DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW

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Introduction

The 2023 edition of the *Digest of United States Practice in International Law* reflects the work of the U.S. Department of State's Office of the Legal Adviser as well as international legal developments within the purview of other departments and agencies of the United States, such as the U.S. Trade Representative, the Department of the Treasury, the Department of Justice, and others with whom the Office of the Legal Adviser collaborates. The State Department publishes the online *Digest* to make U.S. views on international law readily accessible to our counterparts in other governments, and to international organizations, scholars, students, and other users, both within the United States and around the world.

The legal work illustrated in this year's *Digest* was in many ways shaped by world events. The United States' efforts to respond to crises in 2023 is evident in nearly every area of legal practice, and accordingly in most of the chapters of this volume. On April 15, rival factions of Sudan's military and government engaged in armed clashes around the country and in Khartoum. The State Department quickly addressed a variety of issues, including the evacuation of our embassy in Khartoum, the safety of American citizens in Sudan, and the burgeoning humanitarian crisis. The United States also engaged in efforts to reach a settlement between the parties that would stop fighting and improve access to humanitarian assistance. In December, Secretary of State Blinken announced his determination that members of the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) committed war crimes in Sudan and that members of the RSF and allied militias committed crimes against humanity and ethnic cleansing.

On October 7, Hamas perpetrated an attack against Israel that resulted in more than 1,200 deaths and took 254 people hostage. In the aftermath of the attack, the United States engaged in seeking to resolve the conflict and increasing the flow of humanitarian aid to Gaza, assisting U.S. citizens, legal permanent residents, and their immediate family members in departing Gaza, and ensuring the safe return of hostages. The Office of the Legal Adviser supported U.S. engagement in international organizations, particularly at the United Nations, and engaged in legal diplomacy on questions of international humanitarian law and permanent settlement between the Israelis and Palestinians.

The United States continued to respond to Russian aggression in Ukraine in 2023. In February, Vice President Harris announced Secretary Blinken's determination that members of Russia's forces and other Russian officials committed crimes against humanity in Ukraine. Additional response efforts included legal diplomacy, including developing creative approaches, to assist Ukraine in its efforts to support itself and hold Russia to account. The Office of the Legal Adviser continued to participate in multilateral meetings of foreign legal advisers on a variety of legal issues related to Russia's war against Ukraine, including at the Meetings of the Council of Europe Committee of Legal Advisers on Public International Law, U.S.-EU legal dialogues, the Annual Meeting of Allies' Legal Advisers at NATO, and frequent meetings with G7 legal counterparts. In

May, the United States joined the Council of Europe's "Register of Damage Caused by the Aggression of the Russian Federation against Ukraine on or after February 24, 2022," as a founding Associate Member. The United States participated in the Core Group on the development of a special tribunal for prosecuting the crime of aggression in Ukraine. In December, the Department of Justice announced the first ever charges against four Russian-affiliated military personnel for violation of the War Crimes Act in connection with Russia's invasion of Ukraine. Further, the United States responded to Russia's actions related to its treaty obligations, including Russia's announcement that it would suspend its participation in the New START Treaty and its withdrawal from the Treaty on Conventional Armed Forces in Europe (CFE).

This volume features international views and positions on numerous other critical topics in 2023. The United States delivered remarks at the 10th Conference of the States Parties of the UN Convention against Corruption in Atlanta, Georgia, marking the first time in recent history the United States hosted a major UN conference outside of the United Nations in New York. In consular affairs, the Office of the Legal Adviser responded to a decision of the Uniform Law Commission (ULC) not to establish a drafting committee for a model state law on consular notification and access. The Hague Conference on Private International Law approved the Toolkit on Preventing and Addressing Illicit Practices in Intercountry Adoption, the result of six years of work on the part of a working group chaired by the Office of the Legal Adviser. The State Department unveiled a new policy to permit attorneys, interpreters, and other third parties to attend, at the request of the applicant, appointments for passport services at domestic passport agencies and centers and passport and other citizen services at U.S. embassies and consulates. In political-military affairs, the Office of the Legal Adviser continued to engage on efforts to repeal and replace the 2001 Authorization for Use of Military Force (AUMF). On September 28, Acting Legal Adviser Richard Visek testified before the House Foreign Affairs Committee, along with State Department Acting Deputy Secretary Victoria Nuland and Department of Defense officials. With 45 other endorsing states, the United States launched the Political Declaration on Responsible Military Use of Artificial Intelligence and Autonomy.

Representatives of the U.S. government continued to explain U.S. views and positions on critical environmental and health issues. In November and December, a U.S. delegation, headed by the Special Presidential Envoy for Climate, John Kerry, attended the United Nations Climate Change Conference (COP28). The delegation worked with international partners to take stock of collective progress towards achieving the purpose and long-term climate change goals of the Paris Agreement. Also with international partners, the United States reached an historic agreement to operationalize loss and damage fund and funding arrangements. On international health issues, the United States continued participation in negotiations of two legally binding instruments that would address pandemic preparedness, prevention, and response and amend the International Health Regulations. The United States also participated in the negotiation of a new legally binding instrument on plastic pollution.

There were further developments in 2023 relating to U.S. international agreements, treaties, and other arrangements. In May, the United States and Papua New Guinea concluded a new Defense Cooperation Agreement and an Agreement Concerning Counter Illicit Transnational Maritime Activity Operations. The United States and

Taiwan signed the first trade agreement under the framework of the U.S.-Taiwan Initiative on 21st Century Trade. The U.S. Senate provided advice and consent to U.S. ratification of the U.S.-Chile Tax Treaty. The United States signed the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, also referred to as the High Seas Treaty. The United States deposited its letter of acceptance for the World Trade Organization's Agreement on Fisheries Subsidies, an agreement that was the culmination of more than 20 years of negotiations. President Biden transmitted to the U.S. Congress five agreements related to the Compacts of Free Association, signed by the State Department, with the Federated States of Micronesia and the Republic of the Marshall Islands. Pursuant to amendments to the Case-Zablocki Act that took effect in September 2023, the State Department enacted regulations implementing the additional congressional reporting and publication requirements for executive agreements and "qualifying non-binding instruments" set out in the amendments.

The United States engaged in significant actions regarding maritime boundaries and limits. President Biden transmitted two bilateral maritime boundary treaties with Mexico and Cuba to the U.S. Senate for its advice and consent to ratification. The State Department released the geographic coordinates defining the outer limits of the U.S. continental shelf in areas beyond 200 nautical miles from the coast, known as the extended continental shelf (ECS).

The United States also engaged in other significant diplomatic initiatives and responded to developments worldwide. The State Department released the first-ever Strategic Framework for Space Diplomacy. The United States recognized the Cook Islands and Niue as independent, sovereign nations and established diplomatic relations. The Department of the Treasury issued a broad General License to provide additional authorizations for disaster relief assistance to the Syrian people that would otherwise be prohibited by the Syrian Sanctions Regulations. The United States co-penned UN Security Council Resolution 2699 to authorize a Multinational Security Support (MSS) mission to Haiti. The resolution, which was adopted by the Security Council, responds to Haiti's request for international support. Secretary Blinken announced a determination that members of the Ethiopian National Defense Forces, Eritrean Defense Forces, Tigray People's Liberation Front forces, and Amhara forces committed war crimes and other crimes against humanity in northern Ethiopia.

The Office of the Legal Adviser participated in developing and providing U.S. positions in a number of proceedings in U.S. courts in 2023. The U.S. District Court for the District of Columbia granted the State Department's motion for dismissal and summary judgement in *L'Association des Americains Accidentels v. State*, a case challenging the Department's increase of the fee for processing a request for a Certificate of Loss of Nationality. In a related suit filed by L'Association des Americains Accidentels, the U.S. Court of Appeals for the D.C. Circuit dismissed as moot plaintiffs' challenge to the pandemic-related suspension and subsequent delay of Certificate of Loss of Nationality services at U.S. embassies and consulates. Consistent with the views of the United States amicus brief, the Supreme Court denied *certiorari* in *NSO Group v. Whatsapp, Inc*. In April, in *Halkbank v. United States*, the Supreme Court ruled consistently with the U.S. positions that the district court had jurisdiction over the

prosecution of Halkbank, and that the Foreign Sovereign Immunities Act does not provide immunity from criminal prosecution.

The *Digest* discusses other forms of U.S. participation in international organizations, institutions, initiatives, and litigation. After a five-year absence, the UNESCO General Conference accepted the United States' membership proposal, and the United States rejoined UNESCO in July. In *Certain Iranian Assets*, relating to efforts by U.S. victims of terrorism to satisfy judgments against Iran, the International Court of Justice (ICJ) issued its decision rejecting the majority of Iran's case under the now-terminated Treaty of Amity. The United States filed written observations on the admissibility of the U.S. Declaration of Intervention, filed in 2022, in the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukraine v. Russian Federation). The United States also participated in two new advisory opinion proceedings at the ICJ, the first relating to Israeli practices and policies in the Palestinian territories and the second addressing the obligations of States with respect to climate change. In November, Professor Sarah Cleveland, nominated in 2022 by the U.S. National Group to the Permanent Court of Arbitration, was elected to serve as a judge on the ICJ. The State Department, particularly the Bureau for International Organizations Affairs and the Office of the Legal Adviser, played a lead role in promoting Professor Cleveland's candidacy.

Many attorneys in the Office of the Legal Adviser collaborate in the annual effort to compile the *Digest*. For the 2023 volume, attorneys whose contributions to the *Digest* were particularly significant include David Bigge, Laura Conn, Carol Farrand, Anna-Kristina Fox, Terra Gearhart-Serna, James Gresser, CarrieLyn Guymon, Sarah Hunter, Cassandra Kildow, Theodore Kill, Selene Ko, Chinyelu Lee, Benjamin Levin, Lorie Nierenberg, Virginia Prugh, Robert Satrom, Lela Scott, Margaret Sedgewick, Meha Shah, and Thomas Weatherall. I express thanks to our law librarian, Camille Majors, as well as librarian Kera Winburn, and their colleagues in the Bunche Library. Office of the Legal Adviser interns Bryce Klehm, Inbar Pe'er, Tate Sheppard, and Elizabeth Shneider also assisted in ensuring the accuracy of the *Digest.* Rickita Grant once again offered her expertise in formatting the *Digest* for final publication. Finally, I express thanks to Tiffany Holloman for her continuing outstanding work as editor of the *Digest*.

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Note from the Editor

The official version of the *Digest of United States Practice in International Law* for calendar year 2023 is published exclusively online on the State Department's website. I would like to thank my colleagues in the Office of the Legal Adviser and those in other offices and departments in the U.S. government who make this cooperative venture possible and aided in the release of this year's *Digest*.

The 2023 volume follows the general organization and approach of past volumes. As with the 2021 and 2022 volumes, we are no longer posting many full text source documents on the State Department website with one exception. Several U.S. responses to petitions and merits submissions before the Inter-American Commission on Human Rights are placed on the State Department website, at https://www.state.gov/digest-of-united-states-practice-in-international-law/. For many documents we have provided a specific internet citation in the text. We realize that internet citations are subject to change, but we have provided the best address available at the time of publication.

We rely on the texts of relevant original source documents introduced by relatively brief explanatory commentary to provide context. Introductions (in Calibri font) prepared by the editor are distinguishable from lengthy excerpts (in Times New Roman font), which come from the original sources. Some of the litigation-related entries do not include excerpts from the court opinions because most U.S. federal courts now post their opinions on their websites. In excerpted material, four asterisks are used to indicate deleted paragraphs, and ellipses are used to indicate deleted text within paragraphs. Bracketed insertions indicate editorial clarification or correction to the original text.

Entries in each annual *Digest* pertain to material from the relevant year, although some updates (through June 2024) are provided in footnotes. For example, we note the release of U.S. Supreme Court and other court decisions, as well as other noteworthy developments occurring during the first several months of 2024 where they relate to the discussion of developments in 2023.

Updates on most other 2024 developments are not provided, and as a general matter, readers are advised to check for updates. This volume also continues the practice of providing cross-references to related entries within the volume and to prior volumes of the *Digest*.

Other documents are available from multiple public sources, both in hard copy and from various online services. The United Nations Official Document System makes UN documents available to the public without charge at https://digitallibrary.un.org/. For UN-related information generally, the UN's home page at https://www.un.org/ also

remains a valuable source. Legal texts of the World Trade Organization ("WTO") may be accessed through the WTO's website, at https://www.wto.org/english/docs_e/legal_e/legal_e.htm.

The U.S. Government Publishing Office ("GPO") provides electronic access to government publications, including the Federal Register and Code of Federal Regulations; the Congressional Record and other congressional documents and reports; the U.S. Code, Public and Private Laws, and Statutes at Large; Public Papers of the President; and the Daily Compilation of Presidential Documents. GPO makes government materials available online at https://www.govinfo.gov.

On treaty issues, this site offers Senate Treaty Documents (for the President's transmittal of treaties to the Senate for advice and consent, with related materials), available at https://www.govinfo.gov/app/collection/CDOC, and Senate Executive Reports (for the reports on treaties prepared by the Senate Committee on Foreign Relations), available at https://www.govinfo.gov/app/collection/CRPT. In addition, the Office of the Legal Adviser provides a wide range of current treaty information at https://www.state.gov/bureaus-offices/treaty-affairs/ and the Library of Congress provides extensive treaty and other legislative resources at https://www.congress.gov.

The U.S. government's official web portal is https://www.usa.gov, with links to government agencies and other sites. The State Department's home page is http://www.state.gov. The website of the U.S. Mission to the UN is https://usun.usmission.gov.

While court opinions are most readily available through commercial online services and bound volumes, individual federal courts of appeals and many federal district courts now post opinions on their websites. The following list provides the website addresses where federal courts of appeals post opinions and unpublished dispositions or both:

U.S. Court of Appeals for the District of Columbia Circuit:
https://www.cadc.uscourts.gov/internet/opinions.nsf/OpinionsByRDate?OpenView&count=100;

U.S. Court of Appeals for the First Circuit:
http://media.ca1.uscourts.gov/opinions/;

U.S. Court of Appeals for the Second Circuit:
http://www.ca2.uscourts.gov/decisions.html;

U.S. Court of Appeals for the Third Circuit:
http://www.ca3.uscourts.gov/search-opinions;

U.S. Court of Appeals for the Fourth Circuit:
http://www.ca4.uscourts.gov/opinions/search-opinions;

U.S. Court of Appeals for the Fifth Circuit:
http://www.ca5.uscourts.gov/electronic-case-filing/case-information/current-opinions;

U.S. Court of Appeals for the Sixth Circuit:
https://www.ca6.uscourts.gov/opinions;

U.S. Court of Appeals for the Seventh Circuit:
http://media.ca7.uscourts.gov/opinion.html;

U.S. Court of Appeals for the Eighth Circuit:
https://www.ca8.uscourts.gov/all-opinions;

U.S. Court of Appeals for the Ninth Circuit:
https://www.ca9.uscourts.gov/opinions/;

U.S. Court of Appeals for the Tenth Circuit:
https://www.ca10.uscourts.gov/search-opinions;

U.S. Court of Appeals for the Eleventh Circuit:
https://www.ca11.uscourts.gov/opinions;

U.S. Court of Appeals for the Federal Circuit:
https://cafc.uscourts.gov/home/case-information/opinions-orders.

The official U.S. Supreme Court website is maintained at https://www.supremecourt.gov. The Office of the Solicitor General in the Department of Justice makes its briefs filed in the Supreme Court available at https://www.justice.gov/osg/supreme-court-briefs. Many federal district courts also post their opinions on their websites, and users can access these opinions by subscribing to the Public Access to Electronic Records ("PACER") service, https://pacer.uscourts.gov/. Other links to individual federal court websites are available at https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links.

Selections of material in this volume were made based on judgments as to the significance of the issues, their possible relevance for future situations, and their likely interest to government lawyers, especially our foreign counterparts; scholars and other academics; and private practitioners.

As always, we welcome suggestions from those who use the *Digest*.

Tiffany Holloman

CHAPTER 1

Nationality, Citizenship, and Immigration

A. NATIONALITY, CITIZENSHIP, AND PASSPORTS

1. *L'Association des Americains Accidentels v. State I*

On February 10, 2023, the U.S. District Court for the District of Columbia issued its memorandum opinion in *L'Association des Americains Accidentels et al. v. Dep't of State, et al.*, 656 F. Supp. 3d 165 (D.D.C. 2023) ("*AAA I*"). In 2020, L'Association des Americains Accidentels and several of its members (collectively, the Association), sued the State Department in *L'Association des Americains Accidentels et al. v. Dep't of State, et al.*, No. 20-cv-03573 (D.D.C.), alleging that the Department's 2010 Rule increasing the fee for processing a request for a Certificate of Loss of Nationality of the United States ("CLN") under Immigration and Nationality Act Section 349(a)(5) (taking an oath of renunciation of U.S. nationality before a U.S. diplomatic or consular officer abroad) from $450 to $2,350 violated the Administrative Procedure Act, the Constitution, and customary international law. In 2021, the State Department filed motions to dismiss and for summary judgment. See *Digest 2022* at 8-9. The Court granted the Department's motion for dismissal and summary judgment finding that plaintiffs failed to meet their burden under the Administrative Procedure Act and that, even if there were a constitutional right to expatriate protected by the Due Process Clause, the fee would pass strict scrutiny. The Court also found that the fee does not violate the First Amendment, Eighth Amendment, or customary international law. Excerpts follow from portions of the Court's opinion relating to customary international law (with footnotes omitted).

* * * *

Defendants have moved to dismiss Plaintiffs' customary international law claim pursuant to Federal Rule of Civil Procedure 12(b)(6), and, in the alternative, for summary judgment. Plaintiffs oppose Defendants' motion to dismiss and have cross-moved for summary judgment.

The Supreme Court long ago held that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." *Murray v. Schooner Charming Betsy, The*, 6 U.S. 2 Cranch 64, 118, 2 L.Ed. 208 (1804); *see also Sampson v. Fed. Republic of Germany*, 250 F.3d 1145, 1152 (7th Cir. 2001) ("[T]he *Charming Betsy* canon directs courts to construe ambiguous statutes to avoid conflicts with international law"). Customary international law is the "general and consistent practice of states followed by them from a sense of legal obligation." *Usoyan v. Republic of Turkey*, 6 F.4th 31, 40 (D.C. Cir. 2021) (quoting Restatement (Third) of the Foreign Relations Law of the United States § 102(2) (Am. L. Inst. 1987)). To determine the existence of customary international law, a court looks to "obvious sources like treaties and legislative acts," "the general usage and practice of nations and judicial decisions recognizing and enforcing that law." *Usoyan*, 6 F.4th at 41 (internal quotations omitted).

Before the court can engage in the *Charming Betsy* statutory construction analysis, it must first find that Plaintiffs have established the existence of a customary international law with which the renunciation provision must comport. In their Complaint, Plaintiffs allege that "[v]oluntary expatriation is recognized as a right under customary international law," and a $2,350 Renunciation Fee that "preconditions Plaintiffs' right to expatriate on the payment of an exorbitant fee ... fails to comport with customary international law." Compl. ¶ 209, 217 (citing Note, *The Right of Nonrepatriation of Prisoners of War*, 83 YALE L.J. 358, 373 (1973)). They further argue that only the imposition of a "nominal modest [renunciation] fee" would comport with customary international law. *Id.* ¶ 15. In other words, Plaintiffs seek to have the court recognize a "consistent practice of states," *Republic of Turkey*, 6 F.4th at 40, to permit citizens to voluntarily expatriate at no or very little charge.

Plaintiffs have not identified any international treaties, statutes, or court decisions declaring that the right to voluntarily expatriate must be unencumbered by no more than a nominal fee. To the contrary, Plaintiffs have identified at least nine countries other than the U.S. that charge a renunciation fee. *See* Pls.' Selective List of Renunciation Fees, ECF No. 14-3. Even if it is true that the U.S. has not historically charged a fee for voluntary expatriation and that it now charges the highest such fee of any country, those facts are still not sufficient to establish that the U.S.'s former practice of not charging a fee flows "from a sense of legal obligation." *Republic of Turkey*, 6 F.4th at 40. Indeed, Plaintiffs conceded at oral argument that the demand for CLNs has increased, and the State Department has explained that it had not previously set a renunciation fee because it was difficult to "accurately" assess the cost of renunciation. Compl. ¶ 116 (citing 80 Fed. Reg. 51465 (Aug. 25, 2015)). Thus, there is no basis upon which to find that the Executive Branch believed it was legally obligated to offer renunciation services for free. Having failed to show the existence of customary international law establishing that citizenship renunciation must be nearly free of charge, Plaintiffs cannot sustain their customary international law claim. *See United States v. Corey*, 232 F.3d 1166, 1179 (9th Cir. 2000) ("[T]he *Charming Betsy* rule does not apply because there is no conflict with international law to avoid"). Consequently, the court need not address Plaintiffs' cross motion for summary judgment on this claim, and Defendants' motion for summary judgement will be granted.

* * * *

On February 16, 2023, Plaintiffs filed a notice of appeal in the U.S. Court of Appeals for the D.C. Circuit. *AAA I*, No. 23-5034. On May 8, 2023, the parties filed a joint motion to hold the appeal in abeyance to allow the Department time to complete new rulemaking regarding the fee it charges for processing a request for a certificate of loss of nationality. On October 2, 2023, the Department issued a proposed rule, proposing to amend the Schedule of Fees for Consular Services to reduce the current fee for Administrative Processing of a Request for a Certificate of Loss of Nationality of the United States from $2,350 to $450. 88 Fed. Reg. 67,687 (Oct. 2, 2023).

2. *L'Association des Americains Accidentels v. State II*

On August 18, 2023, the U.S. Court of Appeals for the D.C. Circuit issued an unpublished per curiam order dismissing as moot plaintiffs' claims in *L'Association des Americains Accidentels et al. v. Dep't of State, et al.*, ("AAA II") challenging the pandemic-related suspension and subsequent delay of Certificate of Loss of Nationality services at post. *AAA II*, No. 22-5262. The Court concluded that the claims of individual plaintiffs who have successfully taken the oath of renunciation are moot; that those who have failed to contact or follow up with post for an appointment lack standing; and that the Association's claims are moot because the sole named member who has not yet taken the oath of renunciation has an appointment scheduled within a reasonable time. *Id.*Accordingly, the Court dismissed the case for lack of jurisdiction. Plaintiffs had appealed the 2022 decision of the U.S. District Court for D.C. in favor of the Department in *AAA II*, No. 21-cv-02933 (D.D.C. Sept. 28, 2022). See *Digest 2022* at 10-13. Excerpts from the August 18 order follow (footnotes omitted).

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* * * *

First, we lack jurisdiction over the plaintiffs' challenge to the State Department's suspension of renunciation services. The Association and the seven individual plaintiffs who have succeeded in renouncing their American nationality no longer have a "personal stake" in the resolution of the suspension claim. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) (quoting *Camreta v. Greene*, 563 U.S. 692, 701 (2011)); *Sosna v. Iowa*, 419 U.S. 393, 402 (1975). They have received the relief they requested: The State Department ended its suspension of renunciation services and made those services available to plaintiffs. Am. Compl. ¶ 108; *see also id.* Prayer for Relief (e)-(g). Now that the State Department has provided and plaintiffs have taken advantage of the opportunity to expatriate—or failed to do so for reasons not of the State Department's making—a decision of this court could neither "compel that result ... no[r] serve to prevent it." *DeFunis v. Odegaard*, 416 U.S. 312, 317 (1974) (per curiam); *accord Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 437 (D.C. Cir. 2018) (per curiam). Their claims are therefore moot. *See DeFunis*, 416 U.S. at 317; *see*

also *Lemon v. Green*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (holding plaintiff's claims moot when "intervening events make it impossible [for the court] to grant the prevailing party effective relief" (quoting *Burlington N. R.R. Co. v. Surface Transp. Bd.*, 75 F.3d 685, 688 (D.C. Cir. 1996))).

Plaintiffs contend that the suspension policy continues, albeit under a different name. They emphasize that the State Department has yet to resume offering renunciation services at posts in the Czech Republic, Latvia, and Greece. But none of the four individual plaintiffs, nor any identified member of the Association who has yet to renounce, seeks to do so at those posts. And in any case, since June 2021, the State Department has required all diplomatic missions to provide consular services to all U.S. citizens regardless of residence. J.A. 102-03. Thus, even if there were a plaintiff who resided in a country in which the U.S. consular post has not resumed renunciation services, such an individual would be able to go to an alternative consulate or embassy to fulfill the requirements of expatriation. In sum, an order declaring suspension of renunciation services unlawful and setting it aside would be purely advisory.

Seeking alternative footing from which to press their challenge to the now-terminated suspension of renunciation services, plaintiffs invoke the exception to mootness for issues capable of repetition yet evading review, *see* Appellants Br. 15, but that doctrine is a poor fit for this claim. The exception applies when a challenged action is too short in duration to be litigated fully before its cessation and there is a reasonable expectation that the same plaintiff will be subjected to the same action again. *See* *Shapiro v. U.S. Dep't of Justice*, 40 F.4th 609, 615 (D.C. Cir. 2022) (citing *Weinstein v. Bradford*, 419 U.S. 147, 149 (1975) (per curiam)). These plaintiffs lack any such reasonable expectation. Nor do plaintiffs argue that any other exception to mootness applies.

Even allowing that the six-week suspension was too brief for its legality to be litigated, the individual plaintiffs who have successfully renounced their U.S. citizenship could not be affected by any future denial of renunciation services. And the plaintiffs who have yet to renounce lack standing to challenge the unavailability of appointments—whether due to past suspension or continuing backlogs—because any asserted injuries would be self-inflicted: Three of them did not request renunciation appointments at any consular post, and the fourth failed to appear for a scheduled appointment. Their lack of opportunity to renounce citizenship before a consular officer is thus of their own making, not fairly traceable to the State Department's conduct. *See* *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015); *Nat'l Fam. Plan. & Reprod. Health Ass'n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006).

In any event, plaintiffs' protest that the global suspension of in-person services "can be easily reinstated," whether in response to COVID-19 or "for other reasons, such as the Ukrainian-Russian war or future pandemics," Appellants Br. 16-17, is speculative. There is little reason to think that the State Department is poised to reimpose a global suspension of renunciation services that would have any effect on any of the plaintiffs in this case. Further, should the State Department suspend renunciation services in response to another crisis, the legal issues presented would differ and, as the State Department points out, "would need to be evaluated against a different factual record." Appellees Br. 27.

Second, we lack jurisdiction over the plaintiffs' claim of unreasonable delay in scheduling renunciation appointments. Plaintiffs assert that the State Department has abdicated its "mandatory duty to process voluntary renunciation applications," Am. Compl. ¶ 102, in violation of the Administrative Procedure Act, and seek an order requiring the State Department

"to provide renunciation-related services within a reasonable timeframe," *id.* Prayer for Relief (f).

As to this challenge, too, no individual plaintiff has a live claim. For the reasons already noted in connection with the suspension claim, seven of the individual plaintiffs' claims are moot and the other four individual plaintiffs lack standing. And the Association lacks a live unreasonable-delay claim. Plaintiffs challenge delays in receiving appointments to take the renunciation oath but do not allege that the State Department has unlawfully delayed processing applications after interviews have been scheduled. Because the only member the Association identified to support its associational standing has been scheduled for a renunciation appointment, the Association can no longer establish redressable harm from the challenged delay in scheduling a renunciation interview.

A membership organization has standing when (1) "at least one of [its] members would otherwise have standing to sue in his or her own right;" (2) the interest the organization seeks to protect is "germane" to its purpose; and (3) "neither the claim asserted nor the relief requested requires the participation of individual members." *See* *Sierra Club v. EPA*, 755 F.3d 968, 973 (D.C. Cir. 2014); *accord* *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). To establish standing, the organization must identify through affidavits or other evidence a specific member who has suffered an injury-in-fact that can be fairly traced to the defendant's conduct and redressed by a favorable judicial decision. *See* *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 942 F.3d 504, 508 (D.C. Cir. 2019) (explaining that, "[b]ecause the district court disposed of this case at summary judgment," the plaintiff must adduce "specific facts" demonstrating standing (quoting *Shays v. FEC*, 414 F.3d 76, 84 (D.C. Cir. 2005))). The Association fails to show redressability here.

The Association rests its standing to challenge the State Department's delays on the claim of one member, Olivier Vaury. Mr. Vaury attested before the district court that he is a member of the Association, that he requested an appointment to renounce his citizenship before a consular officer in January and again in April 2022, and that his appointment "ha[s] not yet been scheduled." J.A. 148 (Vaury Decl. ¶¶ 1-3). The State Department recently notified the court that it has processed Mr. Vaury's application and scheduled him for an in-person oath appointment at the Paris embassy in November 2023. State Department Letter 2; *see also L'Association des Américains Accidentels v. U.S. Dep't of State*, No. 22-5262, Doc. 1998922, at 3 (D.C. Cir. May 12, 2023) (Ex. A). A court order ensuring Mr. Vaury an appointment for an in-person interview within a reasonable time would have fully redressed his injury from the unreasonable delay alleged in the Association's complaint. The State Department's provision of that very relief thus leaves this court no more to do. *See* *United Steelworkers of Am., AFL-CIO-CLC v. Rubber Mfrs. Ass'n*, 783 F.2d 1117, 1120 (D.C. Cir. 1986) (per curiam). The Association's reference to "[a]pproximately 852 [unnamed] members" who have yet to be able to renounce their U.S. citizenship, J.A. 168, fails to demonstrate the requisite specificity to establish standing, *see* *Shays*, 414 F.3d at 84. Without evidence identifying a specific member whose claimed injury-in-fact this court could direct the district court on remand to redress, the Association cannot invoke associational standing to press its members' claims.

* * * *

3. *Jenke v. United States*

On October 4, 2023, following the decision in *AAA I*, a new group of individual plaintiffs filed a class action suit challenging the fee for processing a request for a CLN in the U.S. District Court for the District of Columbia. *Jenke, et al., v. United States*, No. 23-cv-02950. *See* Section A.1, *supra* for discussion of *AAA I*. Unlike the plaintiffs in *AAA I*, the plaintiffs in *Jenke* filed suit on behalf of all individuals who already paid the fee for CLN services at the time of filing the suit and now seek a refund of the difference between the current fee of $2,350 and $450, the amount to which the Department raised the fee in 2010 and to which the Department recently proposed to reduce the fee. The plaintiffs claim that the $2,350 fee for CLN services violates the Administrative Procedure Act, the Fifth Amendment's substantive due process clause, and two statutory provisions. On December 4, 2023, the government filed a motion to dismiss, arguing, *inter alia*, that both the statute of limitations and *res judicata*, bar the new claims. Excerpts from the government's memorandum in support of the motion to dismiss follow (footnotes omitted).

* * * *

I. Plaintiffs' Claims are Barred by the Statute of Limitations.

Plaintiffs' claims are untimely because they bring a facial challenge to a regulation more than six years after the Department of State published the rule. Pursuant to 28 U.S.C. § 2401(a), a "civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." In challenges to an agency action, "[a] cause of action . . . 'first accrues,' within the meaning of § 2401(a), as soon as (but not before) the person challenging the agency action can institute and maintain a suit in court." *Alaska Cmty. Action on Toxics v. U.S. EPA*, 943 F. Supp. 2d 96, 102 (D.D.C. 2013) (quoting *Spannaus v. U.S. Dep't of Just.*, 824 F.2d 52, 56 (D.C. Cir. 1987)). Thus, "[t]he right of action first accrues on the date of the final agency action." *Harris v. Fed. Aviation Admin.*, 353 F.3d 1006, 1010 (D.C. Cir. 2004). Promulgation of a rule is "unquestionably final agency action." *Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec.*, 892 F.3d 332, 342 (D.C. Cir. 2018).

Plaintiffs challenge the $2,350 renunciation processing fee. *See, e.g.*, Compl. ¶ 7 (challenging the Department's "illegal charge and unjust enrichment" and seeking "reimburse[ment] [for] the Plaintiffs and tens of thousands of other former U.S. citizens who were forced to expend $2,350"); *id.* ¶ 40 (seeking to certify a class of "all individual who have signed and submitted a [renunciation form] since September 6, 2014 and who paid the $2,350 renunciation fee"); *id.* ¶ 47 (challenging "the imposition and collection of the $2,350 fee"). Plaintiffs' claims are wholly facial, as evidenced by Plaintiffs' assertions that the $2,350 fee is unlawful in all circumstances and Plaintiffs' requested relief seeking a declaration to that effect. *See id.* ¶¶ 47-48, 53; *id.* at 13; *see also, e.g.*, *Peri & Sons Farms, Inc. v. Acosta*, 374 F. Supp. 3d 63, 76 n.8 (D.D.C. 2019).

As discussed above, *supra* p. 5, the Department set the renunciation processing fee at $2,350 in the 2014 IFR and finalized it in the 2015 Final Rule, which was codified on August 25, 2015. *See* 2015 Final Rule, 80 Fed. Reg. at 51464-65. Any facial challenge to the $2,350

renunciation processing fee thus accrued, at the latest, on August 25, 2015. *See, e.g.*, *Peri & Sons Farms, Inc.*, 374 F. Supp. 3d at 72. The statute of limitations to any such challenge expired six years later—on August 25, 2021. Because Plaintiffs did not bring the instant lawsuit challenging the $2,350 renunciation processing fee until October 4, 2023, their claims are time-barred.

Plaintiffs cannot claim timeliness under the D.C. Circuit's "narrow" exception for certain as-applied challenges. *Id.* at 74, 76 & n.8. Pursuant to that exception, a party may raise an otherwise untimely challenge to a regulation when an agency has "applied the challenged regulation through an order or other agency action directed at a particular party, its property, or a set of circumstances specifically affecting that party." *Id.* at 75; *see also Genuine Parts Co. v. EPA*, 890 F.3d 304, 316 (D.C. Cir. 2018). No such circumstances are present in this matter.

Nor can Plaintiffs use the publication of 2023 NPRM, which proposes reducing the renunciation processing fee from $2,350 to $450, as the accrual date of their claims. Plaintiffs do not purport to challenge the $450 fee nor anything else proposed by the 2023 NPRM. Indeed, Plaintiffs expressly cite $450 as the proper, legal amount for the fee. *See, e.g.*, Compl. ¶ 48 (alleging that any fee "in excess of $450" would be unlawful). In addition, because an NPRM does not constitute final agency action, even if Plaintiffs had posed a challenge to the NPRM, it would be neither reviewable under the APA nor ripe. *See, e.g.*, *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997); *Window Covering Manufacturers Ass'n v. Consumer Prod. Safety Comm'n*, 82 F.4th 1273, 1292 (D.C. Cir. 2023); *Nevada v. Dep't of Energy*, 457 F.3d 78, 85 (D.C. Cir. 2006). Thus, the mere fact that the 2023 NPRM proposes changes to the renunciation processing fee does not revive any untimely claims to that fee as it is currently formulated.

Plaintiffs' challenge to the $2,350 processing fee is therefore time-barred.

II. Plaintiffs' Claims are Barred by Res Judicata.

The instant lawsuit is AAA's improper attempt to relitigate the same issues it already lost in *L'Association*. "The preclusive effect of a judgment is defined by claim preclusion and issue preclusion, which are collectively referred to as '*res judicata*.'" *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). The doctrine of issue preclusion bars "successive litigation of an issue of fact or law actually litigated and resolved in a . . . prior judgment." *Id.* (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001)). The doctrine exists "to conserve judicial resources, avoid inconsistent results, engender respect for judgments of predictable and certain effect, and to prevent serial forum-shopping and piecemeal litigation." *Robinson v. U.S. Dep't of Educ.*, 502 F. Supp. 3d 127, 133 (D.D.C. 2020) (quoting *Hardison v. Alexander*, 655 F.2d 1281, 1288 (D.C. Cir. 1981)).

Issue preclusion applies where: 1) "the same issue now being raised [was] . . . contested by the parties and submitted for judicial determination in the prior case"; 2) "the issue [was] . . . actually and necessarily determined by a court of competent jurisdiction in that prior case"; and 3) "preclusion in the second case [does] . . . not work a basic unfairness to the party bound by the first determination." *Martin v. Dep't of Just.*, 488 F.3d 446, 454 (D.C. Cir. 2007) (quoting *Yamaha Corp. of Am. v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992)). The preclusion factors are satisfied here.

First, the issue raised here is whether the $2,350 renunciation processing fee is lawful. *See* Compl. ¶ 54. The plaintiffs in *L'Association* ("*L'Association* Plaintiffs") raised the same issue. *See L'Association* Compl. ¶¶ 171, 203, 205. Indeed, Plaintiffs' complaint expressly discusses *L'Association* as a recent lawsuit similarly "challenging the constitutionality and legality of the Renunciation Fee." Compl. ¶ 2.

Second, a district court granted summary judgment for the Department of State and determined that the fee was not unlawful in a final, valid judgment "actually and necessarily determin[ing]" the issue of the fee's lawfulness. *Martin*, 488 F.3d at 454 (citation omitted); *see L'Association*, 656 F. Supp. 3d at 177-78, 180, 185.

Finally, applying preclusion would not work a basic unfairness to Plaintiffs because they are in privity with the *L'Association* Plaintiffs. In the present case, AAA is employing Plaintiffs as proxies to relitigate the same renunciation fee issue that AAA lost in *L'Association*. It is "[a] fundamental precept of common-law adjudication . . . that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies." *Montana v. United States*, 440 U.S. 147, 153 (1979) (quoting *S. Pac. R. Co. v. United States*, 168 U.S. 1, 48-49 (1897)). The Supreme Court in *Taylor v. Sturgill* provided a framework for considering when parties are in privity for the purpose of issue preclusion. *See* 553 U.S. at 893-95; *cf. id.* at 894 n.8 (noting the Court's express avoidance of the term "privity" in the opinion given that the term has taken on broader meaning than the specific nonparty preclusion categories reiterated therein). In particular, the Supreme Court recognized six general categories of relationships that justify preclusion based on a prior lawsuit involving different parties. *See id.* These categories are "meant only to provide a framework for [courts'] consideration of virtual representation, not to establish a definitive taxonomy." *Id.* at 893 n.6.

Two of the *Taylor* categories are relevant here: proxy and control. Since "a party bound by a judgment may not . . . relitigat[e] through a proxy," preclusion is appropriate "when a person who did not participate in a litigation later brings suit as the designated representative of a person who was a party to the prior adjudication." *Taylor*, 553 U.S. at 895. Similarly, in the control category, "a nonparty is bound by a judgment if she 'assume[d] control' over the litigation in which that judgment was rendered." *Id.* (quoting *Montana*, 440 U.S. at 154). Control is evidenced having a "sufficient 'laboring oar' in the conduct of the [prior] litigation." *Montana*, 440 U.S. at 154-55 (quoting *Drummond v. United States*, 324 U.S. 316, 318 (1945)); *see also id.* at 155 (finding control where nonparty had caused the earlier lawsuit to be filed; reviewed and approved the complaint; paid the attorneys' fees and costs; directed the appeal to the Montana Supreme Court; appeared and submitted a brief as *amicus* therein; directed the filing of an appeal to the Supreme Court; and "effectuated" the company's abandonment of that appeal).

Plaintiffs' claims here are precluded because AAA now seeks to "relitigat[e]" its loss in *L'Association* "through a proxy" and is exercising control over this litigation. *Taylor*, 553 U.S. at 895. AAA caused this lawsuit to be filed by recruiting the named Plaintiffs and potential class members. *See Montana*, 440 U.S. at 155. AAA President Fabien Lehagre even publicly thanked the named Plaintiffs "for agreeing to join this class action," noting that "[w]ithout them, there would have been no complaint." Fabien Lahagre, LinkedIn, https://perma.cc/H83P-WGMP. And AAA has been collecting potential class members through social media. Class Action Form, https://perma.cc/4C6V-BFGE; *see* Association des Americains Accidentels, Facebook (Oct. 5, 2023), https://perma.cc/W5JH-UW7F (requesting, in a signed post by Mr. Lehagre, that "[i]f you too have renounced American citizenship by paying $2,350, please complete this form: https://forms.gle/anpXUUcWT525ajS56").

AAA and Lehagre have repeatedly emphasized their role as the driving force behind this lawsuit and have collectively referred to themselves and Plaintiffs as "we." For example, in a LinkedIn post, Lehagre celebrated "the class-action lawsuit we filed this week against the State Department." Fabien Lehagre, LinkedIn, https://perma.cc/H83P-WGMP; *see also Peter Coppola*

Beauty, LLC v. Casaro Labs, Ltd., 108 F. Supp. 3d 1323, 1334 (S.D. Fla. 2015) (finding control likely where nonparty "controlled settlement discussions," "participated regularly in litigation strategy," and, "most telling[ly]," repeatedly referred to nonparty and party in the collective). The same LinkedIn post links to a New York Times article that quotes Lehagre and describes AAA as "spearhead[ing]" this lawsuit, which is AAA's "latest battle" related to the renunciation processing fee. Sopan Deb, *Former Americans Who Gave Up Their Citizenship Want Their Money Back*, The New York Times (Oct. 6, 2023), https://www.nytimes.com/2023/10/06/us/american-citizenship-fee-lawsuit.html; Fabien Lehagre, LinkedIn, https://perma.cc/H83P-WGMP. AAA's Google Form recruiting class members invites individuals who obtained a CLN after paying $2,350 to complete the form to join the class action because "[w]e'll probably need you." Class Action Form, https://perma.cc/4C6V-BFGE. AAA has also made numerous social media posts about the lawsuit, including posts linking to various news articles and a post declaring "CLASS-ACTION FILED" on the day this lawsuit was filed. *See* Association des Americains Accidentels, Facebook (Oct. 4, 2023), https://perma.cc/Y26K-ACS4. And AAA linked to this "[c]lass-action" lawsuit and a press release about it on a page on its website entitled "Accidental Americans take the U.S. State Department to Court." AAA, *Accidental Americans Take the U.S. State Department to Court* (last visited Oct. 11, 2023), https://perma.cc/X9NL-LXF9 (translated by Google from French to English) (linking also to documents related to *L'Association*, No. 20-cv-03573 (D.D.C.)).

AAA has also stated that they are "support[ing]" the instant lawsuit. Class Action Form, https://perma.cc/4C6V-BFGE ("This class action is supported by the Association of Accidental Americans."); Association des Americains Accidentels, Facebook (Oct. 5, 2023), https://perma.cc/W5JH-UW7F (linking to Google Form in a signed post by Mr. Lehagre). And the same lawyers who represented AAA in *L'Association* are counsel in the instant lawsuit. *See* Compl. at 2; *L'Association* Compl. at 63. This level of influence supports a finding of control. *See, e.g.*, *Montana*, 440 U.S. at 155 (finding nonparty had assumed control over prior litigation where, in part, nonparty had caused earlier lawsuit to be filed and paid legal fees); *Shuffle Tech Int'l LLC v. Sci. Games Corp.*, No. 15-cv-3702, 2017 WL 3838096, at *8 (N.D. Ill. Sept. 1, 2017) (finding nonparty had assumed control over prior litigation where nonparty procured counsel, paid legal fees, and "defended the suit for a time"). AAA had "effective choice as to the legal theories and proofs to be advanced" in *L'Association*, and Plaintiffs here are advancing those same legal theories. *Sprint Commc'ns Co. L.P. v. Charter Commc'ns, Inc.*, No. 17-cv-1734, 2021 WL 982726, at *3 (D. Del. Mar. 16, 2021) (citation omitted). AAA has procured counsel, collected Plaintiffs and class members, caused this lawsuit to be filed, and continues to spearhead the lawsuit. Plaintiffs are proxies for AAA's attempt to relitigate the same issues they lost in *L'Association*.

Thus, issue preclusion bars relitigation of Plaintiffs' claims. This case involves the same issues as *L'Association*, those issues were decided by the court, and Plaintiffs here are in privity with the *L'Association* plaintiffs. Applying issue preclusion against Plaintiffs does "not work a basic unfairness to the party bound by the first determination." *Martin*, 488 F.3d at 454 (quoting *Yamaha*, 961 F.2d at 254). AAA has already "had a full and fair opportunity to present its arguments" in *L'Association*. *Gulf Power Co. v. FCC*, 669 F.3d 320, 323-24 (D.C. Cir. 2012) (finding nonparty had "assumed control" over lawsuit for issue preclusion purposes). Applying issue preclusion here is consistent with the purpose of that doctrine—preventing AAA from "serial[ly] forum-shopping," demonstrating "respect for judgments of predictable and

certain effect," and "conserv[ing] judicial resources." *Robinson*, 502 F. Supp. 3d at 133 (quotations omitted). AAA is "not entitled to . . . a second-bite at the apple" regarding the lawfulness of the $2,350 fee by challenging it through its recruited proxies. *Id.* at 135.

* * * *

4. *Koonwaiyou v. Blinken*

On June 7, 2023, the U.S. Court of Appeals for the Ninth Circuit issued its opinion in *Koonwaiyou v. Blinken*, 69 F.4th 1004 (2023). Plaintiff's mother was conferred U.S. non-citizen national status by the Secretary more than 20 years after Plaintiff's birth in Western Samoa, based on the 1986 amendment to the Immigration and Nationality Act ("INA") 308 (8 USC 1408), which allowed persons born outside the United States or American Samoa to only one non-citizen national parent before the amendment's enactment to be considered to be non-citizen nationals, once they prove to the Secretary of State that their non-citizen national parent met the physical presence requirements of the statute. Plaintiff claimed that the U.S. non-citizen national status conferred upon his mother pursuant to the 1986 Amendment to 8 USC 1408 was retroactive to her birth in 1943, and as a result, that he also might qualify for non-citizen national status extending back to his birth in 1967. The court held that the plain language of the 1986 INA amendment makes clear that Congress intended U.S. non-citizen national status conferred on a person pursuant to the statute to be retroactive to the date of birth of such person. Excerpts from the opinion follow (footnotes omitted).

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* * * *

Stripped of conditions not relevant here, the text of § 1408 is straightforward. The first three subsections extend non-citizen national status to (1) individuals born in American Samoa, (2) those born outside the United States or American Samoa to two non-citizen national parents, and (3) those found in American Samoa before the age of five whose parents are unknown. *See* 8 U.S.C. § 1408(1)–(3). All three of these subsections originated in the Nationality Act of 1940, were carried over in modified form to the INA, and have remained largely unchanged since. *Compare* Nationality Act of 1940, Pub. L. No. 76-853, § 204, 54 Stat. 1137, 1139, *and* Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 308, 66 Stat. 163, 238, *with* 8 U.S.C. § 1408(1)–(3). The fourth subsection, added by the 1986 amendments, expanded eligibility to those persons born outside the United States or American Samoa to only one non-citizen national parent. *See* 8 U.S.C. § 1408(4); Pub. L. No. 99-396, § 15(a), 100 Stat. 837, 842–43 (1986).

The structure of § 1408 strongly suggests that individuals who qualify under any of the four subsections attain the same status. Section 1408 states that "the following shall be nationals, but not citizens, of the United States at birth" and then lists the four subsections without differentiation. To bestow a prospective status only on those qualifying under the fourth

subsection but born before its enactment, as the Government argues, we would have to read the phrase "at birth" out of § 1408 for this subgroup of individuals. Doing so would violate the well-established canon against surplusage, which "requires a court, if possible, to give effect to each word and clause in a statute." *United States v. Lopez*, 998 F.3d 431, 440 (9th Cir. 2021). Thus, even though the fourth subsection was added much later, nothing in § 1408 indicates that any of those who qualify under it attain a different status. Instead, the structure of § 1408 indicates that all become "nationals, but not citizens, of the United States at birth." 8 U.S.C. § 1408.

This interpretation is consistent with an uncodified section of the 1986 amendments. That section reads:

(b) The amendment [that adds § 1408(4)] shall apply to persons born before, on, or after the date of the enactment of this Act. In the case of a person born before the date of the enactment of this Act —

(1) the status of a national of the United States shall not be considered to be conferred upon the person until the date the person establishes to the satisfaction of the Secretary of State that the person meets the requirements of [§ 1408(4)] of the Immigration and Nationality Act, and

(2) the person shall not be eligible to vote in any general election in American Samoa earlier than January 1, 1987.

§ 15(b), 100 Stat. at 843. Though not included in the U.S. Code, this uncodified section is binding law. *See U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 448, 113 S.Ct. 2173, 124 L.Ed.2d 402 (1993) (emphasizing that provisions in the Statute at Large retain the force of law even if they are omitted from the U.S. Code); *see also Stephan v. United States*, 319 U.S. 423, 426, 63 S.Ct. 1135, 87 L.Ed. 1490 (1943) (holding that "the Code cannot prevail over the Statutes at Large when the two are inconsistent"). As such, when interpreting the statutory text "as a whole," we must consider it. *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221, 112 S.Ct. 570, 116 L.Ed.2d 578 (1991).

The uncodified section confirms our interpretation. First, the uncodified section makes clear that § 1408(4) applies retroactively. A law is retroactive if "the new provision attaches new legal consequences to events completed before its enactment." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). Because applying a law retroactively raises serious concerns about notice, fairness, and equality, we normally employ a strong presumption against it. *See Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37–38, 126 S.Ct. 2422, 165 L.Ed.2d 323 (2006). But the presumption against retroactivity only applies if Congress has not "expressly prescribed the statute's proper reach." *Landgraf*, 511 U.S. at 280, 114 S.Ct. 1483. In other words, where Congress is clear that a new law applies to actions that took place before its enactment, our judicial presumption yields to statutory text. *See Valiente v. Swift Transp. Co. of Ariz., LLC*, 54 F.4th 581, 585 (9th Cir. 2022).

In the uncodified section of the 1986 amendments, Congress provided the necessary clear statement. The uncodified section clearly states that "persons born before, on, or after the date of the enactment of this Act" qualify for national status under § 1408(4). § 15(b), 100 Stat. at 843. This language distinguishes the 1986 amendments from similar statutes that clearly specify Congress's intent to limit retroactivity to a particular class of individuals, *see Wolf v. Brownell*, 253 F.2d 141, 142 (9th Cir. 1957) (holding that a law granting citizenship "at birth" was not retroactive to all individuals when Congress specifically limited its retroactivity to children born between specified dates to a specific class of qualifying parents), or contain no clear statement about their retroactive reach, *see Friend v. Holder*, 714 F.3d 1349, 1351–52 (9th Cir.

2013) (holding that a law granting citizenship "as of the date of birth" was not retroactive because it provided no indication that it applied to those born before its enactment). The Government's claim that the presumption against retroactivity still applies if the 1986 amendments are read to stretch non-citizen national status back to "birth" for those born before its enactment is unpersuasive. It conflates an interpretative question, "the point at which one's ... status, if successfully established, takes effect," with the retroactivity question, "whether the statute applies to individuals born before the ... Act's effective date." *Friend*, 714 F.3d at 1352. Only the latter is subject to the presumption against retroactivity, which the clear statement in the uncodified section of the 1986 amendments easily overcomes.

Second, the uncodified section of the 1986 amendments clarifies that those qualifying under but born before its enactment do not automatically become non-citizen nationals. Instead, they are "considered to be" non-citizen nationals only after they prove to the Secretary of State that they were in fact born to a non-citizen national parent who met the physical presence requirements listed in § 1408(4). § 15(b)(1), 100 Stat. at 843. Moreover, the uncodified section is clear that no matter how quickly people born before the 1986 amendments applied for national status, they could not obtain one of the benefits of national status—the right to vote in elections in American Samoa—until approximately four months after the 1986 amendments became law. *See* § 15(b)(2), 100 Stat. at 843 (indicating that people born before the amendments were enacted "shall not be eligible to vote in any general election in American Samoa earlier than January 1, 1987"). As the Government emphasizes, no other group who qualifies for non-citizen national status under § 1408 is subject to this kind of certification regime or conferral delay.

But it goes too far to conclude, as the Government argues, that this portion of the amendments was a subtle attempt by Congress to bestow a different status on individuals qualifying under but born before the 1986 amendments' enactment. That interpretation clashes with the text and structure of § 1408: as already described, it would require us to read the prefatory "at birth" language out of § 1408 for one group of individuals. To be sure, "[t]he canon against surplusage is not an absolute rule," and such a reading might be required if there were no other way to reasonably parse the statute's text. *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013). Here, though, the codified and uncodified portions of the 1986 amendments can easily be harmonized. Congress created a scheme where all those eligible under § 1408(4) receive the same status, but those born before the amendments' enactment are required to prove their eligibility before their status is "considered to be conferred upon" them. § 15(b)(1), 100 Stat. at 843. In other words, the 1986 amendments can be read to give every word meaning if we understand the uncodified provisions as establishing a procedure for those born before the enactment of the 1986 amendments to attain the same status of "national[ ], but not citizen[ ], of the United States at birth" as everyone else who qualifies under § 1408.

* * * *

5. *Moncada v. Blinken*

On July 6, 2023, The U.S. District Court for the Central District of California issued a ruling in *Moncada v. Blinken* finding that a Plaintiff born in the United States to a foreign diplomat did not acquire U.S. citizenship at birth. 680 F. Supp. 3d 1190 (C.D. Cal.).

Plaintiff was born in 1950 in New York when his father was both a consul at the Nicaraguan Consulate in New York and an attaché to his country's mission to the UN. The Department incorrectly issued a U.S. passport to Plaintiff until the oversight was discovered in 2018. The case turned on whether Plaintiff's father enjoyed diplomatic agent immunity in 1950 while representing Nicaragua to the UN. The court found that the Department demonstrated by clear and convincing evidence that Plaintiff's father enjoyed diplomatic privileges and immunities at the time of his son's birth in the United States, and that he was not born subject to the jurisdiction of the United States. Plaintiff has filed an appeal, which is currently being briefed. Excerpts from the court's findings of fact and conclusions of law follow.

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* * * *

A. Alien Determinations Under 8 U.S.C. § 1503(a)

113. Title 8, United States Code, section 1503(a) states that "[i]f any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States ..." 8 U.S.C. § 1503(a)

114. "Plaintiff seeks a Declaratory Judgment from this Court that he is a U.S. Citizen by birth and an order compelling the Department of State to reopen and approve his application for a U.S. passport pursuant to 8 U.S.C. § 1503(a)." (Dkt. No. 144-1 at 15 ¶ 1.)

115. A lawsuit brought under § 1503(a) is "not one for judicial review of the agency's action. Rather, section 1503(a) authorizes a *de novo* judicial determination of the status of the plaintiff as a United States national." *Richards v. Secretary of State, Dep't of State*, 752 F.2d 1413, 1417 (9th Cir. 1985).

116. In an alienage determination under § 1503(a), the Plaintiff bears the initial burden of producing "substantial credible evidence" of his citizenship claim. *Mondaca-Vega v. Lynch*, 808 F.3d 413, 419 (9th Cir. 2015).

117. This threshold showing is minimal. In *L. Xia v. Tillerson*, 865 F.3d 643, 656 (D.C. Cir. 2017), the United States Court of Appeals for the District of Columbia Circuit held that "[p]resenting proof of a naturalization certificate or passport—even if already administratively cancelled—would seem to satisfy that *prima facie* requirement."

118. In *Mondaca-Vega*, the Ninth Circuit held that because the petitioner "possessed a valid U.S. passport and successfully petitioned for the adjustment of status of his wife and children based on his purported status as a U.S. citizen[ ]" he had put forth "substantial credible evidence of U.S. citizenship." 808 F.3d at 419 (cleaned up).

119. If the plaintiff satisfies his burden to rebut a presumption of alienage, the "burden shifts back to the government to prove ... [that the plaintiff is not a citizen by] clear and convincing evidence." *Id.* (cleaned up).

120. "[T]he power to make someone a citizen of the United States has not been conferred upon the federal courts, like mandamus or injunction, as one of their generally applicable

equitable powers." *I.N.S. v. Pangilinan*, 486 U.S. 875, 883-84, 108 S.Ct. 2210, 100 L.Ed.2d 882 (1988) (citing 28 U.S.C. §§ 1361, 1651.)

121. This means that "[o]nce it has been determined that a person does not qualify for citizenship, ... the district court has no discretion to ignore the defect and grant citizenship." *Id.* at 884, 108 S.Ct. 2210 (quoting *Fedorenko v. United States*, 449 U.S. 490, 517, 101 S.Ct. 737, 66 L.Ed.2d 686 (1981).

122. In sum, "[n]either by application of the doctrine of estoppel, nor by invocation of equitable powers, nor by any other means does a court have the power to confer citizenship in violation of these limitations." *Id.* at 885, 108 S.Ct. 2210. Thus, the Department of State's prior issuance of a passport—if issued in error—is not determinative of (nor can it confer) citizenship.

123. The Constitution vests with the President the sole power to receive Ambassadors and other public Ministers. U.S. Const. Art. II, § 1, ("The executive power shall be vested in a President of the United States of America."). *Id.* § 3 ("[The President] shall receive Ambassadors and other public Ministers.").

124. "The Reception Clause recognizes the President's authority to determine the status of diplomats, a fact long confirmed by all three branches." *Muthana v. Pompeo*, 985 F.3d 893, 907 (D.C. Cir. 2021) (cleaned up).

125. As a result, "courts have afforded conclusive weight to the Executive's determination of an individual's diplomatic status." *Id.* The Supreme Court has instructed that courts may not "sit in judgment upon the decision of the executive in reference to the public character of a person claiming to be a foreign minister ..." *In re Baiz*, 135 U.S. 403, 432, 10 S.Ct. 854, 34 L.Ed. 222 (1890)

126. The State Department's certification "is the best evidence to prove the diplomatic character of a person accredited as a minister by the government of the United States" *Id.* at 421, 10 S.Ct. 854.

127. Some Courts, including the District of Columbia Circuit and the United States Court of Appeals for the Fourth Circuit, have interpreted *In re Baiz* to hold that the State Department's formal certification of an individual's diplomatic status is conclusive, dispositive evidence that ends the judicial inquiry—so long as that determination is based on a reasonable interpretation of the Vienna Convention. *See e.g., Muthana*, 985 F.3d at 906 ("In light of more than a century of binding precedent that places the State Department's formal certification of diplomatic status beyond judicial scrutiny, we conclude the certification is conclusive and dispositive evidence as to the timing of Muthana's diplomatic immunity."); *United States v. Al-Hamdi*, 356 F.3d 564, 573 (4th Cir. 2004) (criminal conviction) ("[W]e hold that the State Department's certification, which is based upon a reasonable interpretation of the Vienna Convention, is conclusive evidence as to the diplomatic status of an individual."); *Carrera v. Carrera*, 174 F.2d 496 (D.C. Cir. 1949) (family law suit); *Abdulaziz v. Metropolitan Dade Cty.*, 741 F.2d 1328 (11th Cir. 1984) (section 1983 civil action).

128. The government has not cited—and this Court has not identified—a case from the Ninth Circuit holding that *In re Baiz* dictates that the State Department's certification ends the inquiry, so long as it is based on a reasonable interpretation of the Vienna Convention. In this Court's prior Order denying, *inter alia*, the Government's Motion for Summary Judgment, the undersigned determined that: "[Several out-of-circuit] persuasive authorities [cited by the government] are further distinguishable [from the facts before this Court] because they involve individuals seeking to invoke (not reject) diplomatic immunity in non-immigration contexts—here, Plaintiff rejects any claim of immunity for himself and Dr. Moncada." (Dkt. No. 84 at 14:7-

9.) *Muthana*, though, had not been decided at the time of this Court's Order and it is beyond dispute that *Muthana*, like this instant matter, involves an individual seeking to reject diplomatic immunity in an immigration context.

129. However, *Muthana* is, of course, not binding on district courts within the Ninth Circuit and the Court stands by its prior conclusion: "[T]reating the Government's certification as conclusive here would allow the Government unbridled freedom to modify an individual's immigration status and retroactively justify that decision based on a judicially nonreviewable, conclusive certification despite any and all competing evidence. In short, such an approach would potentially render the Government immune from suit under 8 U.S.C. § 1503(a) by virtue of a nonreviewable certification [in any case that was even slightly rooted in a question of diplomatic immunity."] (*Id.* at 14:10-17.)

130. The Court concludes that the Secretary's Certification—assuming it is based on a reasonable interpretation of the Vienna Convention—is highly persuasive evidence of an individual's diplomatic status. It does not, however, mandate that the Court must then close its eyes to the entire body of evidence that is before it.

* * * *

6. Indication of Gender on Consular Reports of Birth Abroad

As discussed in *Digest 2022* at 7-8, on June 30, 2021, the State Department announced policy changes relating to gender. One policy change, effective at that time, permitted applicants for U.S. passports and Consular Reports of Birth Abroad ("CRBAs") to select a new gender marker without presenting medical documentation of gender transition. After the Office of Management and Budget ("OMB") approved revised passport application forms pursuant to the Paperwork Reduction Act of 1995 ("PRA"), on April 11, 2022, another policy change permitted applicants for U.S. passports identifying as unspecified another gender identity to select a third gender marker, "X." In Public Notice 11983, 88 Fed. Reg. 10,423 (Feb. 17, 2023), the State Department published a 60-day Notice of Proposed Information Collection pursuant to the PRA requesting public comment on proposed amendments to the CRBA application (Form No. DS-2029) to add a third gender marker "X" for applicants identifying as unspecified or another gender identity (in addition to the existing "M" and "F" gender markers). In Public Notice 12092, 88 Fed. Reg. 40,912 (June 22, 2023), the State Department published a 30-day Notice of Proposed Information Collection pursuant to the PRA requesting further public comment on the proposed amendments to the CRBA application form, preceding submission of the collection for OMB approval.

7. Third-Party Attendance at Citizen Services

On July 26, 2023, the Department published a notice of proposed rulemaking providing that attorneys, interpreters, and other third parties may attend, at the request of the applicant, appointments for passport services at domestic passport agencies and

centers and passport, Consular Report of Birth Abroad, Certificate of Loss of Nationality, and certain other citizen services at U.S. embassies and consulates. 88 Fed. Reg. 48,143 (Jul. 26, 2023).[*]

8. U.S. Passports Invalid for Travel to North Korea

U.S. passports were declared invalid for travel to, in, or through the Democratic People's Republic of Korea ("DPRK"), pursuant to 22 CFR § 51.63(a)(3),on September 1, 2017. See *Digest 2017* at 7. The Secretary of State has extended the restriction each year since 2017. On August 23, 2023, the Secretary extended the restriction, which became effective on September 1, 2023, and will expire on August 31, 2024 unless extended or revoked. 88 Fed. Reg. 57,514 (Aug. 23, 2023).

B. IMMIGRATION AND VISAS

1. Consular Nonreviewability

On February 2, 2023, the government filed a petition for rehearing en banc following the 2022 decision in *Muñoz v. Dep't of State*, 50 F.4th 906 (9th Cir. 2022). In *Muñoz,* the Ninth Circuit held that the doctrine of consular nonreviewability does not bar judicial review of a visa denial when a U.S. citizen has "a protected liberty interest" in a spouse's visa application, but that such review is limited to whether the USG provided a facially legitimate and bona fide reason for the denial. Although the Ninth Circuit held that the USG had provided such a reason, it had not provided timely notice of the refusal. As such, the court held that consular non-reviewability did not apply and remanded the case for further proceedings. See *Digest 2022* at 15-21. On July 14, 2023, the Ninth Circuit denied the petition for rehearing en banc, over the dissent of 10 Circuit Judges. *Muñoz v. Dep't of State*, 73 F.4th 769 (9th Cir. 2023). On September 29, 2023, the government filed a petition for certiorari seeking Supreme Court review. *Dep't of State v. Muñoz*, No. 23-334. Excerpts from the government's petition for a writ of certiorari follow (footnotes omitted).[**]

* * * *

[*] Editor's note: On May 13, 2024, the State Department published the rule adopting as final the July 26, 2023, notice of proposed rulemaking permitting third-party attendance at appointments for passport, Consular Report of Birth Abroad, and certain other services. The rule's effective date is June 12, 2024. See 89 Fed. Reg. 41,308 (May 13, 2024).

[**] Editor's note: On January 12, 2024, the Supreme Court granted certiorari limited to Questions 1 and 2 presented by the government's petition and heard oral argument on April 23, 2024. *Dep't of State v. Muñoz*, No. 23-334. On June 21, 2024, the Supreme Court issued its opinion, holding that a citizen does not have a fundamental liberty interest in her noncitizen spouse being admitted to the country. 602 U.S. ___, 144 S.Ct. 1812.

A. Certiorari Is Warranted To Decide Whether A U.S. Citizen Has A Protected Liberty Interest In The Visa Application Of A Noncitizen Spouse

The Ninth Circuit erred in ruling that a U.S. citizen has a liberty interest, protected under the Fifth Amendment Due Process Clause, that is implicated by the denial of a visa to a noncitizen spouse. This Court granted certiorari in *Din* to address that issue, see *Din*, 576 U.S. at 90 (plurality opinion), but it did not resolve the question and the Ninth Circuit continues to disagree with every other circuit that has decided it.

1. This Court has repeatedly recognized that a nonresident noncitizen abroad has no constitutional rights in connection with his application for a visa to enter the United States, and therefore no constitutional basis to obtain judicial review of a visa denial. See, *e.g.*, *Mandel*, 408 U.S. at 762, 766-768; *Trump v. Hawaii*, 138 S. Ct. 2392, 2418-2419 (2018). The Ninth Circuit, however, has concluded that a U.S. citizen is nevertheless entitled to judicial review of her spouse's application as a matter of procedural due process. See, *e.g.*, *Bustamante* v. *Mukasey*, 531 F.3d 1059,1062 (2008). The Ninth Circuit reaffirmed that conclusion in this case by recognizing a "protected liberty interest in *'constitutionally adequate procedures* in the adjudication of a non-citizen spouse's visa application,"' which the court believed follows from this Court's recognition of a fundamental "'right to marry."' App., *infra*, 16a (brackets and citations omitted). That was error.

This Court has long recognized that foreign nationals may be denied admission in the political branches' complete discretion, as an exercise of those branches' "plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden." *Mandel*, 408 U.S. at 766 (citation omitted); see, *e.g.*, *Wong Wing v. United States*, 163 U.S. 228, 233 (1896) (reaffirming "[t]he power of congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention"); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) ("[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.") (citation and internal quotation marks omitted).

That plenary authority has been respected even when Congress's choices or the Executive's enforcement decisions prevented family members from residing with each other in the United States. See *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 539, 543-544, 547 (1950) (upholding Executive's power to deny entry to U.S. citizen's noncitizen spouse based on confidential "security reasons" without providing a hearing); see also *Fiallo*, 430 U.S. at 798 (explaining that "we have no judicial authority to substitute our political judgment for that of the Congress," even when "statutory definitions deny preferential status to parents and children who share strong family ties"). As Judge Bumatay's dissent explained, recognizing "a 'liberty interest' for a U.S. citizen over a visa denial" would "directly conflict[] with the political branches' plenary authority" in this area. App., *infra*, 120a-121a.

There is, of course, a fundamental liberty interest in the "rights to marital privacy and to marry and raise a family." *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965) (Goldberg, J., concurring); see *Washington* v. *Glucksberg*, 521 U.S. 702, 720 (1997) ("[T]he 'liberty' specially protected by the Due Process Clause includes the right[] to marry."). But a visa denial does not infringe the right to marry. "[T]he Federal Government here has not attempted to forbid a marriage." *Din*, 576 U.S. at 94 (plurality opinion). Nor has it "refused to recognize [Mufioz's] marriage" or to afford the marriage full legal effect. *Id.* at 101. And it has not prohibited a married couple from living together or otherwise intruded on their "marital privacy." *Griswold*,

381 U.S. at 495 (Goldberg, J., concurring). Instead, it has simply exercised its sovereign authority to deny admission to a noncitizen. Muñoz's fundamental right to marry does not entail a right to compel the United States to admit her noncitizen spouse.

For similar reasons, the court of appeals' emphasis on this Court's *post-Din* decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015), see App., *infra*, 16a-17a, is mistaken. In that case, the Court reaffirmed its precedents holding that "the right to marry is protected by the Constitution." 576 U.S. at 664. But the Court did not implicitly resolve a question in the distinct spousal immigration context that the *Din* Court had specifically left open only eleven days earlier. See *Din*, 576 U.S. at 102 (Kennedy, J., concurring in the judgment). And as the court of appeals acknowledged, *Obergefell* was "reiterat[ing] longstanding precedent that 'the right to marry is a fundamental right inherent in the liberty of the person.'" App., *infra*, 16a (citation omitted). As explained, that long-recognized right is not implicated here.

The court of appeals additionally noted that U.S. citizens have a liberty interest in "residing in their country of citizenship," App., *infra*, 17a (citing *Agosto v. INS*, 436 U.S. 748, 753 (1978)), and reasoned that the "cumulative effect" of a visa denial to a foreign spouse is to force the citizen to choose between "one fundamental right" and "another," *id.* at 17a-18a. But "[n]either [Muñoz's] right to live with her spouse nor her right to live within this country is implicated here." *Din*, 576 U.S. at 101 (plurality opinion). In insisting otherwise, the court of appeals misunderstood the "simple distinction between government action that directly affects a citizen's legal rights ... and action that is directed against a third party and affects the citizen only indirectly or incidentally." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 767 (2005) (quoting *O'Bannon v. Town Court Nursing Ctr.*, 447 U.S. 773, 788 (1980)).

This Court recognized "[o]ver a century ago" that "the due process provision of the Fifth Amendment does not apply to the indirect adverse effects of governmental action." *O'Bannon*, 447 U.S. at 789. That principle holds even where those incidental effects impose substantial hardships on marital or other family relationships. "[M]embers of a family," for example, "may suffer serious trauma" if an "errant father" is sentenced to prison, but those family members "surely * * * have no constitutional right to participate in his trial or sentencing." *Id.* at 788. The same is true here.

2. As the government explained when successfully seeking certiorari in *Din*, see Pet. at 18-21, *Din, supra* (No. 13-1402), the Ninth Circuit's recognition of a U.S. citizen's constitutional interest in immigration decisions affecting a noncitizen spouse conflicts with numerous decisions from other courts of appeals. In the years after *Din* failed to resolve the question, that conflict has not dissolved; to the contrary, courts on both sides have reaffirmed their positions.

For example, in *Bangura v. Hansen*, 434 F.3d 487 (2006), the Sixth Circuit ruled that the plaintiffs (a U.S. citizen and his noncitizen wife) failed to allege a liberty interest in a spousal immigration petition that would allow them to state a procedural due process claim. See *id.* at 495-497. The court accepted that plaintiffs "have a fundamental right to marry," but explained that "[a] denial of an immediate relative visa does not infringe upon" that right. *Id.* at 496. And after *Din*, Chief Judge Sutton's opinion for the court in *Baaghil v. Miller*, 1 F.4th 427 (6th Cir. 2021), reaffirmed that U.S. citizens "do not have a constitutional right to require the National Government to admit noncitizen family members into the country." *Id.* at 433-434.

Similarly, in *Swartz v. Rogers*, 254 F.2d 338, cert. denied, 357 U.S. 928 (1958), the D.C. Circuit considered a U.S. citizen's claim that her husband's deportation burdened her constitutional "right, upon marriage, to establish a home, create a family, [and] have the society and devotion of her husband." *Id.* at 339. The D.C. Circuit rejected that argument, pointing out

that "deportation would not in any way destroy the legal union which the marriage created"; the "physical conditions of the marriage may change, but the marriage continues." *Ibid.* And since the Ninth Circuit's decision below, the D.C. Circuit has reaffirmed its position, explaining that "'[m]arriage is a fundamental right,'" but "a citizen's right to marry is not impermissibly burdened when the government refuses her spouse a visa." *Colindres v. United States Dep't of State*, 71 F.4th 1018, 1021 (2023) (quoting *Obergefell*, 576 U.S. at 673).

Decisions from the First, Second, Third, and Fifth Circuits have reached the same conclusion in visadenial, removal, and other immigration contexts. See, *e.g.*, *Silverman v. Rogers*, 437 F.2d 102, 107 (1st Cir. 1970) (rejecting U.S. citizen's claim of constitutional interest in noncitizen spouse's relief from deportation and explaining that the federal government "has done nothing more than to say that the residence of one of the marriage partners may not be in the United States"), cert. denied, 402 U.S. 983 (1971); *Burrafato v. United States Dep't of State*, 523 F.2d 554, 554-557 (2d Cir. 1975) (rejecting argument that "the constitutional rights of a citizen wife had been violated by denial of her alien husband's visa application without reason" and declining to apply *Mandel)*, cert. denied, 424 U.S. 910 (1976); *Bakran v. Secretary, United States Dep't of Homeland Sec.*, 894 F.3d 557, 564-565 (3d Cir. 2018) (agreeing, based on "Congress's plenary authority to set the conditions for an alien's entry into the United States," that a U.S. citizen does not have "a constitutional right to have his or her alien spouse reside in the United States"); *Bright v. Parra*, 919 F.2d 31, 34 (5th Cir. 1990) (per curiam) ("United States citizen spouses have no constitutional right to have their alien spouses remain in the United States"). That conflict warrants this Court's review.

B. Certiorari Is Warranted To Review The Ninth Circuit's Requirement That The Government Do More Than Cite A Valid Statutory Ground of Inadmissibility To Explain A Visa Denial

The Court should also review the Ninth Circuit's further ruling that, assuming a liberty interest supports a judicial inquiry into a visa denial in this context, a consular officer's citation of the unlawful-activity bar in 8 U.S.C. 1182(a)(3)(A)(ii) does not qualify under *Mandel* as a "facially legitimate and bona fide reason," 408 U.S. at 770, to explain the denial. The Ninth Circuit's decision contravenes *Mandel* and Justice Kennedy's concurrence in *Din* applying that limited standard of review to a materially similar statutory provision. It also overrides Congress's determination, in 8 U.S.C. 1182(b)(3), that consular officers need not provide specific explanations when denying visas on securityrelated grounds. And it squarely conflicts with the D.C. Circuit's intervening decision in *Colindres* regarding a visa denial based on the very same statutory ground of inadmissibility.

1. a. The *Mandel* standard represents a "modest exception" to the rule of consular nonreviewability. *Baaghil*, 1 F.4th at 432. Under *Mandel*, when the government provides a "facially legitimate and bona fide reason" to explain a visa denial, a court may "neither look behind the exercise of that discretion, nor test it by balancing its justification against the [constitutional] interests of those who seek" the applicant's admission. *Mandel*, 408 U.S. at 770. The second question presented in *Din-as* in this petition-was whether the government's citation of a valid statutory ground of inadmissibility, standing alone, was sufficient to meet that standard. See 576 U.S. at 102 (Kennedy, J., concurring in the judgment). In *Din*, Justice Kennedy and Justice Alito concluded that it was. *Ibid.*

The decision below accordingly focused on Justice Kennedy's analysis in *Din* to assess whether the citation of Section 1182(a)(3)(A)(ii) was sufficient in this case. App., *infra*, 3a & n.3, 19a-21a.8 But the court of appeals misinterpreted that opinion. It seized upon Justice

Kennedy's statement that the government did not have to provide a factual explanation in addition to the citation of the terrorist-activity bar in Section 1182(a)(3)(B) because that provision "specifies discrete factual predicates." *Din*, 576 U.S. at 105; see App., *infra*, 3a, 19a. The court of appeals then reasoned that the unlawful-activity bar in Section 1182(a)(3)(A)(ii) does not have "discrete factual predicates" because the provision is not limited to a specified type of lawbreaking. App., *infra*, 19a-20a.

That conclusion is mistaken. As the D.C. Circuit recently explained, Section 1182(a)(3)(A)(ii) *does* "specif[y] a factual predicate for denying a visa: The alien must 'seek[] to enter the United States to engage ... [in] unlawful activity.'" *Colindres*, 71 F.4th at 1024 (quoting 8 U.S.C. 1182(a)(3)(A)(ii)) (second and third sets of brackets in original).9

It is true that different kinds of lawbreaking could serve as the basis for a finding that the statutory bar applies. But that was also the case with respect to the terrorist-activity bar in *Din.* See *Colindres*, 71 F.4th at 1024-1025. As Justice Kennedy acknowledged-and as the dissent in *Din* emphasized-the terrorist-activity bar has ten subsections, with many cross-references, covering a wide variety of terrorism-related grounds of inadmissibility. See 576 U.S. at 105; see also *id.* at 113114 (Breyer, J., dissenting) (noting that Section 1182(a)(3)(B) sets forth "not one reason, but dozens," which "cover a vast waterfront of human activity"). Justice Kennedy nevertheless declined to require the government to be any more specific about which ground supported the visa refusal, even though Din may have had very little idea what finding had been made regarding her husband's inadmissibility. See *id.* at 105-106.

Instead, as Judge Bumatay's dissent correctly explained, Justice Kennedy's concurrence was simply contrasting the terrorist-activity bar-which required the consular officer to make *some* kind of fact-based finding-with the wholly discretionary basis for the waiver denial that was at issue in *Mandel.* App., *infra*, 112a; see *Din*, 576 U.S. at 105 (Kennedy, J., concurring in the judgment). Unlike a discretionary waiver decision, which could be based on a wide range of considerations deemed relevant by the Executive, a consular officer's decision that a noncitizen is not eligible for a visa must be tethered to the legal provisions that define such ineligibility. See, *e.g.*, 8 U.S.C. 1182(a), 1201(g). In other words, when a consular officer cites an inadmissibility provision that requires a fact-based determination, the citation itself "indicates" that the government "relied upon a bona fide factual basis for denying a visa." *Din*, 576 U.S. at 105 (Kennedy, J., concurring in the judgment).

Because a citation of Section 1182(a)(3)(A)(ii) thus supplies a facially legitimate and bona fide reason within the meaning of the *Din* concurrence and *Mandel*, the Ninth Circuit was wrong to require the government to provide any further explanation of the basis for its finding that Asencio-Cordero is inadmissible. If there were any doubt, this Court dispelled it in *Trump v. Hawaii*, when it explained that "[i]n *Din*, Justice Kennedy reiterated that respect for the political branches' broad power over the creation and administration of the immigration system meant that the Government need provide only a statutory citation to explain a visa denial." 138 S. Ct. at 2419 (citation and internal quotation marks omitted).

b. In addition to contravening this Court's cases, the court of appeals' holding also conflicts with a federal statute, 8 U.S.C. 1182(b)(3)-a provision that the court did not even mention. See App., *infra*, 114a-115a (Bumatay, J., dissenting from denial of rehearing).

Section 1182(b)(3) provides that if a consular officer bases a visa refusal on any of the security-related grounds in Section 1182(a)(2) or (3)-including the unlawful activity ground at issue here-then the officer is not obligated to provide "timely written notice" of the specific basis for the refusal. 8 U.S.C. 1182(b)(1) and (3). Congress enacted that protection out of concern that

releasing such information to foreign-national applicants could have serious law-enforcement or national-security consequences. See H.R. Rep. No. 383, 104th Cong., 1st Sess. 101-102 (1995); see also *Din*, 576 U.S. at 106 (Kennedy, J., concurring in the judgment). Such concerns are not eliminated when the noncitizen happens to have a U.S.-citizen spouse. Yet without even acknowledging Section 1182(b)(3), the Ninth Circuit has countermanded Congress's "considered judgment" based on its own weighing of the costs and benefits in this "sensitive area." *Din*, 576 U.S. at 106 (Kennedy, J., concurring in the judgment). The court of appeals' implicit nullification of a federal statute in this context is itself reason for this Court to step in. See *Zadvydas* v. *Davis*, 533 U.S. 678, 696 (2001) (noting the "heightened deference to the judgments of the political branches with respect to matters of national security").

2. The Ninth Circuit's requirement that the government provide a further factual explanation under these circumstances also diverges from its sister circuits.

As noted, the holding in this case directly conflicts with the D.C. Circuit's decision in *Colindres* regarding the same unlawful-activity ground of inadmissibility. That court squarely held that, under the limited *Mandel* standard of review, "the Government need only cite a statute listing a factual basis for denying a visa," and it found that the government had done so by citing Section 1182(a)(3)(A)(ii). *Colindres*, 71 F.4th at 1020; see *id.* at 1024 (explaining that Section 1182(a)(3)(A)(ii) supplies "a factual predicate for denying a visa"). All members of the D.C. Circuit panel acknowledged the Ninth Circuit's contrary decision. See *id.* at 1024; see also *id.* at 1028 (Srinivasan, C.J., concurring in part and concurring in the judgment) (noting the majority's creation of a circuit split).

In addition to that square conflict regarding the government's invocation of Section 1182(a)(3)(A)(ii), the decision below stands in significant tension with other circuits' approach to the *Mandel* standard. See App., *infra*, 95a-96a (Bumatay, J., dissenting from denial of rehearing). No other court of appeals in a *post-Din* case has ever faulted the government for failing to provide a further factual explanation when citing a statutory ground of inadmissibility in Section 1182(a). See *id.* at 96a. And two other circuits, taking their cue from Justice Kennedy and this Court's later paraphrase of his *Din* opinion in *Trump v. Hawaii*, have held that "a 'statutory citation' to the pertinent restriction, without more, suffices." *Baaghil*, 1 F.4th at 432 (citation omitted); see *Sesay v. United States*, 984 F.3d 312, 316 (4th Cir. 2021) (Wilkinson, J.) ("The Supreme Court has unambiguously instructed that absent some clear directive from Congress or an affirmative showing of bad faith, the government must simply provide a valid ineligibility provision as the basis for the visa denial."); cf. *Yafai v. Pompeo*, 924 F.3d 969, 970 (7th Cir. 2019) (Barrett, J., respecting the denial of rehearing) ("The Supreme Court has held that, absent a showing of bad faith, a consular officer need only cite to a statute under which the application is denied.").

In the absence of a definitive resolution of the threshold question whether any form of review should take place at all, see pp. 16-22, *supra*, the State Department will be under different notice obligations depending on where a visa applicant's U.S.-citizen spouse files suit. This Court has previously stepped in when the Ninth Circuit required the government to provide the "factual allegations" underlying its security-related inadmissibility determinations, see *Din v. Kerry*, 718 F.3d 856, 861 (2013), vacated, 576 U.S. 86 (2015), and the Court should do so again here.

C. The Ninth Circuit's Decision To Condition Consular Nonreviewability On A Novel And Vague Requirement For Timely Notice Independently Warrants Review

Finally, even assuming that a visa refusal could implicate a U.S. citizen's due-process rights *and* that a consular officer must provide a further factual explanation when refusing such a visa under Section 1182(a)(3)(A)(ii), the court of appeals badly erred in holding that the State Department must provide that additional explanation within a "reasonable time" after the denial or else forfeit the rule of consular nonreviewability in later litigation about the decision. App., *infra*, 28a-33a. Even if the court were correct in asserting that "receiving timely notice of the reason for the [visa] denial is essential for effectively challenging an adverse determination," *id.* at 31a, but see p. 30, *infra*, a failure to receive the *Mandel-required* explanation within a particular timeframe cannot justify the Ninth Circuit's unprecedented willingness to permit judicial review of the merits of the denial.

As the three dissents in this case all emphasized, the Ninth Circuit's requirement that the government provide a *Mandel-compliant* "facially legitimate and bona fide" reason for a visa denial within a set period of time after the decision is entirely unprecedented; neither this Court nor any other circuit has ever imposed such a condition on the government's ability to invoke consular nonreviewability in court. See App., *infra*, 94a, 96a, 115a, 118a-119a (Bumatay, J., dissenting from denial of rehearing); see also *id.* at 34a, 36a, 39a (Lee, J., dissenting); *id.* at 91a (Bress, J., dissenting from denial of rehearing). Nor does the requirement have any statutory basis. To the contrary, Congress specifically *exempted* consular officers from the obligation to provide "timely written notice" of the ground for an inadmissibility decision that is based on Section 1182(a)(3)(A)(ii). 8 U.S.C. 1182(b)(3); see App., *infra*, 117a-118a (Bumatay, J., dissenting from denial of rehearing).

The Ninth Circuit grounded its novel timeliness requirement in what it described as "core due-process requirements," invoking *Goldberg v. Kelly*, 397 U.S. 254 (1970)-a decision about the process due when a State terminates public-assistance benefits. App., *infra*, 28a; see *id.* at 29a, 31a. But *Goldberg* is inapposite. In that case, the Court emphasized that the public-assistance benefits were "a matter of statutory entitlement for persons qualified to receive them," *Goldberg*, 397 U.S. at 262, and held that "timely and adequate notice" was necessary to enable a recipient to mount a "'meaningful"' pre-termination challenge, *id.* at 267-268 (citation omitted).

Here, by contrast, there is no statutory entitlement to a visa, and consular nonreviewability forecloses any argument that an applicant is entitled to a "meaningful" review of a denial. See pp. 3-5, *supra.* Nor is *Mandel's* "deferential standard" meant to enable U.S. citizens to "'probe and test the justifications"' of entry decisions. *Trump v. Hawaii*, 138 S. Ct. at 2419 (citation omitted). Again, Justice Kennedy's analysis in *Din* illustrates the point: He declined to require the consular officer to cite a specific subsection within the terrorist-activity bar even though providing such information would have enabled Din to "more easily * * * mount a challenge to her husband's visa denial." 576 U.S. at 105-106 (Kennedy, J., concurring in the judgment).

The penalty that the court of appeals imposed for a violation of its new timeliness requirement-that "the government is not entitled to invoke consular nonreviewability to shield its visa decision from judicial review"-is even more ill-considered. App., *infra*, 33a. The court had already found the reason given in the McNeil Declaration-that the consular officer believed Asencio-Cordero to be a member of MS-13-sufficient under *Mandel. Id.* at 22a, 23a-24a. Unless the delay suggests impermissible bad faith (which none of the courts below found, see *id.* at 61a-

64a; *id.* at 36a (Lee, J., dissenting)), there is no basis for instructing the district court to "look behind" the determination, *id.* at 33a (citation omitted), or for requiring the State Department to meet a substantively higher standard to sustain the visa refusal itself. See *id.* at 91a (Bress, J., dissenting from denial of rehearing). The court of appeals' new rule thus represents a remarkable encroachment upon the separation of powers. See *id.* at 36a, 39a (Lee, J., dissenting); *id.* at 96a, 116a (Bumatay, J., dissenting from denial of rehearing).

* * * *

On June 23, 2023, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the dismissal of a complaint in *Colindres v. Dep't of State*, 71 F.4th 1018 (D.C. Cir. 2023), challenging an immigrant visa refusal under INA 212(a)(3)(A)(ii) (intent to engage in unlawful activity). The Court found that an exception to the doctrine of consular nonreviewability did not apply, holding that the refusal of an alien spouse's immigrant visa application does not burden the U.S. spouse's right to marriage and further that the spouse lacks a fundamental right to live in America with their spouse. The Court also held that even if the visa refusal did affect a constitutional right, the consular officer's citation to INA 212(a)(3)(A)(ii) sufficiently demonstrated that the refusal was facially legitimate and bona fide. Finally, the Court found that a litigant must provide clear evidence of bad faith to trigger an exception to consular non-reviewability in light of the presumption of official regularity. Excerpts from the Court's opinion follows (footnotes omitted).

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* * * *

A. The Visa Denial Did Not Burden Mrs. Colindres's Constitutional Right To Marriage

"[M]arriage is a fundamental right." *Obergefell v. Hodges*, 576 U.S. 644, 673, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015). But a citizen's right to marry is not impermissibly burdened when the government refuses her spouse a visa.

The right to marriage is the right to enter a legal union. *See id.* at 680-81, 135 S.Ct. 2584. It does not include the right to live in America with one's spouse. Thus, in *Swartz v. Rogers*, a wife challenged her husband's deportation because it burdened her "right, upon marriage, to establish a home, create a family, [and] have the society and devotion of her husband." 254 F.2d 338, 339 (D.C. Cir. 1958). This court rejected that argument because "deportation would not in any way destroy the legal union which the marriage created. The physical conditions of the marriage may change, but the marriage continues." *Id.*; *see also Rohrbaugh v. Pompeo*, 2020 WL 2610600 (D.C. Cir. May 15, 2020) (relying on *Swartz* to reject a husband's claim that denying his wife a visa burdened his right to marriage).

True, the Supreme Court has said "the right to marry, establish a home and bring up children is a central part of the liberty protected by the Due Process Clause." *Zablocki v. Redhail*, 434 U.S. 374, 384, 98 S.Ct. 673, 54 L.Ed.2d 618 (1978) (cleaned up). But "constitutional protection" is not triggered "whenever a regulation in any way touches upon an aspect of the

marital relationship." *Kerry v. Din*, 576 U.S. 86, 95, 135 S.Ct. 2128, 192 L.Ed.2d 183 (2015) (plurality op.).

Instead, constitutional protection kicks in only when "this Nation's history and practice" show that a government regulation is incompatible with a fundamental liberty interest. *Id.* (cleaned up); *see also Dobbs v. Jackson Women's Health Organization*, —— U.S. ——, 142 S. Ct. 2228, 2248, 213 L.Ed.2d 545 (2022) (courts must be "guided by ... history and tradition" when asking what liberty interests are protected by the Fourteenth Amendment).

Here, history and practice cut against Mrs. Colindres's claim that she has a "marital right" to live in America with her husband. JA 2. To paraphrase Justice Scalia's plurality opinion in *Kerry v. Din*, "a long practice of regulating spousal immigration precludes [Mrs. Colindres's] claim that the denial of [Mr. Colindres's] visa application has deprived her of a fundamental liberty interest." 576 U.S. at 95, 135 S.Ct. 2128.

From the Founding, the government has had discretion to control entry into the United States. Consider the debates around the Alien Act of 1798. The Act gave the President unfettered discretion to remove "all such aliens as he shall judge dangerous to the peace and safety of the United States." Ch. 58, 1 Stat. 570 (1798).

Though the Act's constitutionality was vigorously debated, its supporters and detractors agreed that the government had discretion to control aliens' entry into the United States — even though they disagreed about *which* government should wield that power. Supporters argued that the immigration power was federal. George Keith Taylor thus cited Blackstone to show that "by the law of nations, it is left in the power of all states to take such measures about the admission of strangers as they think convenient." Debate on the Virginia Resolutions, *reprinted in The Virginia Report of 1799-1800*, at 31 (1850). For their part, opponents contended that "the power to admit, or to exclude alien[s]" was left "to each individual state." 8 Annals of Cong. 1955 (1798) (Statement of Rep. A. Gallatin). But even James Madison — one of the Act's strongest critics — recognized that *some* government must have the power to control entry into the United States. James Madison, Report of 1800 (Jan. 7, 1800). He "allow[ed] the truth" of the notion that the "discretionary power" to admit aliens "into the country [is] of favor [and] not of right." *Id.*

Of course, the Supreme Court eventually held that the power to control immigration was federal. *See Head Money Cases*, 112 U.S. 580, 5 S.Ct. 247, 28 L.Ed. 798 (1884). And when Congress enacted immigration legislation, it generally did not carve out exceptions for spouses.

For example, the Page Act of 1875 gave "consol[s]" at ports in Asia discretion to deny permission to come to the United States to any immigrant who "ha[d] entered into a contract or agreement for a term of service within the United States[ ] for lewd and immoral purposes." Ch. 141 § 1, 18 Stat. 477, 477-78. Though the Act was designed to stop prostitutes emigrating, consuls unfortunately treated it as a "general restriction of Chinese female immigration." George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875-1882*, 6 J. Am. Ethnic Hist. 28, 42 (1986). As a result, the Act "made the immigration of Chinese wives extremely difficult." *Id.* Our point is not to endorse the Act's policy or application, but simply to note that the Act did not include an exception for spouses and made no provision for judicial review of consuls' decisions. Ch. 141 § 1, 18 Stat. 477, 477-78.

Immigration statutes passed in the decades following the Page Act likewise limited spousal immigration. Take the Immigration Act of 1882. It required the Treasury Secretary to "examine" aliens arriving at United States ports and to deny "permi[ssion] to land" to "any convict, lunatic, idiot, or any person unable to take care of himself or herself without becoming a public charge." Ch. 376 § 2, 22 Stat. 214. And the Act contained no exceptions for citizens'

spouses. *See also* Immigration Act of 1891, Ch. 551 § 1, 26 Stat. 1084 (expanding grounds of inadmissibility and allowing only administrative review).

Similarly, when Congress started to impose numerical limits on immigration in 1921, those limits applied to citizens' spouses. The Emergency Quota Act of 1921 put a cap on the number of immigrants who could come to the United States each year. Ch. 8 § 2, 42 Stat. 5, 6. Though it gave preferred status to citizens' wives (but not husbands), it did not guarantee them a quota spot. *Id.* "In other words, a citizen could move his spouse forward in the line, but once all the quota spots were filled for the year, the spouse was barred without exception." *Din*, 576 U.S. at 97, 135 S.Ct. 2128.

To sum up, from early federal immigration legislation to today, Congress has sometimes limited spousal immigration. To be sure, on other occasions, Congress has facilitated citizens bringing their spouses to America. *See, e.g.*, War Brides Act of 1945, 59 Stat. 659. But Congress's "long practice of regulating spousal immigration" confirms that citizens have no fundamental right to live in America with their spouses. *Din*, 576 U.S. at 95, 135 S.Ct. 2128. Because the Colindreses cannot show that the Government's visa denial burdened Mrs. Colindres's fundamental rights, their suit does not fall within the constitutional-rights exception to the consular-non-reviewability doctrine. *See Baan Rao Thai Restaurant*, 985 F.3d at 1024-25.

B. Even If The Visa Denial Is Reviewable, The Government Met Its Burden

Even if the Colindreses could get judicial review, their claim would fail on the merits.

When the constitutional-rights exception to the consular-non-reviewability doctrine applies, judicial review is "deferential." *Trump v. Hawaii*, —— U.S. ——, 138 S. Ct. 2392, 2419, 201 L.Ed.2d 775 (2018). Courts ask only whether the government has given "a facially legitimate and bona fide reason" for denying a visa. *Mandel*, 408 U.S. at 770, 92 S.Ct. 2576.

That requirement is easy to satisfy. It "mean[s] that the [g]overnment need provide only a statutory citation to explain a visa denial." *Hawaii*, 138 S. Ct. at 2419. Citing a statutory provision that "specifies discrete factual predicates the consular officer must find to exist before denying a visa" is enough. *Din*, 576 U.S. at 105, 135 S.Ct. 2128 (Kennedy, J. concurring). And even if the government fails to cite such a statute, it may still meet its burden by "disclos[ing] the facts motivating [its] decision." *Id.*; *see also Mandel*, 408 U.S. at 769, 92 S.Ct. 2576.

Here, the consular officer's decision to deny Mr. Colindres's visa satisfies that standard. The officer refused Mr. Colindres's visa application under 8 U.S.C. § 1182(a)(3)(A)(ii). That provision specifies a factual predicate for denying a visa: The alien must "seek[ ] to enter the United States to engage ... [in] unlawful activity." 8 U.S.C. § 1182(a)(3)(A)(ii). And the officer explained why that provision was satisfied here: There was "reason to believe [Mr. Colindres] is a member of a known criminal organization." JA 7-8. That was all the officer was required to do.

To be sure, § 1182(a)(3)(A)(ii) "does not specify the type of lawbreaking that will trigger a visa denial." *Munoz v. Department of State*, 50 F.4th 906, 917 (9th Cir. 2022) (holding that § 1182 does not contain discrete factual predicates). But that level of specificity is not required. In *Din*, Justice Kennedy said that a provision making terrorists inadmissible was detailed enough. *Din*, 576 U.S. at 105, 135 S.Ct. 2128 (Kennedy, J., concurring) (citing § 1182(a)(3)(B)). And that provision is written in the same general terms as the provision at issue here. *Compare* § 1182(a)(3)(B)(i)(II) (an alien is inadmissible if "a consular officer ... has reasonable ground to believe" that the alien "is engaged in or is likely to engage after entry in any terrorist activity"), *with* § 1182(a)(3)(A)(ii) (an alien is inadmissible if "a consular officer ... has reasonable ground to believe[ ] [that the alien] seeks to enter the United States to engage ... [in] unlawful activity").

Thus, here, as in *Din*, the Government's statutory "citation ... indicates it relied upon a bona fide factual basis for denying" Mr. Colindres's request for a visa. *Din*, 576 U.S. at 105, 135 S.Ct. 2128 (Kennedy, J., concurring).

As a fallback, the Colindreses assert that the Government's visa denial was in "bad faith" because its stated reasons for denying the visa were "pretextual" and "not based on the ... merits." Colindres Br. 51-53. True, an "affirmative showing of bad faith on the part of the consular officer" can demonstrate the government failed to give a "bona fide" reason for its actions. *Din*, 576 U.S. at 105-106, 135 S.Ct. 2128 (Kennedy, J. concurring). But because courts "presume" that "public officers" have "properly discharged their official duties," a litigant must provide "clear evidence" of bad faith. *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15, 47 S.Ct. 1, 71 L.Ed. 131 (1926).

The Colindreses do not do that here. Instead, they point to evidence in the record — Mr. Colindres's clean criminal history and his lack of gang tattoos, for example — that they say undercuts the Government's decision. Colindres Br. 51-52. But disagreeing with the Government's decision to discount that evidence falls well short of the kind of clear showing necessary to establish bad faith. *Cf. NRDC. v. SEC*, 606 F.2d 1031, 1049 n.23 (D.C. Cir.bru 1979) (giving examples of evidence sufficient to rebut the presumption of agency regularity); *Hartman v. Moore*, 547 U.S. 250, 264, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006) (the similar presumption of prosecutorial regularity can be rebutted when a prosecutor admits to improper "retaliatory thinking" or "rubber stamp[ing]" decisions).

* * * *

On September 21, 2023, petitioners filed a petition for writ of certiorari seeking Supreme Court review in *Colindres v. Dep't of State*, No. 23-348. On November 22, 2023, the government filed a response. Excerpts from the government's brief follows (footnotes omitted).

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* * * *

Petitioners contend (Pet. 28-37) that a U.S. citizen possesses a constitutionally protected liberty interest in the visa application of a noncitizen spouse, such that the limited standard of review in *Kleindienst* v. *Mandel*, 408 U.S. 753 (1972), applies. Petitioners further con-tend (Pet. 13-27) that, under *Mandel*, the government's citation of the unlawful-activity ground of inadmissibility in 8 U.S.C. 1182(a)(3)(A)(ii) is insufficient to provide a "facially legitimate and bona fide reason" for a visa denial. Those two questions are the subject of the government's pending petition for a writ of certiorari in *United States Department of State* v. *Muñoz*, No. 23-334 (filed Sept. 29, 2023) (*Muñoz* Pet.).6 For the reasons explained in that petition (at 16-20, 22-27), the court of appeals properly resolved both questions against petitioners in this case. Petitioners are correct, however (Pet. 9-10), that there are square circuit splits on both questions and that this Court's resolution is necessary. See *Muñoz* Pet. at 15-16, 20-22, 27-28, 31-33. Accordingly, the government respectfully requests that the Court hold this petition pending the Court's disposition of *Muñoz*, and then dispose of this petition as appropriate.

Muñoz is a superior vehicle for this Court's review because that case presents a third

question that this case does not: whether, if a U.S. citizen has a constitutional interest in her noncitizen spouse's visa application, and if a citation to Section 1182(a)(3)(A)(ii) is insufficient standing alone, due process requires the government to provide a further factual basis for the visa denial "within a reasonable time," or else forfeit consular nonreviewability. See *Muñoz* Pet. at I; see also *id.* at 12-13, 28-31. Because the D.C. Circuit ruled against petitioners on the first two issues here, it had no occasion to consider the Ninth Circuit's novel holding on the third. And the timeliness question would not have been implicated in this case in any event because the government provided a further factual explanation for Colindres Juarez's visa denial contemporaneous with the denial itself. See pp. 8-9, *supra*; see also Pet. App. 20a-21a (Srinivasan, C.J., concurring in part and concurring in the judgment).

Petitioners' phrasing of the question presented al-ludes (Pet. i) to several additional issues that are not the subject of the government's petition in *Muñoz*. But none of those issues is properly presented in this case either. Petitioners refer to their First Amendment and equal-protection challenges. But the lower courts found that those claims were either insufficiently developed or forfeited; indeed, it is not clear that the court of appeals understood petitioners to be raising a First Amendment challenge on appeal at all. See Pet. App. 10a-11a n.2, 14a, 16a, 43a-44a, 48a. Petitioners also contend (Pet. i, 20-24) that Section 1182(a)(3)(A)(ii) is unconstitutionally vague. But both lower courts deemed that claim forfeited as well. Pet. App. 14a, 16a, 31a. In any event, none of those arguments is the subject of a circuit conflict, and none would independently warrant this Court's review.

Nor does there appear to be any compelling reason why the Court would benefit from full merits briefing and argument in both cases on the questions that are actually presented. If certiorari is granted, the *Muñoz* case could potentially be resolved in the government's favor on the basis of the third question presented in that petition (the timeliness issue), thereby obviating the need for the Court to address the first two questions—continuing the greater legal uncertainty that has plagued this area of the law since this Court's fractured decision in *Kerry* v. *Din*, 576 U.S. 86 (2015). But granting certiorari in this case alongside *Muñoz* would not necessarily require the Court to address those first two questions either. If this case were considered on the merits, the government would maintain its position—consistent with the alternative holding in Chief Judge Srinivasan's concurrence—that even assuming that due process requires the government to supply more than a statutory citation, a further factual explanation was in fact provided here. See Pet. App. 20a-21a.7 Because petitioners' due-process challenge would accordingly fail in this case regardless of the Court's answers to the two questions presented, the Court could affirm the decision below without resolving them. For that reason, while the government supports holding this case pending the Court's disposition in *Muñoz*, it does not recommend that petitioners' case receive plenary review alongside *Muñoz*.

* * * *

2. Visa Regulations

a. Visa Waiver Program

On September 26 , 2023, Secretary of Homeland Security Alejandro N. Mayorkas, in consultation with Secretary Blinken, designated Israel into the Visa Waiver Program

("VWP"). 88 Fed. Reg. 67,063 (Sept. 29, 2023). The joint statement released by the State Department and the Department of Homeland Security ("DHS") is available at https://www.state.gov/joint-statement-on-the-designation-of-israel-into-the-visa-waiver-program/, includes the following:

> The designation of Israel into the Visa Waiver Program is an important recognition of our shared security interests and the close cooperation between our two countries," said Secretary of Homeland Security Alejandro N. Mayorkas. "This designation, which represents over a decade of work and coordination between the United States and Israel, will enhance our two nations' collaboration on counterterrorism, law enforcement, and our other common priorities. Israel's entry into the Visa Waiver Program, and the stringent requirements it entails, will make both of our nations more secure.
>
> Israel's entry into the Visa Waiver Program represents a critical step forward in our strategic partnership with Israel that will further strengthen long-standing people-to-people engagement, economic cooperation, and security coordination between our two countries," said Secretary of State Antony J. Blinken. "This important achievement will enhance freedom of movement for U.S. citizens, including those living in the Palestinian Territories or traveling to and from them.

On October 19, 2023, DHS announced the start of visa-free travel for short term visits to the United States for eligible Israeli citizens and nationals following Israel's admission into the VWP. The Department of Homeland Security press release is available at https://www.dhs.gov/news/2023/10/19/dhs-announces-start-applications-visa-free-travel-us-eligible-israeli-citizens-and.

b. Visa Ineligibility on Public Charge Grounds

The State Department decided not to finalize the regulatory amendments made by the 2019 "Visas: Ineligibility Based on Public Charge Grounds" interim final rule ("IFR"), effective October 5, 2023. 88 Fed. Reg. 60,574 (Sept. 5, 2023). Consequently, the Department's regulations reverted to regulatory text that was in place before the publication of the 2019 IFR. The Department released a statement, available at https://travel.state.gov/content/travel/en/News/visas-news/final-rule-governing-public-charge-grounds-of-visa-ineligibility.html, which includes the following. See *Digest 2020* at 61, *Digest 2021* at 22, and *Digest 2022* at 26 for background discussion.

C. ASYLUM, REFUGEE, AND MIGRANT ISSUES

1. Temporary Protected Status

Section 244 of the Immigration and Nationality Act ("INA" or "Act"), as amended, 8 U.S.C. § 1254a, authorizes the Secretary of Homeland Security, after consultation with appropriate agencies, to designate a state (or any part of a state) for temporary protected status ("TPS") after finding that (1) there is an ongoing armed conflict within the state (or part thereof) that would pose a serious threat to the safety of nationals returned there; (2) the state has requested designation after an environmental disaster resulting in a substantial, but temporary, disruption of living conditions that renders the state temporarily unable to handle the return of its nationals; or (3) there are other extraordinary and temporary conditions in the state that prevent nationals from returning in safety, unless permitting the aliens to remain temporarily would be contrary to the national interests of the United States. The TPS designation means that eligible nationals of the state (or stateless persons who last habitually resided in the state) can remain in the United States and obtain work authorization documents. For background on previous designations of states for TPS, see *Digest 1989–1990* at 39–40; *Cumulative Digest 1991–1999* at 240-48; *Digest 2004* at 31-33; *Digest 2010* at 10-11; *Digest 2011* at 6-9; *Digest 2012* at 8-14; *Digest 2013* at 23-24; *Digest 2014* at 80-83; *Digest 2015* at 21-24; *Digest 2016* at 36-40; *Digest 2017* at 33-37; *Digest 2018* at 38-44 *Digest 2019* at 30-31, *Digest 2020* at 62-70, *Digest 2021* at 22-25, and *Digest 2022* at 26-29. In 2023, the United States extended and redesignated for TPS Yemen, Haiti, Somalia, Ukraine, Sudan, South Sudan, Afghanistan, Venezuela, and Cameroon.

a. Yemen

On January 3, 2023, DHS provided notice of the extension of the designation of Yemen for TPS for 18 months, from March 4, 2023, through September 3, 2024, and the redesignation of Yemen for 18 months, effective March 4, 2023, through September 3, 2024. 88 Fed. Reg. 94 (Jan. 3, 2023). DHS found the extension warranted "because the ongoing armed conflict and extraordinary and temporary conditions supporting Yemen's TPS designation remain." *Id*. at 97.

b. Haiti

On January 26, 2023, DHS provided notice of the extension of the designation of Haiti for TPS for 18 months, from February 4, 2023, through August 3, 2024, and the redesignation of Haiti for 18 months, effective February 4, 2023, through August 3, 2024. 88 Fed. Reg. 5022 (Jan. 26, 2023). DHS found the extension warranted "because the extraordinary and temporary conditions supporting Haiti's TPS designation remain

and that such extension is not contrary to the national interest of the United States." *Id*. at 5025.

c. Somalia

On March 13, 2023, DHS provided notice of the extension of the designation of Somalia for TPS for 18 months, from March 18, 2023, through September 17, 2024, and the redesignation of Somalia for 18 months, effective March 18, 2023, through September 17, 2024. 88 Fed. Reg. 15,434 (Mar. 13, 2023). DHS found the extension warranted "because the ongoing armed conflict and extraordinary and temporary conditions supporting Somalia's TPS designation remain." *Id*. at 15,436.

d. Ukraine

On August 21, 2023, DHS provided notice of the extension of the designation of Ukraine for TPS for 18 months, from October 20, 2023, through April 19, 2025, and the redesignation of Ukraine for 18 months, effective October 20, 2023, through April 19, 2025. 88 Fed. Reg. 56,872 (Aug. 21, 2023). DHS found the extension warranted "because the ongoing armed conflict and extraordinary and temporary conditions supporting Ukraine's TPS designation remain." *Id*. at 56,874.

e. Sudan

On August 21, 2023, DHS provided notice of the extension of the designation of Sudan for TPS for 18 months, from October 20, 2023, through April 19, 2025, and the redesignation of Ukraine for 18 months, effective October 20, 2023, through April 19, 2025. 88 Fed. Reg. 56,864 (Aug. 21, 2023). The notice includes the following overview of the basis for designation (footnotes omitted). *Id*. at 56,866.

> Sudan is enduring an ongoing armed conflict and a humanitarian crisis in which millions of individuals are exposed to violence, illness, and forced displacement. On April 15, 2023, violent armed conflict between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) erupted in Sudan killing hundreds of people, driving more than 700,000 persons to flee to other countries.

f. South Sudan

On September 6, 2023, DHS provided notice of the extension of the designation of South Sudan for TPS for 18 months, from November 4, 2023, through May 3, 2025, and the redesignation of South Sudan for 18 months, effective November 4, 2023, through

May 3, 2025. 88 Fed. Reg. 60,971 (Sept. 6, 2023). DHS found the extension warranted "because the ongoing armed conflict and extraordinary and temporary conditions supporting South Sudan's TPS designation remain." *Id*. at 60,974.

g. Afghanistan

On September 25, 2023, DHS announced that the Secretary of Homeland Security is designating Afghanistan for TPS for 18 months, effective November 21, 2023, through May 20, 2025. 88 Fed. Reg. 65,728 (Sept. 25, 2023). DHS found the extension warranted "because the ongoing armed conflict and extraordinary and temporary conditions supporting Afghanistan's TPS designation remain." *Id.* at 65,730.

h. Venezuela

On October 3, 2023, DHS provided notice of the extension of the designation of Venezuela for TPS for 18 months, from March 11, 2024, through September 10, 2025, and the redesignation of Venezuela for 18 months, effective October 3, 2023, through April 2, 2025. 88 Fed. Reg. 68,130 (Oct. 3, 2023). DHS found the extension warranted "because extraordinary and temporary conditions continue to prevent Venezuelan nationals from returning in safety." *Id*. at 68,132.

i. Cameroon

On October 10, 2023, DHS provided notice of the extension of the designation of Cameroon for TPS for 18 months, from December 8, 2023, through June 7, 2025, and the redesignation of Venezuela for 18 months, effective December 8, 2023, through June 7, 2025. 88 Fed. Reg. 69,945 (Oct. 10, 2023). DHS found the extension warranted "because ongoing armed conflict and extraordinary and temporary conditions supporting Cameroon's TPS designation remain." *Id*. at 69,947.

j. **Ramos v. Nielsen** ***and other litigation***

As discussed in *Digest 2018* at 40-44, *Digest 2019* at 31, *Digest 2020* at 63-70, *Digest 2021* at 25, and *Digest 2022* at 29, U.S. courts enjoined the termination of TPS for Sudan, Nicaragua, Nepal, Honduras, Haiti, and El Salvador. On June 13, 2023, DHS announced the rescission of termination of the designation of TPS and extension of TPS designation for Nicaragua, Nepal, Honduras, and El Salvador, as detailed below.

- DHS provided notice of the rescission of termination of the designation of Nicaragua for TPS, which took effect June 9, 2023. The 18-month extension of TPS for Nicaragua begins on January 6, 2024, and will remain in effect through July 5, 2025. 88 Fed. Reg. 40,294 (June 21, 2023).

- DHS provided notice of the rescission of termination of the designation of Nepal for TPS, which took effect June 9, 2023. The 18-month extension of TPS for Nepal begins on December 25, 2023, and will remain in effect through June 24, 2025. 88 Fed. Reg. 40,317 (June 21, 2023).
- DHS provided notice of the rescission of termination of the designation of Honduras for TPS, which took effect June 9, 2023. The 18-month extension of TPS for Honduras begins on January 6, 2024, and will remain in effect through July 5, 2025. 88 Fed. Reg. 40,304 (June 21, 2023).
- DHS provided notice of the rescission of termination of the designation of El Salvador for TPS, which took effect June 9, 2023. The 18-month extension of TPS for El Salvador begins on September 10, 2023, and will remain in effect through March 9, 2025. 88 Fed. Reg. 40,282 (June 21, 2023).

2. Deferred Enforced Departure

In a January 26, 2023 memorandum, President Biden extended and expanded eligibility for deferred enforced departure ("DED") for certain Hong Kong residents present in the United States. 88 Fed. Reg. 6143 (Jan. 31, 2023). See *Digest 2021* at 26-27. The memorandum is available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/01/26/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-certain-hong-kong-residents/, and includes the following:

> By unilaterally imposing on Hong Kong the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (NSL) in June 2020, the PRC has undermined the enjoyment of rights and freedoms in Hong Kong, including those protected under the Basic Law and the Sino-British Joint Declaration. The PRC has continued its assault on Hong Kong's autonomy, undermining its remaining democratic processes and institutions, imposing limits on academic freedom, and cracking down on freedom of the press. Since June 2020, at least 150 opposition politicians, activists, and protesters have been taken into custody on politically motivated NSL-related charges including secession, subversion, terrorist activities, and collusion with a foreign country or external elements. Over 1,200 political prisoners are now behind bars, and over 10,000 individuals have been arrested for other charges in connection with anti-government protests.
>
> There are compelling foreign policy reasons to extend Deferred Enforced Departure (DED) for an additional period for those residents of Hong Kong presently residing in the United States who were under a grant of DED until February 5, 2023, as well as to defer enforced departure for other Hong Kong residents who arrived in the United States subsequent to the initial grant of DED. The United States is committed to a foreign policy that unites our democratic

> values with our foreign policy goals, which is centered on the defense of democracy and the promotion of human rights around the world. Offering safe haven for Hong Kong residents who have been deprived of their guaranteed freedoms in Hong Kong furthers United States interests in the region. The United States will continue to stand firm in our support of the people in Hong Kong.

3. Additional Protocol to the U.S.-Canada Agreement Covering Third-Country Asylum Claims at the Border

On March 25, 2023, the Additional Protocol to the Agreement for Cooperation in the Examination of Refugee Status Claims from National of Third Countries (the "Additional Protocol") entered into force. The United States and Canada signed the Additional Protocol on March 29 and April 15, 2022 at Ottawa and Washington. It supplements the Agreement for Cooperation in the Examination of Refugee Status Claims from National of Third Countries, signed December 5, 2002. See *Digest 2002* at 31-35. The Additional Protocol is available at https://www.state.gov/canada-23-325.

4. Refugee Admissions and Resettlement

On November 3, 2023, the State Department announced the transmission of the President's report to Congress proposing to set the refugee admissions target in Fiscal Year 2024 at 125,000. The Report to Congress is available at https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2024/, and includes the following:

> Last year, the Biden-Harris Administration reaffirmed the United States' humanitarian leadership and commitment to welcoming refugees by maintaining a target of 125,000 refugee arrivals in the Fiscal Year (FY) 2023 Presidential Determination on Refugee Admissions, the highest target in several decades. As a result of intensive efforts to restore, strengthen, and modernize the U.S. Refugee Admissions Program (USRAP), we have made significant progress toward fulfilling the President's aspirational target for resettling refugees from around the world as part of the Administration's robust response to humanitarian crises globally. ... For FY 2024, the President has again set an ambitious goal of 125,000 refugees to be resettled in the United States. Refugee admissions now are nearing a monthly pace that will, if sustained over the course of a year, enable arrival of 125,000 refugees, a 30-year high. The hard work of U.S. government partners across the interagency, in partnership with communities and organizations across the country and world, have put the FY 2024 goal within reach.

5. Migration

a. Unexpected Urgent Refugee and Migration Needs

On February 24, 2023, the President issued Presidential Determination No. 2023-04, "Unexpected Urgent Refugee and Migration Needs" to authorize Emergency Refuge and Migration Assistance funds to meet unexpected refugee and migration needs resulting from the 2023 earthquakes in Turkey and Syria. 88 Fed. Reg. 15,265 (Mar. 13, 2023). The order includes the following:

> By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(c)(1) (MRAA), I hereby determine, pursuant to section 2(c)(1) of the MRAA, that it is important to the national interest to furnish assistance under the MRAA in an amount not to exceed $50 million from the United States Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected urgent refugee and migration needs resulting from the February 2023 earthquakes in Turkey and Syria, including through contributions and other assistance to international and nongovernmental organizations to provide humanitarian assistance for refugees and internally displaced persons affected by the earthquakes, including their host communities, and through payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State.

On May 1, 2023, the President issued Presidential Determination No. 2023-07, "Unexpected Urgent Refugee and Migration Needs" to authorize Emergency Refuge and Migration Assistance funds to meet unexpected urgent refugee and migration needs in the Western Hemisphere. 88 Fed. Reg. 29,809 (May 9, 2023). The order includes the following:

> By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 2(c)(1) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601(c)(1)) (MRAA), I hereby determine, pursuant to section 2(c)(1) of the MRAA, that it is important to the national interest to furnish assistance under the MRAA in an amount not to exceed $50.3 million from the United States Emergency Refugee and Migration Assistance Fund for the purpose of meeting unexpected urgent refugee and migration needs in the Western Hemisphere, including through contributions to international organizations by the Bureau of Population, Refugees, and Migration of the Department of State.

b. Guidance for Stateless Noncitizens in the United States

On August 1, 2023, the Department of Homeland Security (DHS) issued new policy guidance in the U.S. Citizenship and Immigration Services (USCIS) Policy Manual to assist stateless persons in the United States. The DHS press release is available at https://www.dhs.gov/news/2023/08/01/dhs-issues-guidance-stateless-noncitizens-united-states. The USCIS Policy Manual is available at https://www.uscis.gov/policy-manual/.

Cross References

Designations of Foreign Terrorist Organizations under the Immigration and Nationality Act, **Ch. 3.B.4.a(1)**
HRC on international refugee law, **Ch. 6.A.6.b**
UN Third Committee on protection of migrants, **Ch. 6.A.3.a**
OAS case on Haitian migrants, **Ch. 7.D.7**
OAS hearing on immigration detention of Iranian brothers, **Ch. 7.D.7**
Visa restrictions, **Ch. 16.A**

CHAPTER 2

Consular and Judicial Assistance and Related Issues

A. CONSULAR NOTIFICATION, ACCESS, AND ASSISTANCE

1. Consular Notification and Access

For information on U.S. Government efforts to promote compliance with the provisions in the Vienna Convention on Consular Relations regarding consular notification and access, as well as the decision of the International Court of Justice in the *Case Concerning Avena and other Mexican Nationals (Mexico v. United States),* 2004 ICJ 128 (Mar. 31), see *Digest 2004* at 37-43; *Digest 2005* at 29-30; *Digest 2007* at 73-77; *Digest 2008* at 35, 153, 175-215; *Digest 2011* at 11-23; *Digest 2012* at 15-18; *Digest 2013* at 26-29; and *Digest 2014* at 68-69.

2. Uniform Law Commission Model State Law Project

In 2022, the Uniform Law Commission ("ULC") Committee on Scope and Program ("Scope Committee") appointed a working group to help determine the feasibility of establishing a drafting committee for a uniform or model act on consular notification and access ("CNA"). The members of the working group were former U.S. Attorney General Alberto Gonzales (chair), Tom Hemmendinger, Jamie Pedersen, Grant Callow, and Henry Gabriel. The working group posed questions to the State Department. See *Digest 2022* at 40-45 for a full discussion of ULC CNA project efforts in 2022. On February 3, 2023, the Office of the Legal Adviser transmitted the State Department's written responses to the questions posed in 2022. Excerpts from the Department's responses follow. The Department also provided a draft state law on consular notification with its February 3, 2023 responses. The draft state law appears in this section, *infra*.

* * * *

Question 1: What would be the key elements of a uniform act as envisioned by the State Department? Would such an act provide defendants with rights or remedies?

The U.S. Department of State ("Department") has included beneath these answers a draft setting forth, in statutory text, what it regards as the key elements of a uniform or model act on consular notification and access, along with a bulleted list of additional, optional elements. As explained below, even among the key elements, some judgment calls are necessary to translate language from the Vienna Convention on Consular Relations (VCCR) into statutory text appropriate for adoption by a state legislature. We anticipate that the commissioners in the ULC group led by Attorney General Gonzales may have follow-up questions about these key elements, which we will do our best to address. We would also expect that most of the finer details would be left to be thoroughly discussed and resolved within the drafting committee, should one be established. The Department stands ready to work with the drafting committee to determine the most appropriate and legally accurate formulations of provisions in the uniform or model act.[*]

* * * *

Question 5: Does federal law affect the ability of state law to clarify the lack of post-conviction rights or remedies?

The Department understands this question as asking whether federal law affects the ability of state law to clarify the lack of post-conviction rights or remedies specifically in the context of consular notification and access.

If federal statutory law or federal judicial precedent in the relevant circuit recognizes a judicially enforceable individual right to consular notification or access under Article 36 of the VCCR, a state cannot nullify that federal right through legislation or a state court decision. As a general matter, the Supremacy Clause requires state courts to accept jurisdiction over causes of action growing out of valid federal law; states cannot simply refuse to enforce federal claims on policy grounds. *Testa v. Katt*, 330 U.S. 386, 393–94 (1947). States are likewise prohibited from erecting procedural or jurisdictional barriers that serve to undermine an otherwise available federal right. *Dice v. Akron, C. & Y. R. Co.*, 342 U.S. 359, 363 (1952) (recognizing that procedural rights including trial by jury may be "part and parcel" of the substantive right); *Haywood v. Drown*, 556 U.S. 729 (2009) (state jurisdictional rule barring prisoner suits was not a valid excuse for refusing to adjudicate). The relevant inquiry is whether these barriers pose an "unnecessary burden" to the petitioner's ability to vindicate his or her rights. *Brown v. Western Ry. of Alabama*, 338 U.S. 294, 298 (1949) (state courts cannot impose more onerous pleading requirements than a federal court would). *See also Felder v. Casey*, 487 U.S. 131, 138, 141 (1988) (state statute requiring notice within 120 days of alleged injury deemed an impermissible burden on civil rights claims).

[*] Editor's note: The remainder of the answer to Question 1 is reproduced as the Commentary to the State Department's model law in this section, *infra*.

State legislation could not, therefore, bar federal remedies for consular notification violations or prohibit state compliance with federally prescribed remedies. Such remedies could include, for example, damages awarded in a civil rights suit under 42 U.S.C. § 1983 or a retrial or resentencing in state court as ordered by a federal court in federal habeas proceedings.

Under current federal judicial precedent, this scenario is unlikely to arise, except in the Seventh Circuit. Of the federal circuits that have addressed the question, all except the Seventh Circuit have found that Article 36 of the VCCR does not confer an individual right or, even if it might confer such a right, the right is not judicially enforceable. *See, e.g.*, *United States v. Li*, 206 F.3d 56 (1st Cir. 2000); *Mora v. New York*, 524 F.3d 183 (2d Cir. 2008); *McPherson v. United States*, 392 F. App'x. 938 (3d Cir. 2010); *United States v. Jimenez-Nava*, 243 F.3d 192 (5th Cir. 2001); *United States v. Emuegbunam*, 268 F.3d 377, 394 (6th Cir. 2001) ("[T]he Vienna Convention does not create a right for a detained foreign national to consult with the diplomatic representatives of his nation that the federal courts can enforce."); *Cornejo v. County of San Diego*, 504 F.3d 853, 863–64 (9th Cir. 2007) (characterizing Article 36 as conferring an individual benefit, not a right); *Gandara v. Bennett*, 528 F.3d 823 (11th Cir. 2008). District courts in these circuits have followed suit. *See, e.g.*, *Hernandez v. Thaler*, 2011 WL 4437091 (W.D. Tex. Sept. 23, 2011); *Gordon v. City of New York Police Dep't*, 2012 WL 1067964 (E.D.N.Y. Mar. 29, 2012). The Seventh Circuit stands alone in recognizing a judicially enforceable individual right. *Jogi v. Voges*, 480 F.3d 822 (7th Cir. 2007); *Osagiede v. United States*, 543 F.3d 399 (7th Cir. 2008). At least two district courts in the Seventh Circuit have applied this precedent. *Villars v. Kubiatowski*, 45 F. Supp. 3d 791 (N.D. Ill. 2014); *Al-Khalidi v. Rosche*, 2008 WL 5111082 (E.D. Wis. Dec. 3, 2008).

Federal statutory law does not currently confer remedies for the lack of consular notification. Legislation proposed in the 117th Congress would have provided a limited remedy to certain death-row inmates who can demonstrate, in federal habeas proceedings, that they suffered actual prejudice in their trial or sentencing from a failure of consular notification. S. 4462, 117th Cong. § 7075(a) (2022). This legislation was not included in the final appropriations act for fiscal year 2023 that was passed by Congress on December 23, 2022. It is too early to tell whether such legislation might be reintroduced in the 118th Congress.

Conversely, if a state legislature chooses to establish consular notification or access as an individually enforceable right under state law, or to prescribe remedies enforceable in state court, nothing in federal statutory or case law would limit the legislature's ability to do so. While some state courts have recognized an individually enforceable right, most have sidestepped the issue or found no such right. *See* Alberto R. Gonzales & Amy L. Moore, *No Right at All: Putting Consular Notification in Its Rightful Place After* Medellín, 66 Fla. L.R. 685, 712–14 (2015) (compiling and discussing state cases).

* * * *

At an April 2023 meeting of the Scope Committee, the working group recommended that the ULC not establish a drafting committee for a model state law on consular notification and access. On June 1, 2023, Lisa Jacobs, then-Chair of the Scope Committee, wrote Jay Bischoff, Team Lead Attorney-Adviser in the Office of the Legal Adviser, informing him of the Committee's decision not to appoint a drafting committee in light of the working group's recommendation. Ms. Jacobs explained that while the working group believed in the importance of promoting compliance with the VCCR by all

law enforcement officers in the United States, the Department of State or the Department of Justice would be "better situated to promote compliance." Ms. Jacobs also explained the working group's concern that "an act would likely not be enactable if it imposed significant consequences when notifications do not occur," but "a statute that simply reiterated existing legal obligations imposed by a treaty (without creating additional consequences) might not create sufficient motivation for legislatures to enact it." Ms. Jacobs further conveyed the working group's concern that state and local training programs motivated by a model law "would likely lead to additional burdens of effort, time and cost."

On November 3, 2023, Mr. Bischoff sent the Department's response to Steven Willborn, who succeeded Ms. Jacobs as Scope Committee Chair in mid-2023. That letter appears below.

* * * *

Dear Professor Willborn:

I write in response to the letter from Commissioner Lisa Jacobs in her capacity as then-Chair of the Committee on Scope and Program ("Scope") dated June 1, 2023, by which we were informed that the Uniform Law Commission (ULC) decided not to establish a drafting committee for a model state act to promote compliance with the consular notification and access (CNA) requirements of the Vienna Convention on Consular Relations (VCCR) and bilateral consular conventions. We appreciate the attention the ULC, especially the working group chaired by former Attorney-General Alberto Gonzales ("working group"), paid to this important issue and the collaborative spirit shown by the working group in its engagement with us.

While we respectfully disagree with several of the reasons provided for the working group's recommendation against establishing a drafting committee, we wish to note in particular our differing view regarding one of the rationales expressed in Professor Jacobs's letter. As the letter explains, the working group believes that state legislatures would be reluctant to adopt a CNA law that "simply reiterate[s]" treaty requirements without imposing consequences for noncompliance. The State Department does not share this concern, most notably because it is inconsistent with the experience of the three states that have enacted detailed CNA statutes: California, Oregon, and Illinois. None of these statutes stipulates any consequences for noncompliance. In fact, both the Oregon and Illinois legislatures expressly excluded remedies in their respective enactments. The Oregon CNA law provides that "[a] peace officer is not civilly or criminally liable for failure to provide the information required by this subsection," and "[f]ailure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.[1]" When the Illinois legislature adopted its CNA statute in 2015, it included the broader proviso that

[1] Or. Rev. Stat. § 426.228(9)(b) (2003).

the law "does not create any new substantive State right or remedy."[2] Both houses of all three state legislatures adopted their respective CNA statutes by large bipartisan margins.[3]

It also bears reiterating that a model act would do much more than "simply reiterate" existing legal requirements. Instead, like the California and Illinois statutes in particular, it would flesh out important elements on which the VCCR and bilateral consular conventions are vague or silent, but that are key to how police and correctional officials operationalize the requirements in practice. The draft statute we provided to the working group in our February submission contains several examples of how a model act could introduce these necessary details. We have included the text of that draft statute with this letter for your reference.

We note moreover that, based on our experience, these statutes have indeed been effective at improving awareness of and compliance with CNA obligations by police and correctional officials in those states. We rarely receive complaints from foreign governments about a lack of consular notification or access in California, Oregon, and Illinois, as we highlighted at the October 2022 Scope meeting. And as Southern Illinois University law professor Cindy Buys explained to the working group, her research indicates that Illinois has seen a marked drop in post-conviction challenges based on an alleged CNA violation in the years since the Illinois legislature adopted its statute.

We trust that the ULC's decision not to move forward with the CNA project at this time will not adversely affect future engagement with the ULC about promoting state legislation that, like the existing CNA statutes in three states, would help ensure that authorities in the United States know about and comply with our treaty obligations. A strong record of domestic compliance ensures our ability to insist upon adherence to these procedures for the hundreds of U.S. citizens arrested abroad each year, enabling U.S. diplomats to press for humane conditions, access to a lawyer, and communication with family members. To this end, the State Department will continue its robust efforts to promote compliance with CNA requirements by officials at all levels in the United States.

* * * *

Mr. Bischoff appended to this letter the draft model law that the Department developed at the working group's request. The draft model law follows:

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* * * *

[2] 725 Ill. Comp. Stat. § 5/103-1(b-5) (2016).

[3] CA S.B. Hist., 1999-2000 S.B. 287 (Aug. 30, 1999) (75 to 0 (with 5 not voting) in the California Assembly; 34 to 0 (with 6 not voting) in the California Senate); OR B. Hist., 2003 Reg. Sess. H.B. 2047 (May 28, 2003) (55 to 3 (with 2 not voting) in the Oregon House; 27 to 1 (with 2 not voting) in the Oregon Senate); 2015 IL H.B. 1337 (NS) (Jul. 30, 2015) (98 to 13 (with 1 not voting) in the Illinois House; and 51 to 2 (with 6 not voting) in the Illinois Senate).

U.S. Department of State
Draft Uniform or Model State Act on Consular Notification and Access
November 3, 2023

The statutory text below sets forth the key elements that, in the view of the U.S. Department of State ("Department"), should be included in any uniform or model state act on consular notification and access, to most effectively promote compliance with the United States' obligations in Article 36 of the 1963 Vienna Convention on Consular Relations (VCCR), which the United States ratified in 1969, as well as the analogous provisions of bilateral consular conventions the United States has concluded with numerous countries. This text is adapted from a submission by the Department to the Uniform Law Commission dated February 3, 2023.

Key Elements of a Uniform or Model State Act on Consular Notification and Access

(a) Consular notification and access procedures

(1) Notification to the foreign national. Upon arrest and booking, or other detention of a person lasting longer than 24 hours, a peace officer or custodial facility official shall inform the person [as soon as reasonably possible after the arrest] [at booking] that, if he or she is a foreign national, he or she may request that consular officials of his or her country of nationality be notified of the arrest or detention.

(2) Notification to the consular post. If the arrested or detained person asserts that he or she is a foreign national, and the person requests notification of the arrest or detention to his or her consular officials, the peace officer or custodial facility official shall ensure that notice is given to a consulate, preferably the nearest one, of the person's country of nationality, or the country's embassy in Washington, D.C., no later than 72 hours after the arrest or initial detention.

(3) Mandatory notification. Notwithstanding section (a)(2), if the arrested or detained person asserts that he or she is a national of one of the following countries, or if a peace officer or custodial facility official otherwise knows that the person is a national of one of the following countries, the peace officer or custodial facility official shall ensure that notice is given to a consulate, preferably the nearest one, of the person's country of nationality, or the country's embassy in Washington, D.C., no later than 72 hours after the arrest or initial detention, irrespective of the arrested or detained person's wishes.

(A) Albania
(B) Algeria
(C) Antigua and Barbuda
(D) Armenia
(E) Azerbaijan
(F) The Bahamas
(G) Barbados
(H) Belarus
(I) Belize
(J) Brunei
(K) Bulgaria
(L) China (including Macao and Hong Kong)
(M) Costa Rica
(N) Cyprus

(O) Czech Republic
(P) Dominica
(Q) Fiji
(R) The Gambia
(S) Georgia
(T) Ghana
(U) Grenada
(V) Guyana
(W) Hungary
(X) Jamaica
(Y) Kazakhstan
(Z) Kiribati
(AA) Kuwait
(BB) Kyrgyzstan
(CC) Malaysia
(DD) Malta
(EE) Mauritius
(FF) Moldova
(GG) Mongolia
(HH) Nigeria
(II) Philippines
(JJ) Poland
(KK) Romania
(LL) Russia
(MM) Saint Kitts and Nevis
(NN) Saint Lucia
(OO) Saint Vincent and the Grenadines
(PP) Seychelles
(QQ) Sierra Leone
(RR) Singapore
(SS) Slovakia
(TT) Tajikistan
(UU) Tanzania
(VV) Tonga
(WW) Trinidad and Tobago
(XX) Turkmenistan
(YY) Tuvalu
(ZZ) Ukraine
(AAA) United Kingdom
(BBB) Uzbekistan
(CCC) Zambia
(DDD) Zimbabwe

(4) Consular communication and access. The official in charge of the custodial facility shall ensure that consular officials are able, upon their request, to visit the person, converse and correspond with him or her, and arrange for his or her legal

representation; and shall ensure that any communication addressed to the consulate or embassy is forwarded without delay.

(5) Written record. The officials responsible for the notifications in § (a)(1)–(3) shall ensure that a written record is made and maintained about whether and how such notifications were provided.

(b) **Standard operating procedures**

State and local law enforcement agencies shall ensure that protocols, standard operating procedures, and training manuals incorporate the procedures contained in section (a) as elaborated, as appropriate, with relevant further detail, including from the U.S. Department of State publication Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them.

Commentary

Section (a)(1) to (4) sets forth the basic procedures that law enforcement and custodial officials must go through to ensure compliance with the obligations of Article 36 of the VCCR and analogous provisions of bilateral consular conventions between the United States and 56 countries. We have based these elements, to the extent possible, on those in the VCCR itself. We have also drawn, where useful, on the three existing state statutes setting forth consular notification procedures: Illinois, California, and Oregon.

Section (a)(1) contains the VCCR's obligation to inform an arrested or detained foreign national that, if he or she is a foreign national, he or she may request notification to his or her consular post. In a departure from the California, Illinois, and Oregon statutes, we have avoided characterizing consular notification as a right belonging to the foreign national. The United States has long taken the view in international fora that, despite Article 36(1)(b)'s possible suggestion that the foreign national has "rights" related to consular notification and access, this language did not create or recognize an individually enforceable right belonging to the foreign national. For an elaboration of the U.S. position, see, e.g., The Right of Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99, Inter-Am. Ct. H.R. (ser. A) No. 16 (1999), Written Submission of the United States of America, June 1, 1998, *reprinted in* 1991–1999 Digest of United States Practice in International Law 328–35 (Sally J. Cummins & David P. Stewart eds., 2000) ("U.S. Inter-American Court Submission").

While the VCCR is silent on the length of detention required to trigger the obligation to inform the person about consular notification, the Department assesses that detentions lasting less than 24 hours are unlikely to trigger the requirement and even less likely to generate a complaint by the foreign country's government about a lack of notification. *See* United States Department of State, Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them 17 (5th ed. 2018) ("CNA Manual"). As such, the draft act specifies 24 hours, as opposed to the California statute's arguably too demanding two hours, as the maximum amount of time a person may be detained without triggering the need for relevant officers to go through the procedures.

Drawing on longstanding Department guidance, *see* CNA Manual, *supra*, at 21, section (a)(1) sets forth two alternative formulations for how soon after the arrest the person must be informed about consular notification: "as soon as reasonably possible," and the arguably more

pragmatic "at booking." The Department assesses that the Illinois statute's "within 48 hours of booking or detention" may be too long a period of time to be considered reasonable and thus recommends a shorter time limit. To avoid conflict with existing laws in certain states, and drawing on the Illinois statute's analogous formulation, section (a)(1) is framed to avoid obligating the relevant official to require the person to divulge his or her citizenship or immigration status.

Section (a)(2) enshrines the rule in Article 36(1)(b) of the VCCR that, if the person is a foreign national and requests consular notification, the relevant official must inform the person's consular post "without delay." The draft does not require the relevant official to judge the person's credibility or independently verify that the person is a foreign national, which could be unduly burdensome on law enforcement and custodial officers. It instead takes a simpler route by requiring notification to the consulate if the person asserts foreign nationality and requests notification. The Illinois statute also opts for this approach.

The VCCR does not define "without delay." What it means in practice depends largely on the context of the arrest or detention, e.g., an arrest may occur in exigent circumstances or may involve little or no communication between the arresting officer and the arrestee. For clarity and ease of implementation, section (a)(2) translates "without delay" into a set number of hours that appropriately recognizes that it may take some time for law enforcement to be in a position to ascertain the arrestee's nationality and send a communication to the consular post. Thus, the relevant officer has up to 72 hours after the arrest or initial detention to inform the consular post, which the Department assesses is, in most cases, the maximum reasonable time officials should wait. *See* CNA Manual, *supra*, at 25. The Illinois and California statutes are both silent on this important element; they instead direct the relevant officials to consult the CNA Manual. In a significant omission, the Oregon statute lacks any procedures on notifying the consular post or on consular access.

While the VCCR requires notification to the consular post with jurisdiction over the "consular district" where the arrest or detention occurs, ascertaining the boundaries of a particular country's consular districts is too cumbersome to reasonably require of state and local officials. For ease of implementation, section (a)(2) therefore directs the relevant official to notify a consulate of the person's country of nationality, preferably but not necessarily the nearest one to the place of arrest or detention, or the country's embassy in Washington, D.C., which the Department assesses is sufficient to satisfy the obligation. Most countries only have an embassy in Washington, where foreign consular officers typically work in an internal office that handles issuance of visas to U.S. citizens and third-country nationals and provides assistance to the country's own nationals, along with a Mission to the United Nations in New York. Countries with larger numbers of nationals in the United States may also have consulates in other U.S. cities that provide services to their nationals and issue visas. The Department maintains updated contact information for each country's embassy and, if applicable, consulates at https://travel.state.gov/content/travel/en/consularnotification/ConsularNotificationandAccess.html.

Section (a)(3) sets forth the different rule for nationals of "mandatory notification" countries, i.e., the 56 countries with which the United States has entered into a bilateral consular convention requiring notification to the consular post regardless of the arrested or detained person's wishes. It is similar in some respects to the California statute, which addresses mandatory notification in a more detailed manner than the Illinois statute (the Oregon statute does not address mandatory notification at all). Because mandatory notification does not depend

on the person's wishes, officers may not be able to rely solely on assertions by the person about foreign nationality, or the lack thereof, to ensure they have taken reasonable steps to satisfy the requirement. Hence, even without an assertion of foreign nationality, if the relevant officer knows the person to be a foreign national, the officer must provide notification to the consular post. An officer could acquire such knowledge, for example, because the person was carrying a foreign passport, a U.S. green card, or some other identity document indicating his or her foreign nationality. *See* CNA Manual, *supra*, at 13. The California statute speaks of a "known or suspected foreign national" and the Illinois statute is silent on this aspect.

As in Section (a)(2), section (a)(3) sets the time limit for mandatory notification at 72 hours. While certain bilateral conventions use "immediately" or "without delay," a significant number define "three days" or "72 hours" as the outer limit. *See* CNA Manual, *supra*, at 45–50. For ease of implementation, the Department assesses that 72 hours is a reasonable time limit. Notifications made within 72 hours are unlikely to engender complaints by the foreign government about a treaty violation, nor is the defendant likely to suffer significant prejudice within 72 hours in the absence of consular access.

It is for each country to decide for itself what it can and will do to assist its nationals. As noted above, the arrested or detained person does not have an individual right to consular notification. In the same vein, the person does not have an individual right to consular access or assistance. *See* U.S. Inter-American Court Submission, *supra*, at 326–27. By contrast, the foreign government's consular officers do have a right under the VCCR and the bilateral conventions to have access to and to communicate with their national if they choose to do so. The national is not required to accept assistance, but the Department takes the view that consular officers are entitled to visit the national once to verify in person that the national does not want their assistance. *See* CNA Manual, *supra*, at 31–32. **Section (a)(4)** sets forth language on consular access in terms hewing closely to those in VCCR Article 36(1)(b), as opposed to the analogous formulations in the California and Illinois statutes. We believe that section (a)(4)'s framing is a better way to keep clear that these rights belong to the foreign consular officers, not the arrested or detained person. Section (a)(4) adds Article 36(1)(b)'s additional element that relevant law enforcement or custodial officials must forward communications from the foreign national to the consular post.

While not required by the VCCR or bilateral conventions, **section (a)(5)** codifies what the Department assesses to be a key best practice to ensure that law enforcement and custodial officials can later demonstrate that they undertook the required procedures: a written record. *See* CNA Manual, *supra*, at 8–9. Such records can be important evidence in a subsequent proceeding in which the state must defend itself against the foreign national's assertions that his or her conviction or sentence should be overturned due to lack of consular notification or access. Written records also help the Department disclaim foreign governments' complaints about treaty violations due to non-notification.

Finally, **section (b)** requires state and local law enforcement agencies to develop standard operating procedures (SOPs) and training manuals incorporating consular notification and access requirements. While this element is not required by the VCCR or the bilateral conventions, it is another key best practice that is required under the California statute and the Massachusetts Supreme Judicial Court's opinion in *Commonwealth v. Gautreaux*, 941 N.E.2d 616, 622 (2011). Similarly, Nevada law permits the Nevada Attorney General to establish a program and promulgate regulations to assist state officials to implement VCCR Article 36. Section (b) also refers state and local agencies to the CNA Manual for further detail to be included in SOPs and

protocols. The California and Illinois statutes both refer their state agencies to the CNA Manual for further detail and guidance. The CNA Manual contains a draft SOP that agencies can adapt to their particular needs. CNA Manual, *supra*, at 110–13.

Optional Elements of a State Consular Notification and Access Statute

In addition to the key elements listed above, which should as far as possible be uniform across jurisdictions, statutory language incorporating the following optional elements could be included in a uniform or model act to account for existing provisions of state law that might otherwise be in conflict with the draft legislation above, or to accommodate the positions of legislators or law enforcement agencies about the ancillary effects of the draft legislation, such as costs and remedies. The Department does not believe these elements are necessary to include in a uniform or model act to ensure compliance with consular notification and access treaty obligations.

- A provision setting forth procedures leading to possible remedies for a criminal defendant who was convicted and sentenced despite an alleged failure of consular notification or access (e.g., postconviction relief, such as retrial or resentencing, for those who can demonstrate actual prejudice resulting from the failure). *See, e.g.*, S. 4462, 117th Cong. § 7075(a) (2022).
- A provision excluding any remedy in an individual's criminal proceedings based on an alleged failure to provide consular notification or access. *See, e.g.*, Fla. Stat. Ann. § 901.26.
- A provision excluding the exclusion of evidence for the failure to provide consular notification or access. *See, e.g.*, Or. Rev. Stat. § 426.228(9)(b).
- A provision excluding criminal or civil liability for law enforcement and custodial officers who fail to undertake consular notification procedures. *See, e.g.*, Or. Rev. Stat. § 426.228(9)(b).
- A provision requiring the court to inform a defendant about notification at the defendant's initial appearance, and requiring or permitting the court to stay the proceedings to allow an opportunity for consular notification and assistance. *See, e.g.*, Fed. R. Crim. P. 5(d)(1)(F); 725 Ill. Comp. Stat. § 5/109-1(d)–(e); N.D. R. Crim. P. 5(b)(2)(C).
- A provision or explanatory note clarifying that even though law enforcement and custodial officers are required to inform an arrested or detained person that, if the person is a foreign national, the person may request notification to consular officials, law enforcement and custodial officers are not thereby required to ascertain or investigate whether an individual is indeed a foreign national or to compel the person to divulge his or her nationality. *See, e.g.*, 5 Ill. Comp. Stat. § 805/15(e).
- Alternatively, language requiring law enforcement and custodial officers, upon informing an arrested or detained person about consular notification, to also inform the person that he or she may refuse to disclose citizenship or immigration status. *See, e.g.*, Wash. Rev. Code § 10.93.160(9)(a); Or. Rev. Stat. § 181A.823(3).
- A provision directing the relevant state agency to ensure that law enforcement and custodial officials are trained to understand consular notification and access requirements and identify situations in which they are required to go through those procedures. *See, e.g.*, Or. Rev. Stat. § 181A.470.

* * * *

3. Wrongful Detention and Hostage Taking

a. Executive Order 14078

In 2022, President Biden issued a new executive order on wrongful detention, Executive Order ("E.O.") 14078, entitled, "Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home." 87 Fed. Reg. 43,389 (Jul. 21, 2022). See *Digest 2022* at 47-50 and 699-701. On July 11, 2023, the Treasury Department adopted a final rule adding regulations to implement E.O. 14078. See Chapter 16 of this *Digest* for discussion and for sanctions pursuant to E.O. 14078.

On September 20, 2023, Secretary Blinken delivered remarks at a high-level dialogue on the Declaration Against Arbitrary Detention In State-to-State Relations. The excerpt below relates wrongful detention and E.O. 14078. The full remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-the-high-level-dialogue-on-the-declaration-against-arbitrary-detention-in-state-to-state-relations/.

* * * *

[The U.S. government is] also keenly aware that dozens of U.S. nationals are still wrongfully detained, still suffering, as are their families and loved ones. These are our fellow citizens – Americans living and working abroad, businesspeople, journalists, travelers – held without cause, without due process, merely to become a human bargaining chip. Which is why we will not stop our work to free every single one of them.

In this job, I have no higher priority than the security of my fellow Americans abroad. That's why the United States Government has worked relentlessly to free Americans who have been unjustly detained. And I am very proud of the fact that during this administration, we have brought home 35 people over the past two and a half years from countries, alas, around the world.

But … we also have a profound responsibility to do everything possible to deter – to deter future instances of arbitrary detention.

Last July, President Biden signed an executive order to try to expand our tools and disrupt these practices, building off the experience of prior administrations and, critically, the 2020 Robert Levinson Act. This includes authorizing new financial and travel restrictions – like the ones we imposed just this week on the Iranian Ministry of Intelligence and Security and former President Ahmadinejad.

* * * *

More importantly, we can send a message. We can send a message that our people are not pawns. And that if a country holds any of our citizens, all of us will hold them accountable – whether that's sanctioning perpetrators and their families, freezing their assets, or forbidding entry into any one of our countries.

* * * *

b. Russia

On April 10, 2023, Secretary Blinken determined that U.S. citizen Evan Gershkovich was wrongfully detained by Russia. The State Department press statement is available at https://www.state.gov/russias-wrongful-detention-of-journalist-evan-gershkovich/, and follows:

> Today, Secretary Blinken made a determination that Evan Gershkovich is wrongfully detained by Russia.
>
> Journalism is not a crime. We condemn the Kremlin's continued repression of independent voices in Russia, and its ongoing war against the truth.
>
> The U.S. government will provide all appropriate support to Mr. Gershkovich and his family. We call for the Russian Federation to immediately release Mr. Gershkovich.
>
> We also call on Russia to release wrongfully detained U.S. citizen Paul Whelan.

c. Iran

On September 18, 2023, Secretary Blinken announced the release of wrongfully detained U.S. citizens from Iran. The statement is available at https://www.state.gov/on-irans-release-of-unjustly-detained-u-s-citizens/, and excerpted below.

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Siamak Namazi, Emad Shargi, Morad Tahbaz, and two other U.S. citizens who wish to remain private have departed Iran and are on their way back to the United States to be reunited with their families. They are joined by two of their relatives, also U.S. citizens, who had been prevented from leaving Iran until Today. Several of these individuals have spent years imprisoned as part of the Iranian regime's cruel practice of wrongful detention, but today they are all returning home to their loved ones.

From day one of this Administration, the President and I have made clear that we have no higher priority than the safety and security of U.S. citizens at home and abroad. Under President Biden's leadership, we have now secured the release of more than 30 wrongfully detained Americans around the world. I am grateful to everyone from the State Department and across the government who worked tirelessly to bring home our U.S. citizens. We will not rest until we have brought home every wrongfully detained American.

* * * *

Today is also a solemn day. While we celebrate the release of these five U.S. citizens, we recognize that Bob Levinson still remains unaccounted for more than 16 years after his abduction from Kish Island, Iran. The Iranian regime has inflicted unimaginable pain on Bob's family, and they

have yet to account for his fate. We once again call upon the Iranian regime to give a full accounting of what happened to Bob Levinson. Bob's legacy lives on in the Levinson

Act, which bolsters our ability to bring home hostages and wrongfully detained U.S. nationals held overseas, and President Biden's Executive Order 14078, which builds on the Levinson Act and reinforces the tools to deter and disrupt hostage-taking and wrongful detention by other countries. We will use the Levinson Act and other tools to promote accountability for Iran and other regimes for the cruel practice of wrongful detention.

* * * *

d. Venezuela

On December 20, 2023, the United States welcomed the release of six wrongfully detained U.S. nationals from Venezuela. The statement is available at https://www.state.gov/release-of-u-s-nationals-and-electoral-roadmap-implementation-in-venezuela/ , and includes the following:

> The United States welcomes the release today of all six wrongfully detained U.S. nationals from Venezuela — Joseph Cristella, Eyvin Hernandez, Jerrel Kenemore, Savoi Wright, and two individuals who wish to remain private — as well as the release of four additional U.S. nationals. They have all safely departed Venezuela and will soon be reunited with their families and other loved ones. I want to thank the government of Qatar for its work helping secure their release.
>
> The safety and security of Americans worldwide is my highest priority as Secretary. Since President Biden took office, we have secured the release of more than forty wrongfully detained Americans, and we will continue to press for the release of all U.S. nationals wrongfully detained in other countries around the world.

President Biden's December 20, 2023 statement on the release of U.S. national detained in Venezuela is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/20/statement-from-president-joe-biden-on-securing-the-release-of-americans-detained-in-venezuela/.

B. CHILDREN

1. Adoption

a. Annual Reports

As discussed in *Digest 2020* at 95-96, the Intercountry Adoption Information Act of 2019 ("IAIA"), Pub. L. No. 116-184, 134 Stat. 897, which directs the Department to include additional information in its intercountry adoptions annual report to Congress, was signed into law on October 30, 2020. The IAIA requires the Department to identify

countries with laws that "prevented or prohibited" adoptions to the United States and identify the Department's actions that would have similarly "prevented, prohibited, or halted any adoptions." The second annual report submitted pursuant to the IAIA, for Fiscal Year 2022, was released in July 2023. The Fiscal Year 2022 Annual Report, as well as past annual reports, can be found at https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/AnnualReports.html. As in the past, the report includes several tables showing numbers of intercountry adoptions by country during fiscal year 2022, average times to complete adoptions, and median fees charged by adoption service providers.

As required by reporting requirements, the Department provided information on the Department's efforts to encourage the resumption of adoptions where prohibited. The Department provided this information for the Democratic Republic of Congo, Ethiopia, Kenya, Russia, and Latvia, all of which maintained laws or regulations preventing or prohibiting adoptions involving immigration to the United States. Also, in accordance with the IAIA, the Department addressed in the FY 2022 report the impact of the accrediting entity's fees on U.S. families seeking to adopt through intercountry adoption.

b. Ukraine

See Chapter 3 for discussion of the International Criminal Court arrest warrants for Russian officials based on their alleged war crimes of unlawful transfer and unlawful deportation of Ukraine's children.

See also Chapter 16 for sanctions and visa restrictions imposed on individuals and entities to promote accountability for facilitation of forced transfer and deportation of Ukrainian children to Russia and their adoption by Russian families during Russia's War against Ukraine.

c. Litigation: Trower v. Blinken

On January 30, 2023, the U.S. District Court for the Eastern District of Missouri held that a 2019 adoption order in support of an I-600 immigrant visa petition was in accordance with the laws of the Democratic Republic of Congo (DRC) despite the 2016 DRC law suspending intercountry adoptions. The court recognized that the DRC Minister of Justice plainly acknowledged that the adoption decree violated DRC law but also confirmed that it was nonetheless facially valid and enforceable under DRC law adding that "a final, unappealed judgment cannot be deemed invalid merely because it contains an error of law." *Trower v. Blinken*, 22-cv-00077 (E.D. Mo. Jan. 30, 2023). The court applied the *Hennessy* precedent that "when deciding whether to recognize a foreign judgment, courts may not reopen the merits of the case and consider whether foreign courts accurately applied their own law." *Hennessy v. Wells Fargo Bank, N.A.*,

968 N.W.2d 684, 697 (Wis. 2022) (citing *Hilton v. Guyot*, 159 U.S. 113, 202 (1895)). Excerpts follow from the court's opinion (with footnotes omitted).

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The only issue before the Court in this Phase I is whether M.S.'s adoption decree constitutes "evidence of adoption abroad … in accordance with the laws of the foreign-sending country." The DRC Minister of Justice plainly acknowledged that the decree violates Article 923 bis but also confirmed that it is nonetheless facially valid and enforceable under DRC law. (Doc. 19-1 at pp. 169, 171). The record is consistent in this respect, and this Court agrees. A final, unappealed judgment cannot be deemed invalid merely because it contains an error of law. The parties in their briefing conduct a detailed merits analysis of the juvenile court's decisions under DRC and international law, with Defendants essentially claiming reversible error on appeal before this Court. But "when deciding whether to recognize a foreign judgment, courts may not reopen the merits of the case and consider whether foreign courts accurately applied their own law." *Hennessy v. Wells Fargo Bank, N.A.*, 968 N.W.2d 684, 697 (Wis. 2022) (citing *Hilton v. Guyot*, 159 U.S. 113, 202 (1895)). A foreign judgment may not be collaterally attacked upon the mere assertion that it was erroneous. *Sarl Louis Feraud Int'l v. Viewfinder, Inc.*, 489 F.3d 474, 479 (2d Cir. 2007) (stating, "we cannot second-guess the French court's finding"). *See also Medellin v. Dretke*, 544 U.S. 660, 670 (2005) (J. Ginsburg and J. Scalia concurring) (citing the Restatement and *Hilton* to support recognition of a foreign judgment notwithstanding assertions of error). "It is no ground for impeaching a judgment in personam of a foreign court that it is erroneous in matter of law or fact." 50 C.J.S. Judgments § 1333.

Mindful of the foregoing principles, the Court is inclined to recognize the adoption decree at this stage. To the extent non-recognition may be warranted on the basis of fraud, such matters will be examined in Phase II.

* * * *

d. Hague Adoption Convention Accessions

On March 1, 2023, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. No. 105-51; 1870 U.N.T.S. 167. ("Convention") entered into force for Botswana. See March 1, 2023 State Department Advisory and Notice, available at https://travel.state.gov/content/travel/en/News/Intercountry-Adoption-News/intercountry-adoptions-from-botswana-after-march-1--2023.html. The Department of State determined it will not be able to process intercountry adoptions from Botswana initiated on or after March 1, 2023 because Botswana does not yet have legislation implementing the safeguards of the Convention.

e. Toolkit on Preventing and Addressing Illicit Practices in Intercountry Adoption

The 2023 Council on General Affairs and Policy of the Hague Conference on Private International Law ("HCCH") approved the Toolkit on Preventing and Addressing Illicit Practices in Intercountry Adoptions (the "Toolkit"). The Toolkit is the result of six years of work on the part of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption. The Working Group was chaired by Ms. Carine Rosalia, Attorney Adviser in the Office of the Legal Adviser of the U.S. Department of State, and comprised of delegates from the U.S. and more than 20 other States. The new resource will promote the best interests of the child by offering practical guidance to minimize risks of illicit practices in the intercountry adoption process. The 2023 Council also approved six (optional) model forms for Central Authorities to utilize in completing post-adoption reports, seeking consent of a child, and pursuing other procedural steps in the intercountry adoption process.

On May 31, 2023, the HCCH hosted an online event on the occasion of the 30th Anniversary of the 1993 Adoption Convention. At the conclusion of the online event, the HCCH launched the publication of the Toolkit. See https://www.hcch.net/en/news-archive/details/?varevent=920.

On June 6, 2023, the HCCH announced the publication of the Toolkit. The announcement is available at https://www.hcch.net/en/news-archive/details/?varevent=919. The Toolkit is available at https://assets.hcch.net/docs/7aa25208-63fe-41ac-850a-16e732597b88.pdf.

2. Abduction

Annual Reports

As described in *Digest 2014* at 71, the Sean and David Goldman International Child Abduction Prevention and Return Act of 2013 ("ICAPRA"), Pub. L. 113-150, 128 Stat. 1807, signed into law on August 8, 2014, increased the State Department's annual Congressional reporting requirements pertaining to countries' efforts to resolve international parental child abduction cases. In accordance with ICAPRA, the Department submits an Annual Report on International Child Abduction to Congress each year and a report to Congress ninety days thereafter on the actions taken vis a vis those countries cited in the Annual Report for demonstrating a pattern of noncompliance. 22 U.S.C. § 9101, et seq.; see also International Parental Child Abduction page of the State Department Bureau of Consular Affairs, https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers.html.

Annual reports and action reports on international parental child abduction are available at https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html. The April 2023 Annual Report on International Child Abduction is available at

https://travel.state.gov/content/dam/NEWIPCAAssets/2023%20ICAPRA%20Annual%20Report-fv.pdf. The 2023 report cites fourteen countries for a pattern of noncompliance: Argentina, Belize, Brazil, Bulgaria, Ecuador, Egypt, Honduras, India, Jordan, Peru, Republic of Korea, Romania, Russia, and the United Arab Emirates. On May 2, 2023, the State Department issued a media note announcing the release of the report, available at https://www.state.gov/release-of-the-2023-annual-report-on-international-parental-child-abduction/.

Cross References

Immigration and Visas, **Ch.1.B**
Children, **Ch.6.C**
Declaration Against Arbitrary Detention In State-to-State Relations, **Ch. 6.M.2**
Child Support Convention, **Ch. 15.B**
Executive Order 14078, "Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home," **Ch.16.A.12**
Sanctions and visa restrictions related to forced transfer and deportation of Ukrainian children, **Ch. 16.A.4.a**

CHAPTER 3

International Criminal Law

A. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Law Enforcement Dialogue with Cuba

On January 19, 2023, the United States and Cuba held the first Law Enforcement Dialogue since 2018. The United States and Cuba held four Law Enforcement Dialogues from 2015 to 2018. See *Digest 2018* at 349-51; *Digest 2017* at 55; and *Digest 2016* at 363-68. The meeting was held in Havana and included a U.S. delegation of representatives from the Departments of State, Homeland Security and Justice and officials from the U.S. Embassy in Havana. See State Department media note, available at https://www.state.gov/united-states-and-cuba-resume-law-enforcement-dialogue/, which includes the following:

> This type of dialogue enhances the national security of the United States through improved international law enforcement coordination, which enables the United States to better protect U.S. citizens and bring transnational criminals to justice. These dialogues strengthen the United States' ability to combat criminal actors by increasing cooperation on a range of law enforcement matters, including human trafficking, narcotics, and other criminal cases. Enhanced law enforcement coordination is in the best interests of the United States and the Cuban people. This dialogue does not impact the administration's continued focus on critical human rights issues in Cuba, which is always central to our engagement.

2. Universal Jurisdiction

On October 12, 2023, Acting Deputy Legal Adviser Elizabeth Grosso delivered remarks at the 78th UN General Assembly Legal Committee, or Sixth Committee, meeting on "Agenda Item 86: Scope and Application of the Principle of Universal Jurisdiction." The statement is excerpted below and available at https://usun.usmission.gov/remarks-at-

the-78th-general-assembly-sixth-committee-agenda-item-86-scope-and-application-of-the-principle-of-universal-jurisdiction/.*

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Recognizing the importance of this issue and its long history as part of international law relating to piracy, the view of the United States continues to be that basic questions remain about how jurisdiction should be exercised in relation to universal crimes and States' views and practices related to the topic.

In that regard, the submissions made by States to date, the continued effort of the Working Group in this Committee, and the Secretary-General's reports have been useful in helping us to identify differences of opinion among States as well as points of consensus on this issue. In the years since this issue was taken up by the Committee, we have engaged in thoughtful discussions on a number of important topics concerning universal jurisdiction, including with respect to its definition, scope, and application. We remain interested in further exploring issues related to the practical application of universal jurisdiction.

The United States continues to analyze the contributions of other States and organizations. In that regard, the United States takes this opportunity to note the recent amendment of the United States' War Crimes Act that expands jurisdiction over the offenses listed in the act to an offender who is present in the United States, regardless of the nationality of the victim or offender.

* * * *

3. Agreement on Preventing and Combatting Serious Crime

On September 21, 2023, the U.S.-Israel Agreement on Enhancing Cooperation in Preventing and Combatting Serious Crime and Terrorism entered into force. The agreement was signed on July 7, 2022 at Tel Aviv. The full text of the agreement is available at https://www.state.gov/israel-23-921. For background on these types of agreements ("PCSC agreements"), which provide a mechanism for the parties' law enforcement authorities to exchange personal data—including biometric (fingerprint) information—for use in detecting, investigating, and prosecuting terrorists and other criminals, see *Digest 2008* at 80-83 and *Digest 2019* at 67.

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* Editor's note: The excerpt references the United States' War Crimes Act. On January 5, 2023, President Biden signed the Justice for Victims of War Crimes Act, Pub. L. No. 117-351, 136 Stat. 6265, which amends the U.S. War Crimes Act, 18 U.S.C. 2441. The amendment, *inter alia*, broadens the scope of individuals subject to prosecution for war crimes to include offenders present in the United States regardless of the nationality of the victim or offender. See section C.4.a, *infra*, for discussion of the first ever charges under the U.S. war crimes statute for war crimes in connection with Russia's invasion of Ukraine.

B. INTERNATIONAL CRIMES

1. Organized Crime

On February 8, 2023, the State Department announced a Transnational Organized Crime Rewards Program ("TOCRP") reward offer of up to $5 million for information leading to the arrest and/or conviction of Yulan Adonay Archaga Carías, also known as "Porky" or Alex Mendoza, for conspiring to participate in or attempting to participate transnational organized crime. The press statement is available at https://www.state.gov/department-of-state-announces-reward-offers-for-information-leading-to-arrest-and-or-conviction-of-ms-13-leader-in-honduras/, and excerpted below.

* * * *

This announcement complements a U.S. Department of Justice criminal indictment, which charged Archaga Carías in 2021 with conspiracy to violate the racketeering laws of the United States, conspiracy to import cocaine into the United States, and possession of a machine gun in relation to a drug-trafficking crime.

Archaga Carías is the highest-ranking member of Mara Salvatrucha 13 (MS-13) in Honduras and is responsible for directing the gang's criminal activities including drug trafficking, money laundering, murder, kidnappings, and other violent crimes. Archaga Carías is also responsible for the gang's importation of large amounts of cocaine into the United States.

This announcement is an element of a comprehensive effort in conjunction with the U.S. Treasury's Office of Foreign Assets Control sanctions against Archaga Carías. Archaga Carías is a most-wanted fugitive by the FBI, DEA, and DHS Homeland Security Investigations.

The United States supports the efforts of law enforcement partners in Honduras seeking justice against violent MS-13 gang members like Archaga Carías. In coordination with these efforts, and to complement the work of police and prosecutors in Honduras, we are announcing the new reward offer today.

* * * *

On April 25, 2023, the State Department announced a TOCRP reward offer of up to $5 million for information leading to the arrest and/or conviction of Democratic People's Republic of Korea ("DPRK") national Sim Hyon-Sop. The Department is also offering separate reward offers of up to $500,000 each for information leading to the arrests and/or convictions of People's Republic of China ("PRC") nationals Han Linlin and Qin Gouming. See Chapter 16 for concurrent sanctions. The press statement announcing the reward, available at https://www.state.gov/u-s-department-of-state-announces-reward-offers-for-information-leading-to-the-arrests-and-or-convictions-of-three-transnational-criminals-violating-dprk-sanctions/, includes the following:

> According to the Department of Justice's indictment, Qin, Han, and Sim used multiple front companies to purchase tobacco products and other goods for North Korean customers and laundered U.S. dollars for these shipments. The tobacco imported by Qin, Han, and others into the DPRK was used to manufacture counterfeit cigarettes, the sales of which benefitted the DPRK regime.

On September 28, 2023, the Secretary Blinken announced a TOCRP reward offer of up to $5 million for information leading to the arrest and/or conviction of as yet unknown co-conspirators responsible for the assassination of Fernando Villavicencio. Secretary Blinken also announced a second reward offer of up to $1 million for information leading to the identification or location of any individual holding a key leadership position in the Transnational Organized Crime group responsible for Mr. Vilavicencio's homicide. The press statement announcing the reward, available at https://www.state.gov/u-s-department-of-state-announces-transnational-organized-crime-rewards-offer-for-as-yet-unknown-co-conspirators-responsible-for-the-assassination-of-fernando-villavicencio/, includes the following:

> Multiple assassins attacked Mr. Villavicencio, the Movimiento Construye party's presidential candidate in the 2023 elections, as he left a Quito campaign event on August 9. The Ecuadorian National Police arrested six Colombian nationals, believed to be part of a Colombian organized crime group, as part of the assassination plot. The investigation, supported by the FBI, continues to identify others involved in the assassination.
>
> The United States will continue to support the people of Ecuador and work to bring to justice individuals who seek to undermine democratic processes through violent crime.

On November 15, 2023, the State Department announced an increased TOCRP reward offer of up to $2 million each for information leading to the arrest and/or conviction of Haitian national—Vitel'Homme Innocent—for conspiring to participate in or attempting to participate in transnational organized crime. See Digest 2022 at 102 for the 2022 TOCRP reward offer. The press statement announcing the reward, available at https://www.state.gov/u-s-department-of-state-announces-increased-reward-offer-for-information-leading-to-the-arrest-and-or-conviction-of-haitian-gang-leader/, includes the following:

> This announcement coincides with the FBI announcement of Innocent's addition to the FBI's Ten Most Wanted Fugitive List and follows the Department of Justice's announcement of an indictment against Innocent for conspiracy to commit hostage taking resulting in death, and other charges.
>
> On October 16, 2021, the 400 Mawozo gang engaged in a conspiracy to kidnap sixteen U.S. Christian missionaries and one Canadian missionary and held them for ransom. Then, on October 7, 2022, armed members of Innocent's gang

kidnapped two elderly U.S. citizens residing in Torcelle, Haiti, resulting in the death of one of the kidnap victims. Innocent was charged as a co-conspirator in both kidnappings.

2. Trafficking in Persons

a. Interagency Task Force to Monitor and Combat Trafficking in Persons

On February 13, 2023, Secretary Blinken convened a meeting of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons ("PITF"). The full meeting remarks are available at https://www.state.gov/remarks-at-the-meeting-of-the-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons-2/. Secretary Blinken's February 13, 2023 press statement following the PITF meeting is available at https://www.state.gov/meeting-of-the-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons/, and excerpted below.

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With these formidable challenges in mind, today I chaired the 2023 meeting of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons. Task force agencies committed to taking significant steps throughout 2023 to advance progress to combat human trafficking, including to advance the *National Action Plan to Combat Human Trafficking*. We also heard from a member of the U.S. Advisory Council on Human Trafficking, who challenged us to effectively incorporate survivors as equal stakeholders in our work.

Looking forward, the State Department will do our part, by:

- Promoting meaningful survivor engagement and leadership through our support to the U.S. Advisory Council on Human Trafficking and our engagement with consultants in the Department's Human Trafficking Expert Consultant Network. For the 2023 Trafficking in Persons Report, consultants are drafting and reviewing content for the introduction in addition to advising on the inclusion of trauma-informed photography and ethical storytelling.
- Preventing and addressing human trafficking, including forced labor, through our own procurement in the global marketplace. There will be special emphasis on better equipping our acquisitions workforce with the knowledge and support they need, in addition to developing a new risk screening process to mitigate this danger from State Department contracts.
- Collaborating with Canada and Mexico through the Trilateral Working Group on Trafficking in Persons, which will resume this year.
- Working to prevent trafficking within the diplomatic community by providing important checks on the welfare of domestic workers employed by foreign mission and international organization personnel across the United States.

- Making new investments to build on the successes of U.S. anti-trafficking foreign assistance programs, including to combat forced child labor for domestic work and begging.

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On February 13, 2023, the White House published a fact sheet entitled, "President's Task Force to Monitor and Combat Trafficking in Persons," available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/13/fact-sheet-presidents-interagency-task-force-to-monitor-and-combat-trafficking-in-persons-2/.

b. Trafficking in Persons Report

On June 15, 2023, the Department of State released the 23rd edition of the annual Trafficking in Persons Report (TIP 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 2022 through March 2023 and evaluates anti-trafficking efforts around the world. Through the report, the Secretary determines the ranking of countries and territories as Tier 1, Tier 2 or 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. Under the TVPA, the President decides whether to restrict certain types of foreign assistance for the governments of Tier 3 countries or to grant waivers for assistance that would promote the purposes of the TVPA or is otherwise in the U.S. national interest. The 2023 report lists 24 countries as Tier 3 countries. 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/reports/2023-trafficking-in-persons-report/. Chapter 6 of this *Digest* discusses the determinations relating to child soldiers. Fact sheets for the 2023 Trafficking in Persons Report are available at https://www.state.gov/fact-sheets-for-2023-trafficking-in-persons-report/.

On June 15, 2023, Secretary Blinken and Ambassador-At-Large for the Office to Monitor and Combat Trafficking in Persons Cindy Dyer delivered remarks at a launch ceremony for the 2023 TIP Report. The remarks and a video recording are available at https://www.state.gov/secretary-antony-j-blinken-at-the-release-of-the-2023-trafficking-in-persons-report/ and excerpted below.

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SECRETARY BLINKEN: …Today, the State Department is releasing the 2023 Trafficking in Persons Report. This report provides a comprehensive, objective assessment of 188 countries and territories – including the United States. Its purpose is to showcase successful efforts to prevent trafficking, to identify areas where countries are falling short and have more work to do, and ultimately – ultimately – to eliminate trafficking altogether.

The United States is committed to combatting human trafficking because it represents an attack on human rights and freedoms. It violates the universal right of every person to have autonomy over their own life and actions. Today, more than 27 million people around the world are denied that right.

Trafficking harms our societies: weakening the rule of law, corrupting supply chains, exploiting workers, fueling violence. And it disproportionately impacts traditionally marginalized groups: women, LGBTQI+ individuals, persons with disabilities, ethnic and religious minorities.

In his first year in office, President Biden released an updated National Action Plan to ensure that our policy response is keeping pace with what is an evolving challenge. Earlier this year, as the ambassador noted, I chaired a meeting of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons, where we reviewed steps that we've taken to implement the plan: prohibiting the importation of goods made with forced labor; imposing financial sanctions on those that knowingly profit from that labor; integrating racial equity into our antitrafficking work; strengthening our efforts to counter online sexual exploitation and abuse of children.

The TIP Report is a central part of the United States Government's antitrafficking work, and it reflects the efforts of so many people in this room today – and countless others both in Washington and around the world.

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This year's report shows a picture of steady progress around the world, with dozens of countries making significant strides in preventing trafficking, in protecting survivors, in prosecuting those who carry out this crime.

In Seychelles, the national government offered enhanced training to airport staff and police officers to better spot trafficking. The government also instituted new policies to screen vulnerable populations, like migrants at transit points, for trafficking indicators. That's helped them identify more victims than ever before and convict a record number of traffickers.

Hong Kong launched a new hotline to help trafficking victims report fraudulent overseas employment scams and to get help. In its first month, that hotline received hundreds of calls, leading to several investigations.

In Denmark, authorities led a renewed focus on – and committed additional resources to – combatting human trafficking, identifying more victims, prosecuting and convicting more traffickers.

So that's the good news, and these are just examples of it. The report also highlights a number of concerning trends.

The first is the continued expansion of forced labor. As the pandemic disrupted supply chains around the world and spiked demand in certain industries, like PPE production, exploitative employers used a host of tactics to take advantage of lower-paid and more vulnerable workers.

The second is the rise in labor trafficking using online scams, which have proliferated as more of the world gains access to the internet. The pandemic supercharged this trend. Traffickers capitalized on widespread unemployment to recruit victims with fake job listings and then forced them to run international scams.

Third, the report exposes the risks facing an often-overlooked segment of trafficking victims: boys and young men. According to a recent report by the United Nations Office on Drugs and Crime, between 2004 and 2020 the percentage of boys identified as victims of human trafficking rose five-fold.

Now for years, there's been a widely held – but incorrect – belief that trafficking affects exclusively female victims. This false perception has had some, quite frankly, devastating and tangible consequences, with far few support services typically allocated to male victims of trafficking.

The reality is that any person, regardless of sex, regardless of gender identity, can be targeted by human traffickers. And so governments, civil society, the private sector – all of us have to develop resources for all populations, including male victims.

When President Biden released his National Plan to Combat Human Trafficking, he said, and I quote, "We can accomplish far more working in partnership than we [can] working alone." That's true for the work between governments, between the federal and local officials, and with and between civil society and the private sector.

We see that in North Macedonia, where the government partnered with social workers, with NGO staff, with psychologists, with law enforcement to launch mobile teams that identify the majority of trafficking victims in the country. This program has been so effective that several other countries in the Balkans either plan to, or already have, implemented the very same model.

We see it in the work of the Issara Institute. That's an NGO that's worked hand-in-hand with private sector to help hundreds of thousands of workers learn about their rights and seek remediation when labor abuses occur.

We see it in Argentina, where leaders from the federal government regularly meet with representatives from across the country's 24 jurisdictions, to coordinate their efforts and raise one another's ambition, including by committing to offer long-term housing to survivors of trafficking.

For an issue that's as complex and as constantly evolving as this one, we simply need all hands on deck. We need law enforcement working to prosecute traffickers. We need social workers providing trauma-informed care to the victims. We need advocates holding governments accountable. We need communities coming together to support the survivors. In many ways, this room reflects that need and reflects that community.

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c. 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 29, 2023, the President issued a memorandum for the Secretary of State, "Presidential Determination With Respect to the Efforts of Foreign

Governments Regarding Trafficking in Persons," available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/09/29/memorandum-on-presidential-determination-with-respect-to-the-efforts-of-foreign-governments-regarding-trafficking-in-persons-2/. The President's memorandum conveys determinations concerning the countries that the 2023 Trafficking in Persons Report lists as Tier 3 countries. See section B.2.b., *supra*, for discussion of the 2023 report.

d. Trilateral Working Group on Trafficking in Persons

On October 24, 2023, the State Department published as a media note the joint statement on the occasion of the relaunch of the Trilateral Working Group on Trafficking in Persons, which met for the first time since 2018. The joint statement of Mexico, Canada, and the United States is excerpted below and available at https://www.state.gov/joint-statement-on-the-sixth-meeting-of-the-trilateral-working-group-on-trafficking-in-persons/.

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During this sixth meeting, dialogue was resumed to strengthen regional collaboration in the fight against labor and sex trafficking through an understanding that promotes measures to identify and prevent human trafficking and the dismantling of criminal networks, through trilateral coordination and the exchange of information.

The Working Group discussed how to continue increasing collaboration to address shared emerging challenges. The Working Group also talked about how to better coordinate efforts to prevent and respond to possible human trafficking situations related to major events, such as the 2026 FIFA Men's World Cup. Last, the Working Group discussed potential ways to strengthen our temporary labor migration programs to better prevent and address labor exploitation, including forced labor, in order to ensure workers legal rights and protections are in place.

With the relaunching of this Working Group, Mexico, Canada, and the United States reiterate their unwavering commitment to combat this transnational crime. By joining forces, the three countries seek to collaborate to strengthen strategies to address human trafficking in each nation, with the aim of providing comprehensive support to victims and holding accountable those who profit from human suffering. This renewed effort symbolizes a regional alliance.

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3. Narcotics

a. Actions to Combat International Fentanyl Trafficking

On April 11, 2023, the White House published a fact sheet announcing a strengthened approach to crack down on illicit fentanyl supply chains. The fact sheet is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/11/fact-sheet-biden-harris-administration-announces-strengthened-approach-to-crack-down-on-illicit-fentanyl-supply-chains/, and excepted below.

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To build on the trend of decreasing overdose deaths, the Administration is cracking down on illicit fentanyl supply chains by:

- **Leading a coordinated global effort with international partners to disrupt the illicit synthetic drug trade.** Building on the Biden-Harris Administration's work to successfully schedule nearly a dozen precursor chemicals with global partners through the United Nations' Commission on Narcotic Drugs, the United States is building a global coalition to accelerate efforts against illicit synthetic drugs and employing bilateral and multilateral approaches to prevent illicit drug manufacturing, detect emerging drug threats, disrupt trafficking, address illicit finance, and respond to public safety and public health impacts. This global coalition will develop solutions, drive national actions, and create synergies and leverage among like-minded countries who agree that countering illicit synthetic drugs must be a global policy priority.
- **Strengthening coordination and information-sharing among U.S. intelligence and domestic law enforcement agencies.** It is essential to improve coordination and information/intelligence sharing across the Federal government and with State, Territorial, Local, and Tribal partners to strengthen our ongoing investigative and analytical efforts to target drug traffickers and dismantle their networks. The Biden-Harris Administration will improve tracking of pill presses and their spare parts, including die molds, used to transform powder fentanyl into pills, in collaboration with state and local law enforcement; strengthen Federal law enforcement coordination to increase seizures of bulk cash being smuggled at the Southwest Border; and better track and target the origins, shipments, and destinations of precursors and equipment used to produce illicit fentanyl and its analogues, including by enhancing collaboration across the Federal government's targeting, screening, and analysis programs.
- **Accelerating work with the private sector globally.** Illicit drug traffickers often use legitimate commercial enterprises to access significant capital resources, collaborate with raw material suppliers across international borders, use technology to fund and conduct business, and innovate production and distribution strategies to expand their markets. To disrupt these criminals' access to capital and materials, the Biden-Harris Administration is launching a whole-of-government effort, in partnership with the private sector, to strengthen cooperation with international and domestic express consignment carriers to interdict more illicit substances and production materials; educate companies on

safeguarding against the sale and distribution of dual-use chemicals and equipment that could be used to produce illicit fentanyl; and intensify global engagement with private chemical industries.

- **Further protect the U.S. financial system from use and abuse by drug traffickers.** Drug traffickers, who are primarily driven by profits, require significant funds to operate their illicit supply chains. The Biden-Harris Administration will expand its efforts to disrupt the illicit financial activities that fund these criminals by increasing accountability measures, including financial sanctions, on key targets to obstruct drug traffickers' access to the U.S. financial system and illicit financial flows. We will also strengthen collaboration with international partners on illicit finance and anti-money laundering efforts related to drug trafficking.

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On June 23, 2023, Secretary Blinken announced the launch of a Global Coalition to Address Synthetic Drug Threats. See Secretary Blinken's press statement available at https://www.state.gov/launch-of-global-coalition-to-address-synthetic-drug-threats/ and follows.

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Synthetic drugs represent a grave and growing risk to the health and safety of Americans and people around the world. Illicit fentanyl and other synthetic opioids are involved in more deaths of American adults under 50 than any other cause. Other countries face challenges from dangerous synthetic drugs including tramadol, methamphetamine, captagon, MDMA, and ketamine. Recognizing the urgent need for collective action, the United States is rallying the international community to address this pressing challenge head-on.

On July 7, 2023, I will convene and host a virtual Ministerial meeting, bringing together dozens of countries and international organizations, to launch a Global Coalition to Address Synthetic Drug Threats. This coalition seeks to unite countries worldwide in a concerted effort to prevent the illicit manufacture and trafficking of synthetic drugs, identify emerging drug trends, and respond effectively to their public health impacts.

Following the establishment of the Global Coalition, the United States will engage in consultations with participating countries to prioritize specific, concrete actions to address synthetic drug threats. Through specialized working groups, we will develop innovative solutions, drive national initiatives, and elevate the need to address synthetic drugs as a shared global priority. The Global Coalition plans to reconvene on the margins of the 78th UN General Assembly and the March 2024 UN Commission on Narcotic Drugs. These gatherings will provide critical platforms to share progress and achievements with a wider audience and facilitate the advancement of international drug policy.

The United States wishes to engage with all countries concerned about the public health and security risks associated with synthetic drugs. We encourage partners to join this coalition and contribute to building a safer world.

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On July 6, 2023, Assistant Secretary for International Narcotics and Law Enforcement Todd Robinson delivered remarks at a special briefing on Secretary Blinken's participation in a virtual ministerial to launch the Global Coalition to Address Synthetic Drug Threats. The remarks are available at https://www.state.gov/briefing-with-assistant-secretary-todd-d-robinson-on-the-secretarys-participation-in-a-virtual-ministerial-to-launch-the-global-coalition-to-address-synthetic-drug-threats/.

On July 7, 2023, Secretary Blinken delivered opening remarks at the virtual ministerial meeting to launch the Global Coalition to Address Synthetic Drugs. The remarks are available at https://www.state.gov/secretary-antony-j-blinken-opening-remarks-at-a-virtual-ministerial-meeting-to-launch-the-global-coalition-to-address-synthetic-drugs/, and excerpted below.

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Colleagues, on behalf of President Biden, welcome. Welcome to the launch of the Global Coalition to Address Synthetic Drug Threats. We are grateful to the senior government officials from more than 80 countries, as well as leaders from over a dozen regional and international organizations for joining us (inaudible).

We feel this acutely in the United States. Synthetic drugs are the number one killer of Americans aged 18 to 49. And it's almost worth pausing on that fact. The number one killer of Americans aged 18 to 49 – synthetic drugs, notably fentanyl. Nearly 110,000 Americans died last year of a drug overdose. Two-thirds of those deaths involved synthetic opioids. For the individuals, the families, the communities affected, the pain caused by these deaths and by the millions who suffer with substance use is immeasurable. It's also inflicting a massive economic toll – nearly $1.5 trillion in the United States in 2020 alone, according to a report by our Congress; our public health system, our criminal justice system all bearing the costs.

That's why President Biden has made it a top priority for us to tackle two of the critical drivers of this epidemic in the United States: untreated addiction, and drug trafficking. In 2022 our administration released a National Drug Control Strategy that for the first time the United States embraces harm reduction efforts that meet people where they are and engages them in care and services. America is far from alone in facing this challenge. According to the United Nations, more than 34 million people around the world use methamphetamines or other synthetic stimulants annually. And every region is experiencing an alarming rise in other synthetic drugs. In Africa, it's tramadol; in the Middle East, fake Captagon pills; in Asia, Ketamine.

One of the main reasons we wanted to come together today is because we believe the United States is a canary in the coal mine when it comes to fentanyl, an exceptionally addictive and deadly synthetic drug. Having saturated the United States market, transnational criminal enterprises are turning elsewhere to expand their profits. If we don't act together with fierce urgency, more communities around the world will bear the catastrophic costs that are already affecting so many American cities, so many American towns.

The criminal organizations that traffic synthetic drugs are extremely adept at exploiting weak links in our interconnected global system. When one government aggressively restricts the precursor chemical, traffickers simply buy it elsewhere. When one country closes off a transit route, traffickers

quickly shift to another. This is the definition of a problem that no country can solve alone. That's why we're creating this global coalition.

We're focused on three key areas: first, preventing the illicit manufacture and trafficking of synthetic drugs; second, detecting emerging threats and patterns of use; and third, advancing public health interventions and services to prevent and reduce drug use, to save lives, to support recovery for people who use drugs.

Now, of course, we're not starting from scratch. For years, governments, regional and international organizations, health workers, and communities have been coming up with innovative solutions on each of these priorities. Countries in the Western Hemisphere are working with the Organization of American States to develop and implement early warning systems to detect emerging synthetic drug use.

Take-home naloxone kits, pioneered by countries in Europe, have been adopted by countries in Central Asia and other regions. The International Narcotics Control Board is promoting intelligence sharing on the trafficking of precursors to help governments cooperate on interdictions and on prosecutions. This coalition – this coalition is intended to build on these and other important efforts, not take their place, including efforts in the United States, which are among those shared lessons learned.

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On July 7, 2023, during the virtual ministerial meeting of the Global Coalition to Address Synthetic Drugs, the participating States adopted a declaration on "Accelerating and Strengthening the Global Response to Synthetic Drugs." The ministerial declaration is available at https://www.state.gov/ministerial-declaration-on-accelerating-and-strengthening-the-global-response-to-synthetic-drugs/, and excerpted below.

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We the Ministers and government representatives of the undersigned States, having met virtually on 7 July 2023, affirm our shared commitment to taking concerted and sustained action at the national, regional, and international levels to effectively respond to emerging drug-related threats in an integrated and balanced manner.

We express grave concern about the public health and social harms associated with the non-medical consumption of synthetic drugs, the insufficient availability, accessibility, affordability, and quality of drug treatment, recovery, and support services, and the security challenges associated with their illicit manufacture, diversion, trafficking, and related crimes.

We reaffirm our determination to address these challenges comprehensively through evidence-based public health interventions aimed at reducing demand and at preventing and reducing synthetic drug-related harms to individuals and society, including due to overdoses, as well as by preventing and countering the illicit manufacture, diversion, and trafficking of synthetic drugs and their precursors, including trafficking via the internet.

We hereby establish a Global Coalition to Address Synthetic Drug Threats to strengthen the coordinated global response to the international public health and safety challenges posed by synthetic drugs through international cooperation to drive comprehensive, balanced, evidence-based,

and effective actions at the national and international levels, in accordance with applicable international law.

We are committed to jointly identifying priority lines of effort, developing forward-looking solutions, and advancing national and international actions, including the provision of training, technical assistance, and capacity building upon request, to make measurable progress toward addressing and countering this public health and security challenge, taking into account its evolving nature and long-term impact.

We are committed to sharing technical expertise, best practices, scientific evidence, and other relevant information, as appropriate and in accordance with applicable domestic law, and to taking into account, as appropriate, input from all relevant stakeholders, including international organizations, law enforcement, judicial and health-care personnel, civil society, the scientific community and academia, as well as the private sector.

We affirm that the use of certain synthetic drugs is indispensable for medical and scientific purposes, including for the relief of pain and for palliative care, and that measures to address their illicit manufacture, diversion, trafficking, and non-medical consumption should not unduly restrict their accessibility or availability for such purposes.

We take these actions while underscoring that the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, and other relevant international instruments constitute the cornerstone of the international drug control system.

We reaffirm our unwavering commitment, including in the context of addressing synthetic drug threats, to ensuring that all aspects of demand reduction and related measures, supply reduction and related measures, and international cooperation should be addressed in full conformity with the purposes and principles of the Charter of the United Nations, international law, and the Universal Declaration of Human Rights, with full respect for the sovereignty and territorial integrity of States, the principle of non-intervention in the internal affairs of States, all human rights, fundamental freedoms, the inherent dignity of all individuals and the principles of equal rights and mutual respect among states.

We are committed to contributing to the UN Commission on Narcotic Drugs as the policymaking body of the UN system with prime responsibility for drug control and other drug-related matters, as well as to other relevant regional and multilateral bodies and fora, while recognizing the ongoing efforts of relevant United Nations entities, in particular those of the United Nations Office on Drugs and Crime and the World Health Organization, as well as the treaty-mandated role of the International Narcotics Control Board.

We invite additional countries to join these efforts, recognizing these threats have a detrimental and dangerous impact for public health, safety, and security around the world, and require global response.

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On July 7, 2023, Secretary Blinken delivered closing remarks at the virtual ministerial meeting to launch the Global Coalition to Address Synthetic Drugs. The remarks are available at https://www.state.gov/secretary-antony-j-blinken-closing-remarks-at-a-virtual-ministerial-meeting-to-launch-the-global-coalition-to-address-synthetic-drugs/, and excerpted below.

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On behalf of all the signatories, I am very proud to adopt the Joint Ministerial Declaration that formalizes the creation of this coalition. And I am grateful to all the governments that helped shape its text and put it together. This was a very good, collaborative process.

This declaration, simply put, signals our collective commitment to curb the threats from synthetic drugs through global partnerships amongst ourselves, in coordination with nongovernmental stakeholders, including civil society and the private sector.

And it reaffirms the critical role that the United Nations and other relevant organizations play, and commits our coalition to continue collaborating with them to address this threat.

Today is just the beginning. The candid exchange of experiences, of ideas, of strategies that we engaged in today; the coalescing around shared priorities; the commitment to cooperation – that's what we created this global coalition to do.

So we have a lot of work ahead of us. I think of course coming together at a ministerial level is very, very important to continue to drive this process, but it's also going to be really critically the day-in, day-out work of our different lines of effort that countries and organizations will engage in that's going to make all the difference.

We look forward to a lot more collaboration as we work together to develop practical policies, to deliver concrete results, to diminish the public health and public security threats posed by synthetic drugs, and indeed, improve the lives of our people.

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On September 18, 2023, Secretary Blinken addressed global synthetic drug threats at a U.S.-hosted side event on the margins of the 78th session of the UN General Assembly, titled "Addressing the Public Health and Security Threats of Synthetic Drugs Through Global Cooperation." Secretary Blinken's remarks are available at as State Department media note at https://www.state.gov/secretary-antony-j-blinken-at-the-addressing-the-public-health-and-security-threat-of-synthetic-drugs-through-global-cooperation-event/, and excerpted below.

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SECRETARY BLINKEN: Well, good afternoon, everyone. Thank you so much for being here this afternoon. And in particular, I have to say it's great to be joined by colleagues from dozens of national governments, civil society groups, and the private sector. This group, in all its diversity, demonstrates a fundamental truth about the synthetic drug crisis: No part of the world is immune. To effectively protect our people, we need to work together across governments, across regions, across sectors. I just had a brief glimpse at the video a moment ago, and I think it's very powerful – even those few short minutes – the profound threat that synthetic drugs pose as an urgent public health threat to our people.

Here in the United States, synthetic drugs are the number-one killer of Americans aged 18 to 49. We had nearly 110,000 overdose deaths last year in the United States; more than two thirds of those had a synthetic opioid like fentanyl involved in the death. This crisis has an immeasurable cost. It has devastated families. It's devastated communities. It's also been overwhelming to our public health and criminal justice systems.

But here is the reality. The United States may have been to some extent a canary in the coal mine when it comes to fentanyl, but alas, we are not alone. Criminal organizations trafficking drugs are exploiting gaps in our interconnected system to bring new drugs to new places in new ways. And every region across the globe is experiencing an alarming rise in synthetic drugs, from tramadol in Africa, to fake Captagon pills in the Middle East, to ketamine and amphetamines in Asia.

In Australia last year, law enforcement seized 5 million doses of fentanyl, each one potentially lethal and reflecting the largest shipment authorities had ever seen. In the European Union, 41 never-seen-before synthetic substances were reported just last year. As the UN Office on Drugs and Crime has found, the synthetic drug trade in Asia has now reached, and I quote, "extreme levels."

We launched the Global Coalition to Address Synthetic Drug Threats in recognition of the scale of this challenge and of the need for strong, coordinated, international action. In July, we convened the first ministerial, joined by officials from more than 80 other countries and leaders from over a dozen regional and international organizations. This month, the three working groups that we launched focused on preventing the illicit manufacture and trafficking of synthetic drugs and their chemical precursors, detecting emerging drug threats, and promoting public health solutions. These working groups held their first meetings.

Now, we have brought together representatives from over a hundred countries from every region in the world, as well as civil society and the private sector, to channel the experience and expertise of the broader global community into concrete and effective solutions: public health solutions, as we're seeing in Kazakhstan, which just launched a new three-year plan that provides record investments to help minors who are suffering from substance use disorders; law enforcement interventions, like the national coalition set up by Honduras bringing together the military, the police, prosecutors, the private sector to improve the regulation of legal precursors coming into the country; novel solutions that engage experts, including scientists, like the UN's efforts to help build the capacity of more than 300 national forensic laboratories in 96 countries, training scientists, providing technological tools to help them better detect synthetic drugs.

These are precisely the kind of interventions that we'll share, we'll replicate, we will bring to scale through this global coalition while supporting other best practices, like expanded information sharing between governments and the private sector, stronger shipment labeling standards, and know-your-customer practices to help prevent the diversion of precursors into illicit use. At same time, we will continue to use every tool in our diplomatic toolkit to tackle this crisis. That's why this year we are providing more than $100 million to help our partners better detect, identify, and interdict drugs, and to provide vital treatment and prevention services.

Already, we've supported projects to create a new surveillance system to monitor new narcotic substances through the World Health Organization, to connect people in the criminal justice system in partner countries with effective health treatments like rehabilitation, and to create an online platform for law enforcement around the world to share information about emerging drug threats.

And to build on our diplomatic efforts, we are taking three additional steps, each with the goal of translating action – initiative, excuse me, into action.

First, the United States will name an envoy to elevate our diplomacy on this issue, working with countries around the world to confront this global threat.

Second, later this year in December, the United States will introduce a resolution at the United Nations General Assembly highlighting the global health and security threat of synthetic drugs and urging international action to address them. We're already working with our partners to help build consensus for the text. We welcome all countries joining as co-sponsors.

And third, the United States, alongside of UNODC, will be partnering with tech companies in the fight against illicit drugs. Among other things, we'll be focused on finding ways to deny criminals access to online platforms to market dangerous drugs, as well as developing tools to help those seeking treatment options for substance use disorders.

Now, several of you in this audience are already partnering with us, and we look forward to more joining the effort.

So as you can see, we are laser-focused on taking concrete steps so that we can help save lives, the lives not just of Americans but of people around the world. There is no issue that is more obviously one that requires, that demands, that urgently needs, international cooperation than this one. But I am convinced that if we work together and if we act together, we can make a profound difference, a profound difference in literally saving lives.

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On November 16, 2023, the White House published a fact sheet further detailing the Biden-Harris Administration progress on fighting against global illicit drug trafficking. The fact sheet is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/16/fact-sheet-biden-harris-administration-continues-progress-on-fight-against-global-illicit-drug-trafficking/, and excerpted below.

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The Biden-Harris Administration has initiated new measures to disrupt the trafficking of illicit fentanyl and its precursors into American communities and dismantle the firearms trafficking networks that enable drug traffickers to grow their enterprises. The U.S. government, alongside our partners, will continue our efforts to prevent the production and trafficking of illicit synthetic drugs through multiple efforts, including the Global Coalition to Address Synthetic Drug Threats, which has brought together over 100 countries to collectively address the scourge of fentanyl.

The Biden-Harris Administration also has taken historic action to expand access to life-saving public health services and remove decades-long barriers to treatment for substance use disorder. To help advance these Administration efforts, President Biden has requested $26 billion for prevention, harm reduction, treatment, and recovery support services in his FY24 budget request. In addition, President Biden is requesting $1.55 billion in his supplemental budget request to strengthen these support services across the country.

The Biden-Harris Administration's diplomacy with PRC has resulted in concrete action:

- The PRC is issuing a notice to its domestic industry advising on the enforcement of laws and regulations related to trade in precursor chemicals and pill presses equipment. A similar notice to industry in 2019 led to a drastic reduction in seizures of fentanyl shipments to the United States from China.
- The PRC has begun taking law enforcement action against Chinese synthetic drug and chemical precursor suppliers. As a result, certain PRC-based pharmaceutical companies have ceased operations and have had some international payment accounts blocked.
- At the beginning of this month, and for the first time in nearly three years, the PRC re-started submitting incidents to the International Narcotics Control Board's global IONICS database, which is used to share real-time information internationally about things like suspicious shipments and suspected trafficking. This information will help global law enforcement agencies identify trends and conduct intelligence-driven investigations that disrupt illicit synthetic drug supply chains.

Together, the United States and China are now announcing the launch of a counter-narcotics working group to create a platform for policy and technical experts to discuss law enforcement efforts and exchange information on counter-narcotics efforts going forward. These announcements build on the Administration's comprehensive, whole-of-government approach to tackling global illicit drug trafficking. The Administration's decisive actions to crack down on drug trafficking include:

- **Announcing a strategic approach to commercially disrupting the global illicit fentanyl supply chain.** The Biden-Harris Administration announced a strengthened whole-of-government approach to save lives by disrupting the trafficking of illicit fentanyl and its precursors into American communities. This approach builds on the President's *National Drug Control Strategy* and helps deliver on his State of the Union call to beat the opioid and overdose epidemic by cracking down on the production, sale, and trafficking of illicit fentanyl to help save lives, protect the public health, and improve the public safety of our communities.
- **Increasing security at the border.** Under President Biden's leadership, this Administration has invested significant amounts of funding for law enforcement efforts to address illicit fentanyl trafficking and enabled historic seizures of illicit fentanyl on the border. Further, President Biden's national security supplemental funding request includes more than $1.2 billion to stop the flow of illicit fentanyl into American communities; portions of this funding will support an additional 1,300 border patrol agents to work alongside the 20,200 border patrol agents already funded in the FY24 budget.
- **Deploying detection technology.** President Biden's FY24 budget called for $535 million in U.S. Customs and Border Protection for border technology, including $305 million for Non-Intrusive Inspection Systems, with a primary focus on fentanyl detection at ports of entry. Further, President Biden's national security supplemental funding request includes more than $1.2 billion to stop the flow of illicit fentanyl into American communities; portions of this funding will ensure deployment of more than 100 cutting-edge detection machines that will help detect fentanyl at ports of entry at the southwest border.
- **Expanding our High Intensity Drug Trafficking Area (HIDTA) Program.** The HIDTA program devotes more than $302 million to supporting federal, state, local, and Tribal law enforcement working to stop traffickers across all 50 states. Earlier this year, the White House announced the designation of nine new counties to the HIDTA

Program. The addition of these nine counties to the HIDTA program will allow additional resources to be deployed to areas hardest hit by drug trafficking and overdoses.

- **Targeting the global illicit supply chain.** President Biden issued the *Executive Order on Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade* to target the enablers of the global illicit synthetic drug supply chain including raw material brokers, financiers, and others. This allows the U.S. government to target not just drug kingpins but also those who operate their businesses.
- **Launching the Global Coalition to Address Synthetic Drug Threats.** The Biden-Harris Administration launched the Global Coalition to Address Synthetic Drug Threats that will help accelerate efforts against illicit synthetic drugs and employ coordinated approaches to prevent illicit drug manufacturing, detect emerging drug threats, disrupt trafficking, address illicit finance, and respond to public safety and public health impacts. The Administration brought together more than 100 countries and 11 international organizations to take action knowing that countering illicit synthetic drugs must be a global policy priority.
- **Regulating "precursor" chemicals used to produce illicit fentanyl.** At the request of the United States, the UN Commission on Narcotic Drugs (CND) voted to control three chemicals used by drug traffickers to produce illicit fentanyl. In addition, the United States placed 28 chemicals and certain equipment used in the production of fentanyl, methamphetamine, PCP, LSD, and other controlled substances and listed chemicals on the Controlled Substances Act's Special Surveillance List. These additions include precursor chemicals used to make fentanyl as well as pill press punches and dies, which are used to press fentanyl into fake pills.
- **Bringing law enforcement actions against every aspect of the global illicit fentanyl supply chain.** The United States has executed a network-focused strategy to attack every aspect of the global illicit fentanyl supply chain and dismantle the criminal organizations that operate it. In just the last year, the U.S. government brought: criminal indictments against chemical companies for supplying precursor chemicals to be made into fentanyl; criminal charges against leaders, enforcers, and associates of the largest and most powerful drug cartel in the world and the one responsible for the vast majority of fentanyl entering the United States; criminal charges against more than 3,300 associates of the drug cartels responsible for the last mile of distribution of fentanyl on our streets and on social media. As part of these criminal cases, law enforcement seized fentanyl precursor chemicals, fentanyl analogues, fentanyl additives, and finished fentanyl amounting to more than 263 million deadly doses of fentanyl.
- **Working with Mexico and Canada to counter illicit fentanyl, the Biden-Harris Administration established the Trilateral Fentanyl Committee in 2022.** This high level committee is strengthening regulatory frameworks associated with the manufacture, shipping, and sale of precursor chemicals and related equipment. Expanded bilateral collaboration with Mexico has also yielded significant achievements in 2023—including closer coordination on law enforcement investigations and actions, such as the September extradition of Ovidio Guzman Lopez (son of "El Chapo") to the United States, multiple additional joint investigations to disrupt and interdict narcotics and arms trafficking, and coordinated public health and public safety initiatives.

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b. Narcotics Rewards Program

On April 14, 2023, the State Department announced Narcotics Rewards Program ("NRP") rewards offers for information leading to the arrest or conviction of 27 individuals for illicit fentanyl activity. See Secretary Blinken's press statement, available at https://www.state.gov/u-s-actions-targeting-transnational-criminals-for-illicit-fentanyl-activity/. See also Chapter 16 of this *Digest* for concurrent sanctions actions. Also on April 14, 2023, the Department of Justice announced significant indictments against fentanyl traffickers in the Sinaloa Cartel, available at https://www.justice.gov/opa/pr/justice-department-announces-charges-against-sinaloa-cartel-s-global-operation. The listing of reward offers announced is available at https://www.state.gov/inl-rewards-program/narcotics-rewards-program/, and follows:

- The Department announced an NRP reward offer of up to $10 million for information leading to the arrest and/or conviction of Ivan Archivaldo Guzmán Salazar. Additional information is available at https://www.state.gov/ivan-archivaldo-guzman-salazar/.
- The Department announced an NRP reward offer of up to $10 million for information leading to the arrest and/or conviction of Jesus Alfredo Guzmán Salazar. Additional information is available at https://www.state.gov/jesus-alfredo-guzman-salazar/.
- The Department announced an NRP reward offer of up to $4 million for information leading to the arrest and/or conviction of Oscar Noe Medina Gonzalez, a/k/a "Panu." Additional information is available at https://www.state.gov/oscar-noe-medina-gonzalez/.
- The Department announced an NRP reward offer of up to $3 million for information leading to the arrest and/or conviction of Nestor Isidro Perez Salas, a/k/a "Nini." Additional information is available at https://www.state.gov/nestor-isidro-perez-salas/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Jorge Humberto Figueroa Benitez. Additional information is available at https://www.state.gov/jorge-humberto-figueroa-benitez/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Ana Gabriela Rubio Zea, a/k/a "Gaby." Additional information is available at https://www.state.gov/ana-gabriela-rubio-zea/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Yonghao Wu. Additional information is available at https://www.state.gov/yonghao-wu/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Yaqin Wu. Additional information is available at https://www.state.gov/yaqin-wu/.

- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Huatao Yao. Additional information is available at https://www.state.gov/huatao-yao/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Kun Jiang. Additional information is available at https://www.state.gov/kun-jiang/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Carlos Limon Vazquez. Additional information is available at https://www.state.gov/carlos-limon-vazquez/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Jesus Tirado Andrade. Additional information is available at https://www.state.gov/jesus-tirado-andrade/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Carlos Omar Felix Gutierrez. Additional information is available at https://www.state.gov/carlos-omar-felix-gutierrez-captured/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Silvano Francisco Mariano. Additional information is available at https://www.state.gov/silvano-francisco-mariano-captured/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Liborio Nunez Aguirre, a/k/a "Karateca." Additional information is available at https://www.state.gov/liborio-nunez-aguirre/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Noel Perez Lopez. Additional information is available at https://www.state.gov/noel-perez-lopez/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Samuel Leon Alvarado. Additional information is available at https://www.state.gov/samuel-leon-alvarado/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Luis Javier Benitez Espinoza. Additional information is available at https://www.state.gov/luis-javier-benitez-espinoza/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Alan Gabriel Nunez Herrera. Additional information is available at https://www.state.gov/alan-gabriel-nunez-herrera/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Juan Pablo Lozano, a/k/a

"Camaron." Additional information is available at https://www.state.gov/juan-pablo-lozano/.

- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Julio Marin Gonzalez. Additional information is available at https://www.state.gov/julio-marin-gonzalez/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the arrest and/or conviction of Mario Alberto Jimenez Castro. Additional information is available at https://www.state.gov/mario-alberto-jimenez-castro/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Sergio Antonio Duarte Frias. Additional information is available at https://www.state.gov/sergio-antonio-duarte-frias-captured/.
- The Department announced an NRP reward offer of up to $4 million for information leading to the arrest and/or conviction of Leobardo Garcia Corrales, a/k/a "Leo." Additional information is available at https://www.state.gov/leobardo-garcia-corrales/.
- The Department announced an NRP reward offer of up to $4 million for information leading to the arrest and/or conviction of Martin Garcia Corrales. Additional information is available at https://www.state.gov/martin-garcia-corrales/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Humberto Beltran Cuen. Additional information is available at https://www.state.gov/humberto-beltran-cuen-captured/.
- The Department announced an NRP reward offer of up to $1 million for information leading to the conviction of Anastacio Soto Vega. Additional information is available at https://www.state.gov/anastacio-soto-vega-captured/.

c. Majors List Process

(1) International Narcotics Control Strategy Report

In March 2023, the Department of State submitted the 2023 International Narcotics Control Strategy Report ("INCSR"), an annual report to Congress required by § 489 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2291h(a). The report describes the efforts of foreign governments to address all aspects of the international drug trade in calendar year 2022. Volume 1 of the report covers drug and chemical control activities and Volume 2 covers money laundering. The full text of the 2023 INCSR is available at https://www.state.gov/2023-international-narcotics-control-strategy-report/.

(2) Major Drug Transit or Illicit Drug Producing Countries

On September 15, 2023, the White House issued Presidential Determination No. 2023-12, "Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024." 88 Fed. Reg. 66,673 (Sept. 27, 2023). In this year's determination, the President named the following countries as countries meeting the definition of a major drug transit or major illicit drug producing country: Afghanistan, The Bahamas, Belize, Bolivia, Burma, the PRC, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela. 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 that support Bolivia, Burma, and Venezuela are vital to the national interests of the United States, thus ensuring that such U.S. assistance would not be restricted during fiscal year 2024 by virtue of § 706(3)(A) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1350.

d. Joint Action Plan on Opioids

On November 9, 2023, the governments of the United States and Canada released a joint statement on the meeting of the Canada-United States Joint Action Plan on Opioids Steering Committee. Senior officials met to address progress in public health, law enforcement, border security, and postal security collaboration. The joint statement is available at https://www.whitehouse.gov/ondcp/briefing-room/2023/11/09/steering-committee-meeting-of-the-canada-united-states-joint-action-plan-on-opioids/, and excerpted below.

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Key Milestones in 2023

Public Health:

Public health professionals shared lessons learned and expanded their knowledge of both harm and stigma reduction strategies, as well as emerging threats. Officials discussed approaches to address the emerging threat of xylazine, which became more prevalent within the illegal drug supply within the last year. Additionally, they participated in the June 2023 North American Drug Dialogue (NADD) Public Health Summit alongside public health officials from Mexico.

Law Enforcement:

Canadian and U.S. law enforcement agencies continued their seized drug sample sharing program. Through shared samples, the Royal Canadian Mounted Police (RCMP) and United States Drug Enforcement Administration are building a greater understanding of drug flows and threats our countries face. Additionally, this year, the Canada Border Services Agency (CBSA), RCMP, and United States Homeland Security Investigations continued to share innovative approaches and troubleshoot shared challenges to targeting and interdicting illegal precursor chemical shipments.

Border Security:

Border security agencies from both countries continued their close collaboration. The CBSAand United States Customs and Border Protection undertook a joint audit of their respective detection technology and facilities along the Canada-U.S. border to assess and identify areas of possible cooperation to improve identification and interdiction of smuggled drugs and precursor chemicals. This process is ongoing.

Postal Security:

Canada Post and the United States Postal Inspection Service continued to strengthen their partnership to combat illicit drugs being trafficked through the postal stream. Through monthly operational meetings, joint training and sharing of best practices, Canadian and U.S. partners heightened their interdiction capabilities.

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4. Terrorism

a. U.S. Actions Against Terrorist Groups

(1) General

Designations of organizations as Foreign Terrorist Organizations ("FTOs") under § 219 of the Immigration and Nationality Act ("INA"), as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), Pub. L. No. 108-458, 118 Stat. 3638 (2004), expose and isolate the designated terrorist organizations, deny them access to the U.S. financial system, and create significant criminal and immigration consequences for their members and supporters. A list of State Department-designated FTOs is available at https://www.state.gov/terrorist-designations-and-state-sponsors-of-terrorism/. See Chapter 16 for discussion of actions taken pursuant to Executive Order ("E.O.") 13224, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," 66 Fed. Reg. 49,079 (Sept. 25, 2001) directed at specially designated global terrorists ("SDGTs").

(2) Foreign Terrorist Organizations

During 2023, 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 INA. See *Digest 2005* at 113–16 and *Digest 2008* at 101–3 for additional details on the IRTPA amendments and review procedures.

On June 30, 2023, the State Department published the determination, after review, that the designations as FTOs of ISIL-Libya and Real IRA should be maintained and amended to include new aliases. 88 Fed. Reg. 42,415 (June 30, 2023).

(3) Rewards for Justice ("RFJ") Office

On January 5, 2023, the State Department announced an Reward for Justice program ("RFJ") reward offer of up to $10 million for information leading to the arrest or conviction in any country of Maalim Ayman or any individual who committed, attempted, or conspired to commit, or aided or abetted in the commission of the January 5, 2020 terrorist attack on U.S. and Kenyan personnel at the Manda Bay Airfield in Kenya. The State Department media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-maalim-ayman-and-others-responsible-for-2020-attack-on-manda-bay-airfield-in-kenya/, is excerpted below.

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Maalim Ayman is the leader of Jaysh Ayman, an al-Shabaab unit conducting terrorist attacks and operations in Kenya and Somalia. Ayman was responsible for preparing the January 2020 attack. In November 2020, the Department of State designated Ayman as a Specially Designated Global Terrorist (SDGT) under Executive Order (E.O.) 13224, as amended.

In the pre-dawn attack, al-Shabaab terrorists killed a U.S. soldier and two U.S. Department of Defense (DoD) contractors and wounded two other U.S. service members and a third DoD contractor. In a video subsequently released by al-Shabaab, a spokesperson for the group claimed responsibility for the attack.

The Manda Bay Airfield is part of a Kenyan Defence Forces military base utilized by U.S. armed forces to provide training and counterterrorism support to East African partners, respond to crises, and protect U.S. interests in the region.

Based in East Africa, al-Shabaab is one of al-Qaida's most dangerous affiliates and is responsible for numerous terrorist attacks in Kenya, Somalia, and neighboring countries that have killed thousands of people, including U.S. citizens. The terrorist group continues to plot, plan, and conspire to commit terrorist acts against the United States, U.S. interests, and foreign partners.

The Department of State designated al-Shabaab as a Foreign Terrorist Organization (FTO) and Specially Designated Global Terrorist (SDGT) in March 2008. In April 2010, al-Shabaab was designated by the UN Security Council's Somalia Sanctions Committee pursuant to paragraph 8 of resolution 1844 (2008). In February 2021, Maalim Ayman was also designated by the UN Security Council's Somalia Sanctions Committee pursuant to paragraph 8(a) of resolution 1844 (2008).

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On January 12, 2023, the State Department announced an RFJ reward offer of up to $10 million for information leading to the arrest or conviction in any country of Mohamoud Abdi Aden or any individual who committed, attempted, or conspired to commit, or aided or abetted in the commission of the 2019 attack on the DusitD2 hotel complex in Nairobi, Kenya. The State Department media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-mohamoud-abdi-aden-and-others-responsible-for-the-2019-attack-on-dusitd2-hotel-complex-in-nairobi-kenya/, is excerpted below.

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On the afternoon of January 15, 2019, gunmen with the al-Shabaab terrorist group, armed with explosives, automatic weapons, and grenades, attacked the DusitD2 commercial center, a 6-building complex of shops, offices, and a hotel. At least 21 people, including one U.S. citizen, were killed in the assault.

Al-Shabaab, an affiliate of the al-Qa'ida terrorist organization, released live updates throughout the attack and issued a press release in which it stated that the attack was in response to guidance from now deceased al-Qa'ida leader Ayman Zawahiri.

Mohamoud Abdi Aden, aka Mohamud Abdirahman, an al-Shabaab leader, was part of the cell that planned the Dusit2 Hotel attack. In October 2022, the Department of State designated Aden as a Specially Designated Global Terrorist (SDGT) under Executive Order (E.O.) 13224, as amended.

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On February 28, 2023, the State Department announced an RFJ reward offer of up to $5 million for information leading to the identification or location of al-Shabaab key leader Ali Mohamed Rage. The State Department media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-ali-mohamed-rage/, is excerpted below.

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Ali Mohamed Rage, also known as Ali Dheere, has been al-Shabaab's chief spokesperson since May 2009 and is a senior leader of the terrorist organization.

Rage was born in the Hawlwadag district of Mogadishu, Somalia in 1966 and has been involved in the planning of attacks in Kenya and Somalia.

On August 6, 2021, the Department of State designated Rage as a Specially Designated Global Terrorist (SDGT). That designation, among other consequences, blocks all property and interests in property belonging to Rage and may expose persons who engage in certain transactions with Rage to designation. Furthermore, any foreign financial institution that knowingly facilitates a

significant financial transaction or provides significant financial services for Rage could be subject to U.S. correspondent account or payable-through account sanctions.

On February 18, 2022, the UN Security Council's Somalia Sanctions Committee added Rage to its Sanctions List pursuant to paragraph 43(a) of resolution 2093 (2013) for engaging in or providing support for acts that threaten the peace, security or stability of Somalia. The UN designation requires UN Member States to impose an arms embargo, including related training and financial assistance, a travel ban, and an assets freeze on Rage.

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On October 17, 2023, the State Department announced an RFJ reward offer of up to $5 million for information leading to the identification or location of al-Shabaab key leader Ali Adan. The State Department media note, available at https://www.state.gov/rewards-for-justice-reward-offer-for-information-on-abukar-ali-adan/, includes the following:

> Abukar Ali Adan is the deputy leader of al-Shabaab. Adan spent several years as al-Shabaab's military chief after previously heading the Jabhat, al-Shabaab's armed wing.
>
> On January 4, 2018, the Department of State designated Adan as a Specially Designated Global Terrorist (SDGT) under Executive Order 13224. Among the consequences of this designation, all of Abukar Ali Adan's property and interests in property subject to U.S. jurisdiction are blocked, and U.S. persons are generally prohibited from engaging in any transactions with him.
>
> In addition, Adan is associated with al-Qa'ida affiliates al-Qa'ida in the Arabian Peninsula and al-Qa'ida in the Islamic Maghreb.

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

On May 23, 2023, the Department published Secretary of State Blinken's 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." 88 Fed. Reg. 33,184 (May 23, 2023). The countries are: Cuba, Democratic People's Republic of Korea, Iran, Syria, and Venezuela.

c. Global Coalition to Defeat ISIS Africa Focus Group

On June 8, 2023, the State Department published as a media note the joint statement by ministers of the Global Coalition to Defeat ISIS. The joint statement follows and is available at https://www.state.gov/joint-communique-by-ministers-of-the-global-coalition-to-defeat-isis-3/.

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Foreign Ministers of the Global Coalition to Defeat Daesh/ISIS convened in Riyadh, Saudi Arabia, today at the invitation of Saudi Minister of Foreign Affairs Faisal bin Farhan Al-Saud and United States Secretary of State Antony J. Blinken. The Ministers welcomed the Republic of Togo as the newest member of the Coalition, bringing the total number of members to 86. Coalition partners confirmed their continued support for counterterrorism programming in Africa, Iraq, Syria, and South and Central Asia, demonstrating the Coalition's wide reach and sustained commitment to diminishing ISIS's capabilities.

Member states and international organizations continue to make unique contributions to the robust campaign to support stabilization efforts in areas liberated from Daesh/ISIS in Iraq and Syria and to counter Daesh/ISIS financing, travel, and propaganda. The Ministers confirmed their commitment to enhance the civilian-led counterterrorism capacities of Coalition members from Iraq to Africa, to South and Central Asia, emphasizing border and internal security, judicial reform, and intelligence and law enforcement information sharing via bilateral and multilateral platforms. Border security requires the preservation and sharing of battlefield evidence as appropriate with law enforcement, and the collection and sharing of terrorist and terrorist suspect biometrics via bilateral and multilateral platforms such as INTERPOL channels.

Ministers of the Coalition reconfirmed that the fight against Daesh/ISIS in Iraq and Syria remains the number one priority of the Coalition. They reiterated the importance of allocating adequate resources to sustain Coalition and legitimate partners. Additionally, ministers of the Coalition announced the launch of its Stabilization Pledge Drive, with a goal of raising $601 million for areas liberated from Daesh/ISIS in Iraq and Syria – toward which eight members have already announced pledges more than $300 million.

Regarding Iraq, the Ministers underscored the need to enhance civilian-led counterterrorism and counter terrorist financing capabilities in Iraq in the long term, along with stabilization efforts in areas liberated from Daesh/ISIS, and to support the Iraqi government and the Iraqi Security Forces, including the Kurdish Peshmerga. They lauded Iraq's progress in repatriating its nationals from northeast Syria, and Iraqi efforts to implement sustainable long-term solutions, including appropriate legal procedures to ensure those guilty of crimes are held accountable and those victims of Daesh/ISIS seeking to reintegrate into communities of origin are able to do so.

Regarding Syria, the Coalition stands with the Syrian people in support of a lasting political settlement in line with UN Security Council Resolution 2254. The Coalition continues to support stabilization in areas liberated from Daesh/ISIS and reconciliation and reintegration efforts to foster conditions conducive to a Syria-wide political resolution to the conflict.

The Ministers reaffirmed the importance of durable solutions for remaining populations in northeast Syria, including ensuring that Daesh/ISIS terrorists detained in Syria are housed securely and humanely, and improving the security conditions and humanitarian access for family members residing in al-Hol and Roj displaced persons camps. The Coalition will work with the international community to identify opportunities to best contribute to the continued basic needs for humanitarian aid, reintegration assistance for returnees, security measures, and stabilization for communities liberated from Daesh/ISIS throughout northeast Syria.

Regarding sub-Saharan Africa, the Ministers discussed the emergence of Daesh/ISIS affiliates which operate in West Africa, the Sahel, East Africa, and Central and southern Africa. The Ministers lauded the work of the Global Coalition's Africa Focus Group, and highlighted the

fact that it convened in Niamey, Niger in March 2023 – the first Coalition event in the sub-Saharan African region. The Ministers similarly endorsed the Africa Focus Group Action Plan, adopted in Niamey, that calls on members to cooperate in improving African member civilian-led counterterrorism and strategic communication capacities, as well as the imperative to counter malign, separatist, and non-state military actors which undercut counterterrorism cooperation and destabilize regional security.

Regarding the threat that ISIS-Khorasan poses in the region surrounding Afghanistan, as well as to the global community, the Ministers underscored the importance of the Coalition's intensified focus and alignment of efforts to monitor ISIS-Khorasan and prevent its ability to raise funds, travel, and spread propaganda. Coalition members remain committed to ensuring Afghanistan never again becomes a safe haven for terrorists.

The Ministers welcomed the participation of Tajikistan and Uzbekistan as observers in Riyadh and emphasized the need for Coalition members to increase engagement with Central Asia to enhance their respective counterterrorism capacities. The Ministers affirmed the Coalition's commitment to the survivors and families of victims of Daesh/ISIS crimes that perpetrators must be held accountable. The atrocities carried out by Daesh/ISIS are an offense to humanity, and the Coalition remains united in its determination to prevent future generations from enduring the suffering created by Daesh/ISIS.

The Ministers recognized that extremism and terrorism, in all forms and manifestations, cannot and should not be associated with any religion, nationality, or ethnic group, and noted the urgent need to vigorously counter such activities.

The Ministers agreed to update the current Guiding Principles of the Global Coalition to Defeat ISIS/Daesh, last endorsed by ministers in 2018, to reflect the growth of the Coalition in membership from different regions, priorities, and the work of its thematic working groups and geographic-based focus and standalone groups.

The responsibility and momentum of the international community against this shared adversary was evident today. The Global Coalition is the largest international coalition and remains intent on defeating Daesh/ISIS anywhere it operates.

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d. United Nations

On June 14, 2023, Ambassador Jeffrey DeLaurentis, Acting Deputy Representative to the United Nations, delivered the U.S. explanation of vote following the adoption of a UN Security Council resolution on tolerance and international peace and security. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-on-tolerance-and-international-peace-and-security/, and excerpted below.

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We appreciate that this meeting today and the vote on this resolution is occurring in a broader global context in which fundamental rights and freedoms are under assault as never before, including by governments seeking to infringe on those rights under the cover of "combatting extremism." It is an utmost U.S. priority with this resolution that the Council not appear to be granting license to states to repress dissenting views under the pretext of "countering extremism" or maintaining peace or societal harmony.

For years, the UN has appropriately focused on addressing violent extremism, including in the Secretary-General's Plan of Action to Prevent Violent Extremism and existing commitments Member States have made to prevent and counter violent extremism.

In the context of such efforts, the Security Council has also been clear opinions and beliefs must be protected – even if characterized as "extreme" – and states should seek to address violent acts of extremism that threaten peace and security. The United States does not view this resolution as altering that emphasis. Rather, the text of the resolution, in repeatedly discussing "extremism" in the context of armed conflict and violence, continues to distinguish between "extremism" and "violent extremism."

It was important to us that this resolution reaffirm the vital role of women's leadership in prevention and resolution of conflict and their contribution to prevent the spread of intolerance and incitement to hatred.

We also ensured this resolution emphasized combatting extremism must be done, "in a manner consistent with applicable international law." States must respect and vigorously protect international law and human rights, including the freedoms of expression and religion, even as they promote tolerance and address ideologies that are indeed abhorrent.

Stifling human rights is counterproductive to the vision of peace and security that we, as members of the Security Council, seek to advance. To unduly limit the exercise of human rights and fundamental freedoms under a pretext of combatting extremism undermines these universal rights and freedoms.

The United States stands with likeminded members of this Council in committing to ensure this resolution will not be misused to justify repression of human rights defenders, women and girls, LGBTQI+ persons, or any violations or abuses of human rights – and we welcome the attention of civil society to ensure, as this Council has upheld previously, that "extremism," when not linked to violence, must never be accepted as a justification to curtail human rights or fundamental freedoms. Indeed, nothing in this resolution is intended to construe peaceful opposition to government policy, advocacy for addressing climate change, or the exposure of corruption as "extremism."

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On June 22, 2023, the UN General Assembly adopted a resolution on the Eighth Review of the UN Global Counter-Terrorism Strategy ("GCTS"), a document which enhances national, regional, and international counterterrorism efforts and which undergoes regular, biennial review. U.N. Doc. A/Res/77/298, available at https://undocs.org/A/RES/77/298. The GCTS provides, among other things, that Member States have resolved to take practical steps, individually and collectively, to prevent and combat terrorism, such as strengthening capacity to counter terrorist threats as well as improving coordination of activities within the UN System's counter-terrorism architecture. The Eighth Review final text maintains significant provisions

originally introduced in the 2021 review, including on integrating prevention, capacity building, and human rights as a fundamental components of counterterrorism measures.

On June 22, 2023, Ambassador Jeffrey DeLaurentis, Acting Deputy Representative to the United Nations delivered remarks on the UN General Assembly adoption of the Global Counter-Terrorism Strategy. The remarks follow and are available at https://usun.usmission.gov/remarks-on-the-un-general-assembly-adoption-of-the-global-counter-terrorism-strategy/.

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Mr. President, we welcome the adoption by consensus of the eighth review of the UN Global Counterterrorism Strategy. We also thank Ambassadors Rae of Canada and Ladeb of Tunisia and their teams for co-facilitating this difficult, but important, negotiation process.

When the Strategy was adopted in 2006, the counterterrorism landscape looked very different. Today, the threat is more ideologically and geographically diffuse than ever before. Al-Qa'ida and ISIS branches and affiliates remain resilient and determined, especially in Africa and Afghanistan.

We are seeing terrorists use new and emerging technology such as unmanned aerial systems, artificial intelligence, and encrypted communications to radicalize new recruits to violence and commit acts of terrorism. We must continue our collective efforts to sustain effective counterterrorism pressure against these adversaries. Through this update to the GCTS, we can keep pace with this evolving threat.

The negotiations were fraught, but it is critical that we preserved robust text on the important role of civil society, gender equality, and human rights in this resolution.

We are also glad to see the GCTS recognize the Secretary-General's report on "terrorist attacks on the basis of xenophobia, racism and other forms of intolerance, or in the name of religion or belief" – or what the United States refers to as racially or ethnically motivated violent extremism. The GCTS is clear in condemning terrorism in all its forms and calling out the danger of violence motivated by religious prejudices. We emphasize the importance of careful research on these phenomenon and whole-of-society approaches, including in the field of prevention.

We welcome the Secretary-General's numerous calls for Member States to redouble their efforts to repatriate their nationals from northeast Syria. As such we strongly support the updated text in the GCTS calling on Member States to provide technical assistance and build capacity to repatriate, rehabilitate, reintegrate, and where appropriate, prosecute foreign terrorist fighters and associated family members. The United States stands ready to assist Member States in their efforts on this front. As the Secretary-General said during his visit to the Jeddah-1 camp in March 2023, "we must prevent the legacy of yesterday's fight from fueling tomorrow's conflict."

We are disappointed that this resolution was not updated to include a more significant focus on one of the most pressing emerging challenges we are all dealing with globally, the threat from the use of unmanned aerial systems – UAS – for terrorist purposes. We must be vigilant in countering terrorist use of this technology. We have seen terrorists carry out attacks

using UAS, including against critical infrastructure, as well as using UAS for propaganda and surveillance purposes.

We must continue to enhance transparency and accountability and monitoring and evaluation of the implementation of the GCTS by UN entities. We look forward to 2026, when we will reconvene to mark twenty years since the initial adoption of the strategy.

We will submit an additional **explanation of position** in detail for the record. Thank you, Mr. President.

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The U.S. explanation of position, as submitted for the record on June 22, 2023, follows and is available at https://usun.usmission.gov/explanation-of-position-on-the-un-general-assembly-adoption-of-the-global-counter-terrorism-strategy-2/.

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FOREIGN OCCUPATION

As the United States said in 2018 and 2021, the Global Counterterrorism Strategy review resolution should guide global efforts to counter terrorism and prevent violent extremism, not be yet another vehicle to unjustly criticize Israel at the UN. The United States cannot accept the divisive reference to foreign occupation in preambular paragraph 43 of the resolution that serves to justify terrorist acts, which are categorically unacceptable under any circumstances, and undermine a Member State's exercise of its legitimate right of self-defense. Accordingly, the United States dissociates from consensus on preambular paragraph 43 of the resolution. We must reject all terrorist acts. All forms and manifestations of terrorism are criminal and unjustifiable.

COMBATTING THE FINANCING OF TERRORISM /INTERNATIONAL HUMANITARIAN LAW

We continue to promote increasing humanitarian assistance and access for those in need consistent with both counterterrorism and humanitarian imperatives. This is demonstrated through our championing of UN Security Council resolution 2664, which created a carveout for humanitarian efforts across all UN sanctions regimes. The United States was the first country to implement this groundbreaking reform, which has encouraged the flow of humanitarian assistance to meet the basic human needs of those mostvulnerable in conflict zones around the globe. We endorse the language in paragraph 60 – drawn from UN Security Council resolution 2462, adopted in 2019 – which urges Member States, when designing and applying counterterrorism measures, to take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law. However, the United States rejects the efforts by some to read language included in paragraph 109 to mean that all Member States – including non-parties to the relevant armed conflict – have obligations under international humanitarian law any time it applies to ensure that counterterrorism legislation does not impede humanitarian aid, even if terrorists benefit from such aid. Rather, we read paragraph 109 consistent with paragraph 60, which states that all measures undertaken by Member States to counter the financing of terrorism should comply with

their obligations under international law, including when their obligations under IHL are applicable. We emphasize that paragraph 109 has no impact upon the binding obligation for Member States to criminalize the financing of terrorism and prohibit their nationals or those within their territories from providing funds or other economic resources directly or indirectly to terrorist organizations or individual terrorists for any purpose, even without a link to a specific terrorist act, regardless of whether such support is meant to further the "terrorist," "humanitarian," or any other goals or activities of a terrorist or terrorist organization.

PRINCIPLE TO EXTRADITE OR PROSECUTE

Additionally, the United States also remains deeply concerned about the references to a so-called "Principle to Extradite or Prosecute" in operative paragraphs 26 and 29 of the Strategy review, which is a misstatement of international law. While extradition and prosecution are vital elements of law enforcement response to terrorism, we remind the Assembly that the obligation to "extradite or prosecute" arises under specific multilateral treaties, including international counterterrorism conventions. It is incorrect to suggest that it exists as a freestanding principle of law that applies and has independent meaning outside the specific relevant provisions of those treaties.

OTHER PROBLEMATIC TEXT

In preambular paragraph 23, we note that the right to education is to be progressively realized, as with all economic, social, and cultural rights. In that same paragraph, we read "all feasible measures" to encompass existing obligations under international humanitarian law. This resolution does not expand on the obligations of parties to an armed conflict vis-a-vis schools. In operative paragraph 68, we read the term "nuclear, chemical and biological materials" to include only materials with the potential weapons of mass destruction applications and not – for instance – bona fide medical supplies. We also reiterate that successful counterterrorism and preventing and countering violent extremism efforts must respect human rights, including freedom of expression, and the rule-of-law. As such, we read this resolution in light of our Constitution and international obligations.

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On August 25, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN Security Council briefing on threats to international security and peace caused by terrorist acts. The statement is excerpted below and available at https://usun.usmission.gov/remarks-by-ambassador-thomas-greenfield-at-a-un-security-council-briefing-on-threats-to-international-security-and-peace-caused-by-terrorist-acts/.

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The United States is committed to promoting justice and accountability for all acts of conflict-related sexual violence. And this commitment is laid out in President Biden's Memorandum on Promoting Accountability for Conflict-Related Sexual Violence.

In June, the United States designated two Da'esh leaders as Specially Designated Global Terrorists. Both individuals committed sexual violence against Yezidis and were responsible for the abduction and enslavement of Yezidi women and girls. The designation of these two

individuals was a historic action, marking the first time a dedicated focus on conflict-related sexual violence led to the imposition of U.S. sanctions. And we will never stop fighting for justice or forget the more than 2,700 Yezidi women and children who remain unaccounted for.

Colleagues, we must use all multilateral tools available to us, including UN sanctions, to prevent these acts of violence given how destructive conflict-related sexual violence is for victims and communities, and how destabilizing it is for societies. We urge UN Member States to increase funding for UN agencies and partners working to provide comprehensive services for survivors and gender-based violence. These programs can make a significant impact in the lives of survivors, and they must be funded. Especially because right now the world's most vulnerable women and girls are in dire need.

As just one example, many of the people residing in the al-Hol and Roj displaced persons camps in northeast Syria – some of whom are family members of ISIS fighters – are also victims and survivors of conflict-related sexual violence. The situation in these camps constitutes a humanitarian, human rights, and security crisis – and there is an urgent need for countries to repatriate their nationals.

The United States views repatriation of both detained ISIS fighters and displaced persons in the al-Hol and Roj camps as a top priority. It will help to ensure ISIS does not re-emerge in Syria and it can prevent further human rights abuses. We have seen an increase in repatriations over the past six months and hope it is a sign of greater efforts to come.

The international community must also ensure vulnerable populations are not susceptible to recruitment by violent extremists, including through stabilization assistance to liberated areas. As the Secretary-General's report highlights, ISIS continues to take advantage of conflict and inequality to attract followers and organize terrorist attacks.

The United States is particularly focused on the increasing terrorism threat across Africa – as outlined in the Secretary-General's report. And we are deeply concerned the string of military takeovers in the Sahel will hamper the fight against terrorism in the region. We look forward to the Africa Counter-Terrorism Summit in early 2024 – and the opportunity to discuss durable solutions to the terrorism challenges across the continent. But let's be clear: The summit must include engagement with civil society organizations in order to be impactful.

Colleagues, the United States continues to provide our African partners critical assistance in disrupting and degrading D'aesh and al-Qaida affiliates – in a manner consistent with international law. And I want to reiterate that capable law enforcement and broader security service responses are essential to preventing and countering terrorism and violent extremism. In South Asia, Afghanistan must deny safe haven to terrorist groups, including al-Qaida and ISIS-Khorosan, which continue to harbor ambitions to carry out attacks, and has claimed deadly attacks in both Afghanistan and Pakistan.

Today, I also want to call on Member States to support increased transparency and operationalization of the Counter Terrorism Committee's assessments. These expert, neutral reports include recommendations to guide the provision of counter terrorism-related technical assistance. And the Secretary-General's report rightly characterizes the fight against terrorism as requiring a long-term commitment.

The international community, and this Council, must continue to invest in whole-of-society approaches that respect human rights and the rule of law. By doing so, we can prevent and counter the spread of terrorism. And we can save lives and end needless suffering. We must act with urgency, and we must act together now.

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On October 2, 2023, Attorney-Adviser Dorothy Patton delivered the U.S. statement at the 78th meeting of the Sixth Committee on "Agenda Item 109: Measures to Eliminate International Terrorism." Her statement is available at https://usun.usmission.gov/statement-at-the-78th-general-assembly-sixth-committee-agenda-item-109-measures-to-eliminate-international-terrorism/, and follows.

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It has long been recognized by the United Nations that terrorism in all its forms and manifestations constitutes one of the most serious threats to international peace and security, and that any acts of terrorism are criminal and unjustifiable regardless of their motivations. Although the terrorism landscape has evolved over the years, the human suffering caused by terrorism and violent extremism remains the same – tragic and profound. The attack in Ankara just yesterday demonstrates the continuing threat, and the United States extends deepest condolences to the people of Türkiye during this tragic time. Every year, individuals, families, communities, and nations are devastated by terrorist violence. It is for this reason that we come together as an international community to rigorously pursue measures to eliminate international terrorism.

The United Nations plays a critical role in strengthening the capacity of Member States to prevent and counter terrorism, while highlighting the value of gender-sensitive, whole-of-government and whole-of-society approaches and the importance of respecting human rights and the rule of law. Together, we have taken many steps to diminish terrorist threats, including by targeting terrorist networks' financing and support systems, countering their propaganda, and preventing their travel.

Over the past year, there have been several achievements in the counterterrorism space, most notably the adoption of the General Assembly resolution that reviewed the Global Counterterrorism Strategy. The four pillars of the GCTS remain as relevant today as when the Strategy was initially adopted in 2006. The resolution adopted by consensus earlier this year contains critical guidance for Member States, including on the important role of civil society, gender equality, and respect for human rights in approaches to countering terrorism.

The GCTS resolution also now calls on Member States to provide technical assistance and to help build capacity to repatriate, rehabilitate, reintegrate, and where appropriate, prosecute foreign terrorist fighters and associated family members. In so doing, the resolution recognizes that foreign terrorist fighters in inadequate detention facilities and associated family members living in overburdened camps in Syria and Iraq pose a serious security threat and constitute a dire humanitarian crisis, raising human rights concerns. Repatriation of Member States' nationals is essential to preventing a resurgence of ISIS in Iraq and Syria and the uncontrolled return of foreign terrorist fighters to countries of origin in the future. The United States stands ready to assist Member States in their efforts on this front.

While recognizing the advancements we have made as an international community to address terrorism, we also must recognize that there remains much to be done. We should remain united in our collective efforts to prevent and counter the rising and changing threat posed by Racially or Ethnically Motivated Violent Extremists or "REMVEs." REMVE actors target

religious and racial minorities, immigrants, women and girls, LGBTQI+ individuals, and other perceived enemies. Many attacks that are categorized as REMVE are inspired by transnational, white supremacist movements. We consider REMVE to be one of the most pressing counterterrorism challenges facing the international community today due to loose, leaderless networks and the ease of access to REMVE propaganda – online and offline – that can mobilize and radicalize followers to violence.

We should also commit to addressing the threat posed by the use of new and emerging technologies for terrorist purposes, including terrorist radicalization, recruitment, mobilization, planning and operations. The speed at which technologies – such as generative artificial intelligence – are evolving presents a real challenge which requires an innovative and comprehensive approach. In addition to countering terrorism online, we should also focus on preventing it by cultivating critical thinking skills, media literacy, and online public safety awareness. These efforts can help build resilience against terrorist narratives among those who may be vulnerable to recruitment and radicalization to violence. Public-private partnerships and international cooperation are key to these endeavors, including through the UN and the Global Internet Forum to Counter Terrorism. Yet more research is needed in order to bolster our collective abilities to address these emerging threats, including on questions such as when and why consuming online content leads to offline physical harm. The United States, along with key partners, is supporting a project to facilitate more independent research and looks forward to engagement with others on additional opportunities to expand upon this work.

It is critical that all efforts to counter and prevent terrorism and violent extremism respect human rights, including freedom of expression, religion or belief, and the rule-of-law. In fact, efforts to stifle freedom of expression, religion or belief and other human rights and fundamental freedoms under the guise of counterterrorism are counterproductive, at times providing fuel for terrorist narratives. The international community must recommit to multilateral efforts to prevent and counter terrorism and violent extremism, utilizing whole-of- society approaches that incorporate a broad range of actors.

Concerning a "Comprehensive Convention on International Terrorism," we will listen carefully to delegates' statements. However, 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.

To close, the United States reiterates its firm condemnation of terrorism in all forms and manifestations and reiterates its commitment to work with the international community to counter terrorism and violent extremism.

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e. Country Reports on Terrorism

Each year, the State Department releases its annual Country Reports on Terrorism, detailing key developments in the global fight against ISIS, al-Qa'ida, Iran-supported terrorist groups, and other terrorist groups. 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 2022 Country Reports on Terrorism was released on November 30, 2023. The report covers the 2022 calendar year and includes: policy-

related assessments; country-by-country breakdowns of foreign government counterterrorism cooperation; and information on state sponsors of terrorism, terrorist safe havens, foreign terrorist organizations, and the global challenge of chemical, biological, radiological, and nuclear terrorism. The 2022 Country Reports on Terrorism are available at https://www.state.gov/reports/country-reports-on-terrorism-2022/.

5. Corruption

a. International Cooperation to Combat Illicit Financial Flows

On November 21, 2023, U.S. Advisor to the UN General Assembly Economic and Financial Committee, or Second Committee, Jason Lawrence delivered the U.S. explanation of position on a UN General Assembly Second Committee resolution on promotion of international cooperation to combat illicit financial flows. The remarks are excerpted below and available at https://usun.usmission.gov/explanation-of-position-on-a-second-committee-resolution-on-promotion-of-international-cooperation-to-combat-illicit-financial-flows/.

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The United States appreciated the opportunity to participate in these important discussions over the past weeks and is joining consensus on this resolution. The United States strongly supports the 2030 Agenda for Sustainable Development and notes that the U.N. Office on Drugs and Crime plays a central role in supporting our efforts to promote transparency strengthen the rule of law and combat corruption.

Nonetheless the United States reiterates its concern that the term "illicit financial flows" lacks an agreed-upon international definition when applied to the proceeds of crime. We understand that calls for or commitments to "preventing and combating illicit financial flows" refers to Member States implementing their existing obligations and commitments to prevent and combat corruption and money laundering terrorist financing and other forms of illicit finance through robust implementation of the Financial Action Task Force recommendations and best practices enshrined in the existing international architecture. Reducing illicit financial flows must fundamentally begin with preventing and combating the acts of corruption that facilitate such flows. Countries must prioritize domestic efforts to counter corruption and money laundering in line with their international treaty obligations particularly those enumerated in the UN Convention against Corruption (UNCAC) and the UN Convention against Transnational Organized Crime. The United States remains concerned this resolution places too much focus on vague commitments to address the ill-defined concept of illicit financial flows to the detriment of pressing countries to take the domestic actions necessary to combat the crimes and fulfill the commitments Member States have an obligation to address.

Further the United States reiterates the international framework for asset recovery is primarily outlined in the UNCAC. This important treaty prescribes the measures States parties must adopt and implement to successfully detect restrain and confiscate the proceeds of crime.

Unfortunately, this resolution misinterprets several of these obligations. The United States therefore reiterates that nothing in this resolution changes or nullifies the existing asset recovery treaty obligations; obligations that the United States takes very seriously.

In addition, the United States expresses its concern that the resolution places an overemphasis on asset return to the detriment of other integral parts of the asset recovery process. Countries are only successful in asset recovery when they have the sufficient political will and capacity to investigate and prosecute corruption crimes domestically. More attention must be devoted to ensuring that all countries are domestically able to pursue all stages of the asset recovery process—including asset identification detection prosecution and confiscation–more effectively.

Finally, the UNCAC Conference of States Parties (COSP) serves as the UN's lead body promoting anti-corruption and related anti-crime policy and is the appropriate venue for relevant experts to consider issues addressing the recovery and return of the proceeds of these crimes. As the host of the 10th session of the COSP the United States regrets that this resolution undermines the UNCAC COSP's role in leading the discussion on corruption and asset recovery at the global level. We reiterate longstanding concerns that language in this resolution undermines our ability to work together constructively through relevant technical and treaty bodies such as the COSP to address money laundering corruption and other related crimes.

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b. UN Convention against Corruption

From December 11-15, 2023, the United States hosted the 10th Conference of States Parties ("COSP10") of the UN Convention against Corruption ("UNCAC") in Atlanta, Georgia. The COSP marked the first time in recent history that the United States hosted a major UN conference outside of United Nations in New York. Additional information, including conference room papers submitted by the participants, including the United States is available at https://www.unodc.org/corruption/en/cosp/conference/session10.html.

On December 11, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at the COSP10, available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-the-10th-conference-of-the-united-nations-convention-against-corruption/, and excerpted below.

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On behalf of President Biden, it really is my privilege to welcome you to the 10th Session of the Conference of the States Parties to the UN Convention against Corruption. Here this week, we have delegations from every corner of the globe. We have an unprecedented number of anti-corruption experts from civil society and the private sector. It is a true testament to the importance – and the urgency – of our work.

This week, we celebrate two [key] moments in history: the 20th anniversary of the adoption of the UN Convention against Corruption. And the 75th anniversary the adoption of the Universal Declaration of Human Rights. These two foundational documents are inextricably linked and mutually reinforcing.

When we advance good governance, accountability, and transparency, we advance human rights, fundamental freedoms, and peace. But the opposite is also true – when we allow corruption to go unchecked, we create a culture of impunity that allows human rights violations to go unpunished.

Corruption is a cancer that metastasizes; that weakness every pillar of society; that fuels extortion and discrimination; that subverts democracy and the rule of law, and denies people their rights and freedoms and their futures; that steals funds from essential government services, and can even keep students from continuing their education, pursuing their ambitions and their dreams, particularly in developing countries, where families are sometimes forced to bribe local officials to get their kids into school.

We know corruption has the most dire consequences for the most vulnerable: women and children, persons with disabilities, the LGBTQI+ community, the poor, and the underserved; the people who most need our help and support, but who often feel that, no matter how hard they work, the system is rigged against them, who see democracy as ineffective, the justice system as inaccessible.

And here's what is really, really dangerous: when leaders fail to take on corrupt actors and corrupt systems, they open the door to instability and conflict. When you look at Transparency International's CPI Index, many of the countries with the highest levels of corruption, including Libya, Sudan, the DRC, and Yemen, are in the throes of conflict. This is not a coincidence, and it should set off alarm bells for us all.

This is one of many reasons the United States has made anti-corruption a centerpiece of our foreign policy. Two years ago this week, President Biden released the first-ever U.S. Strategy on Countering Corruption. And today, I want to discuss four key ways we are working to live up to our commitments.

First, I am proud to announce that, just this morning, President Biden issued a Presidential Proclamation that will expand Secretary Blinken's authority to restrict entry into the United States for those who enable corruption. This is a bold step forward, and one that will allow us to advance justice and accountability.

Second, in our Fiscal Year 2022 budget, the United States is providing $252 million in foreign assistance to counter corruption, including at least $10 million for regional anti-corruption hubs that strengthen UNCAC implementation. This year alone, we supported the launch of a new UNODC hub in Colombia, Kenya, and Thailand.

Third, the United States will continue to promote financial transparency and integrity, particularly in sectors at high risk of corruption, including government procurement. Opaque corporate structures allow bad actors to facilitate money laundering and other criminal offenses with impunity at the expense of everyone else.

Listen, I won't shy away from the fact that this also happens in the United States. So, we have a responsibility to root out this kind of corruption. And starting on January 1st, 2024, many American companies will be required to report their true beneficial owners to the Department of Treasury.

The United States will also continue to expand cooperation between law enforcement authorities to recover and return stolen assets and ensure transparent and accountable use of these

funds. Since 2010, we have worked closely with international partners to return over $1.6 billion in stolen assets. And later this week, we will share details about additional confiscated assets that will be returned to Malaysia and other countries.

Finally, our administration is developing a suite of legislative proposals that would strengthen law enforcement and visa authorities for pursuing anti-corruption cases, which we will soon share with Congress.

And you'll notice, the three steps I just outlined are about going after bad actors. But our approach to anti-corruption is also about empowering good actors like the journalists who expose injustice, often at great personal risk, who need and deserve full protection.

This past year, the United States launched the Reporters Shield program, which works to counter the sharp increase in libel, defamation, and meritless lawsuits meant to silence independent media outlets and civil society organizations. And we continue to support journalists and civil society through the Global Anti-Corruption Consortium. I'm proud that 1,000 participants from civil society and the private sector are here this week – more than three times the number that have participated in previous conferences.

And this week, the United States held a groundbreaking Young Changemakers event, celebrating the role that young people play in countering corruption. Let's give it up for young leaders here this week.

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C. INTERNATIONAL TRIBUNALS AND OTHER ACCOUNTABILITY MECHANISMS

1. General

On August 29, 2023, Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice, delivered remarks at a briefing entitled "Anticipating Justice and Accountability Around the World." The remarks are available at https://www.state.gov/briefings-foreign-press-centers/anticipating-justice-and-accountability-around-the-world and excerpted below.

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In these opening remarks, what I'd like to do is highlight a couple of signature engagements of the Biden-Harris administration to promote accountability for atrocities around the world, and to emphasize some new innovations in evidence collection and institutional design. I hope that these remarks will serve as a survey of the current state of play in the system of international justice at a time when the world is increasingly united around the imperative of justice for the commission of international crimes.

Although much attention has been paid, of course, to the terrible situation in Ukraine in connection with the unprovoked war of aggression by Russia in that country, this has galvanized justice efforts around the world. I do want to focus on a number of areas elsewhere around the world to show the global solidarity around the pursuit of accountability and also efforts and demands at justice by survivors.

So a little bit now about the architecture of international justice. The last decade has seen incredible innovations in this field. The institutional framework is increasingly decentralized and multipolar. And while the International Criminal Court is an important element of this larger system, there are justice activities happening elsewhere at the domestic and international levels.

In particular, states are taking it upon themselves to adjudicate cases of international crimes in their own courts when they have access – when they can exercise their jurisdiction over those who are responsible. These cases are proceeding under expansive principles of extraterritorial jurisdiction, including universal jurisdiction.

We also see national war crimes units – based in the equivalent of our Department of Justice here in the United States – increasingly coordinating amongst themselves to share evidence, strategies, information, to cooperate around international arrest operations when defendants are within their jurisdictional reach. And states have also expanded their use of sanctions, visa restrictions, and import/export regulations for the benefit of victims and survivors, and to hinder the ability of bad actors to perpetrate, fund, and benefit financially from their criminal conduct.

Nongovernmental organizations, many of them who are funded by the U.S. State Department, have emerged as important players in these proceedings. These organizations, which are often survivor-led, are collecting and evaluating potential evidence in real time, pursuant to international standards, to inform accountability processes. This includes sophisticated open-source investigations that rely on the ability to geolocate photos and other digital artifacts, to scrub social media platforms for actionable information, and to access satellite-based data that had in the past only been available at certain resolutions to particular governments. For example, the Conflict Observatory, which is a collective of open-source investigators funded by the U.S. State Department, is one source of information about the conflicts in Sudan and Ukraine. Likewise, the International Accountability Platform for Belarus, which is supported by over a dozen governments, including the United States, is a consortium of civil society organizations working together to share information about abuses and violations in Belarus.

Civil society actors, youth, human rights defenders, diaspora communities have a stronger role than ever in these justice processes, despite the great risks and difficulties often associated with doing this work. Across the board, we're seeing continued progress in promoting techniques of documentation, investigation, and evidence preservation that are survivor-centered and trauma-informed. What we've seen over the years is that applying these best practices leads not only to better and expansive and more high-quality evidence for accountability purposes, but also allows for investigations to proceed in a responsible manner that mitigates harm to survivors and also minimizes the risk of re-traumatization.

The importance of good documentation cannot be overstated, because it will undergird any justice efforts that might be underway. Furthermore, what we've seen is that even if pure accountability can't be achieved for whatever reason, victims and survivors appreciate seeing naming and shaming of perpetrators, removing privilege of anonymity that perpetrators enjoy, to truth telling and also to the establishment of accurate historical records, particularly when accountability options are limited, where there are efforts at propaganda and misinformation to tell a different narrative, and also to just acknowledge what survivors and their communities have faced. The development of high-quality documentation will counter-efforts by perpetrators to deny the commission of crimes.

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Of course, there are no easy answers to the atrocities being committed in Sudan, but we do have a few more tools in 2023 than we had 20 years ago. Thanks to the bravery of Sudanese survivors, human rights activists, and journalists, we have compelling testimony about what is happening on the ground in real time. The United States is working to augment civil society efforts at documentation to work – that are working inside and outside of Sudan.

For example, we've provided upwards of $3 million to fund human rights documentation programs that are collecting and preserving evidence of abuses throughout Sudan to eventually be fed into justice and accountability processes. While some of these in-person activities have had to be paused given the violence, much of it is still ongoing, and there are teams working together to coordinate this work, including developing and implementing investigation plans into alleged war crimes and crimes against humanity.

Among the U.S. Government-funded projects is the Sudan Conflict Observatory, a remote platform that leverages commercially and publicly available data collection technologies – including digital photos, videos, and other information shared online – to carefully document conflict developments to inform responses, including on the justice front. This includes damage to the civilian infrastructure, the movement of troops, rapid population movements within the civilian population, and possible international crimes. The Sudan Conflict Observatory is committed to sharing this information publicly – a critical aspect of why we have funded this platform. Reports are released publicly on a regular basis as new information is collected, aggregated, and analyzed. All of this can be fed into existing and future accountability mechanisms.

Most importantly, the International Criminal Court has been engaged on Darfur since 2005 when the Security Council referred the matter to the court. The current prosecutor recently testified before the Security Council that his investigation will be expanded to include contemporary violence in Darfur. We welcome the ICC's investigations and prosecutions, including in the current violence in Darfur, and we are taking steps to bolster the court's investigations, and particularly to locate and apprehend fugitives.

In Ukraine, the United States and our allies and partners have responded to the death and destruction the full-scale invasion of Ukraine has wrought with an array of accountability initiatives. Most importantly, we're tracking closely the cases that Ukraine has brought in its own domestic courts, but also before the International Court of Justice and the European Court of Human Rights. In addition, we have seen the opening of investigations in more than a dozen states around the world, working often under the rubric of the Eurojust network within Europe.

And of course, the United States has also funded an additional conflict observatory that is dedicated to documenting the war crimes, crimes against humanity, and other atrocities in Ukraine. Notwithstanding international efforts, including at the International Criminal Court, which are of course central to the quest for justice, the main engine of accountability for the war in Ukraine will be Ukrainian courts themselves.

My office, in partnership with the Ukraine Office of the Prosecutor General, is funding teams of investigators and prosecutors drawn from the world's war crimes courts to help assist Ukrainian prosecutors and investigators in their efforts to bring cases in Ukrainian courts. This initiative is supported by both the European Union and the United Kingdom and is designed to ensure that the donors are adequately coordinated to be able to provide the best assistance possible to the Ukrainian Office of the Prosecutor General.

We are also trying to ensure the recruitment of the best experts around the world to assist in this challenging but critical work. We are now taking the Atrocity Crimes Advisory Group one step further with the creation of a multinational fund. We invite other states to join us in this effort with contributions, no matter how large or small, in order to ensure the sustainability of the Atrocity Crimes Advisory Group and the ability to support the work in Ukrainian courts.

Elsewhere in Europe, of course the Lukashenka regime in Belarus continues to carry out a brutal three-year crackdown on civil society, members of the democratic opposition, journalists, and ordinary Belarusians who are exercising their human rights and fundamental freedoms and seeking a democratic and fair future. The regime has carried out politically motivated prosecutions against more than 4,000 persons and holds nearly 1500 political prisoners. The United States is committed to promoting accountability for these abuses and violations within Belarus, and we stand with the Belarusian people as they demand respect for their rights and pursue democratic aspirations. Along with 18 other governments, the United States has supported the International Accountability Platform for Belarus, which works to collect and preserve evidence.

Elsewhere in the world, it is equally important for us to keep global attention on the ongoing suffering of the Yezidi people and remember that what happened in 2014 was a genocide, particularly given that 3,000 Yezidi are still missing and survivors are still to this day being found in captivity. The United States determined that ISIS was responsible for genocide against Yezidi Christians and Shia Muslims in areas it controlled. Furthermore, we concluded that ISIS was responsible for crimes against humanity and ethnic cleansing against these groups, and in some cases against Sunni Muslims, Kurds, and other minorities.

Although there is widespread impunity for these atrocities against Yezidi and other victims, we are committed to seeking accountability and there are glimmers of justice. National prosecutorial authorities are stepping up and bringing cases in their national courts. We've had the first case alleging genocide against an ISIS member in courts in Germany, for example. A German court found Taha al-Jumailly guilty of genocide, crimes against humanity, war crimes, and human trafficking in a landmark case involving the death of a five-year-old Yezidi girl. The case ended up in a life imprisonment sentence for the perpetrator. In 2022 the German – Germany convicted another former Syrian official, Anwar Raslan, for life imprisonment for crimes against humanity, and a new arrest has happened most recently in August. Other states such as Sweden and Canada are investigating and prosecuting ISIS members through structural investigations within their systems.

We are also closely following the Lafarge case in France. This is the first case in which a major multinational corporation has been accused crimes against humanity – in this case, in northern Syria. This follows on the heels of a major settlement here in the United States that generated a fine and forfeiture valuing more than $700 million. A number of organizations and victims advocates are exploring whether portions of such large financial settlements can be used to promote healing and post-traumatic growth for victims of the responsible organizations. More creative thinking needs to be done to how these settlements by those who profited from abuses can ultimately benefit survivors of atrocities.

Two international organizations have supported many of these prosecutions in national courts: the United Nations Investigative Team to Prosecute Accountability for Crimes Committed by Daesh, UNITAD; and the International, Impartial and Independent Mechanism for Syria, the Triple-I M. Both entities continue to collect information and evidence, share it with investigators and prosecutors who are pursuing cases against alleged perpetrators.

The United States is proud to have supported both of these entities to provide multiple pathways to justice. This includes over 14 million to UNITAD and 3.5 million to help stand up the Triple-I M. But of course, more remains to be done. The United States has welcomed the passage of the Yezidi Survivor Law in Iraq. It is past time, however, to see the law fully implemented in a survivor-centric way to enable funding for reparations and the rehabilitation of survivors for their ongoing trauma. Implementation of the new law must also take account of the multiple difficulties associated with displacement and relocation and the life paths that have been so disrupted by the terrible crimes of ISIS.

The Government of Iraq and the Kurdistan Regional Government must also take steps to fully implement the Sinjar agreement in consultations with Yezidis and other Sinjaris to address security, administrative, and reconstruction needs within Sinjar so that displaced community members can return to their ancestral homes.

We also urge Iraq to codify genocide, war crimes, and crimes against humanity into its domestic penal code. This will enable ISIS members to be tried in Iraq for these underlying crimes in addition to acts of terrorism. It will also ensure that UNITAD is able to live up to its full potential and promote national prosecutions in Iraqi courts and not just in European courts and courts elsewhere around the world. This will finally ensure that Iraqi prosecutors can charge ISIS members with the full range of crimes they have committed against Yezidis.

Turning to Asia, in Burma the current military regime and previous governments were complicit in genocide, crimes against humanity, ethnic cleansing against Rohingya, and there are no prospects for justice inside the country. This persistent impunity has emboldened the military regime, which continues to wage a campaign of violence against civilians, including those peaceably advocating for change and a more promising democratic future.

Despite the regime's refusal to halt and address these atrocities, there are various pathways to justice that give us hope. This includes the International Court of Justice, the International Criminal Court, and domestic courts around the world exercising universal and other forms of extraterritorial jurisdiction. In 2019, the Gambia, with encouragement from the Organization of Islamic Cooperation, brought a case against Burma before the International Court of Justice under the Genocide Convention. The United States applauds this case and we have shared relevant information with the Gambia as it presses its claims under the convention on behalf of other treaty members. We also welcome the Organization of Islamic Cooperation's financial support to the Gambia as it confronts a genocidal regime intent on the destruction of a mostly Muslim ethnoreligious minority.

The ICC investigation, which was authorized in 2019, is looking into atrocities committed against Rohingya in Burma who fled to neighboring Bangladesh, which is a member of the court. It is anticipated that the main charge will be forcible deportation of the civilian population, because an element of that crime occurred on the territory of Bangladesh. The United States has also indicated that it is in favor of a full-scale Security Council referral of the situation to the International Criminal Court, which would enable the court to address a broader range of crimes committed against Rohingya but also with respect to crimes committed against peaceful protesters advocating for a democratic future. We are, however, of course, cognizant that China and Russia would likely block such an effort.

Victims and NGOs have filed criminal complaints in Argentina and in Germany based on universal jurisdiction involving those deemed most responsible for these abuses. The case in – filed in Germany includes victims and survivors from other communities as well in addition to Rohingya. Last June, with the assistance of State Department funding, seven witnesses traveled

from Cox's Bazar to Buenos Aires to give testimony about what they had witnessed and what they experienced during the 2017 rampage. I was in Cox's Bazar prior to that point. I met with victims and survivors, and everyone expressed their sincere hope that the international community would not forget their community and would focus on pursuing justice in whatever pathway exists.

While these judicial pathways are being pursued, the United States has taken other concrete actions to promote accountability on behalf of victims and survivors, including Global Magnitsky sanctions and other designations under 7031(c). In addition, all of these justice experts – efforts have been assisted by a United Nations Independent Investigative Mechanism for Myanmar, the Double-I Double-M. The mandate of the Double-I Double-M is to collect, consolidate, preserve, and analyze evidence of atrocities committed in Myanmar since 2011, and to facilitate criminal and other legal proceedings in any court with jurisdiction.

Following the 2021 coup d'état, the Triple-I M is also investigating post-coup violence that may constitute atrocity crimes. Consistent with the recently passed BURMA Act, we will continue to support this institution through our votes and our interventions at the United Nations, with State Department funding for witness protection and open-source investigations, and by sharing relevant information in our possession.

Turning to Ethiopia, in March of this year the Secretary announced his determination that war crimes, crimes against humanity, and ethnic cleansing had taken place during the conflict in the north. The Ethiopian Government and people must ensure that transitional justice efforts are inclusive, transparent, and credible to allow for lasting reconciliation, and we will continue to support them in this effort. My deputy is leaving for Ethiopia tomorrow in order to attend an expert gathering on transitional justice that will also review the results of an innovative population-based survey that has asked ordinary Ethiopians what their hopes, expectations, and preferences are for justice and accountability. What such surveys show is that even with dire needs on the humanitarian and security front, people still want to know the truth about what happened and they also want justice to be served – not only for the direct perpetrators but also for those most responsible.

Finally, while it is very challenging to create pathways to justice for the atrocities being committed in China's Xinjiang region, it does not mean that we sit idly by or are silent. First, we must continue to call these atrocities by name: these are crimes against humanity and genocide. The Secretary of State has determined that authorities of the People's Republic of China under the direction and control of the Chinese Communist Party have committed crimes against humanity and genocide against the predominantly Muslim Uyghurs and members – other members of religious and ethnic groups within Xinjiang. As these atrocities continue, the world must stand firm against them both in word and in deed. Documentation is ongoing. Academics and independent researchers are scrutinizing policy directives and websites. Witnesses are sharing their experiences. NGOs are analyzing commercial satellite images of detention centers and destroyed Muslim cemeteries and mosques. Supply chains tainted with forced labor are being tracked and analyzed. This documentation is incredible.

Although pathways to justice for addressing these atrocities are limited now, this documentation has been crucial to informing other responses. The Uyghur Forced Labor Prevention Act was enacted in 2021, and established a rebuttable presumption that goods mined, produced, or manufactured in whole or in part in Xinjiang or by any entity that's named on an entity list are made with force labor and there are – therefore are prohibited from importation within the United States.

Since 2020, we have designated 12 persons connected with serious human rights in Xinjiang under the Global Magnitsky sanctions program and we have imposed visa restrictions on several PRC and CCP officials for their involvement in gross human rights violations in Xinjiang. And in March 2021, we coordinated with the EU, the UK, and Canada to impose sanctions on several individuals and entities. The Department of Commerce has imposed export controls and import restrictions on entities associated with abuses in Xinjiang, and the Customs and Border Protection office has issued withhold release orders on products from Xinjiang that are produced with forced labor. We've also issued a Xinjiang Supply Chain Business Advisory to highlight the heightened risk to businesses with supply chains and investments in Xinjiang given the entities complicit in forced labor and other human rights abuses there and throughout China.

So these are just a few examples of how the United States is trying to lead the way in imposing costs on individuals and entities in connection with atrocities around the world, and we will continue to work towards the day that these brutal acts cease and that those responsible are held accountable.

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2. International Criminal Court

a. General

On October 30, 2023, Calvin Smyre, public delegate for the U.S. Mission to the UN, delivered remarks at the UN General Assembly meeting on "Agenda Item 74: Report of The International Criminal Court ("ICC")." The remarks are excerpted below and available at https://usun.usmission.gov/statement-un-general-assembly-agenda-item-74-report-of-the-international-criminal-court-icc/.

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As noted in the Court's report on developments from August 2022 through July 2023, this has been a particularly active year for the International Criminal Court, with significant activities by all organs of the Court, across a range of situations.

The United States welcomed the conclusion of the Dominic Ongwen appeal, which provided justice, for the first time, for the many victims of the Lord's Resistance Army, and the conclusion of the trial proceedings in the "Al Hassan" case, concerning crimes against humanity and war crimes committed in Timbuktu, Mali.

The ICC has also made meaningful progress in the first trial in a situation referred to the Court by the UN Security Council, in the case against Ali Mohammed Ali Abd-al Rahman, a former Janjaweed commander also known as Ali Kushayb.

This important trial marks the first case against any senior leader for crimes committed by the Omar al-Bashir regime and government-supported forces following the genocide and other atrocities in Darfur.

We also welcomed the Prosecutor's announcement that his office has commenced focused investigations on recent events in Darfur, as well as the Court's reauthorization of the Prosecutor's investigation in Venezuela. Victims of these atrocities continue to demand justice.

We are also tracking significant developments with regard to Ukraine, where the Court issued arrest warrants against Vladimir Putin and Maria Lvova-Belova for the alleged war crimes of unlawful deportation of population and the unlawful transfer of population from occupied areas of Ukraine to the Russian Federation.

As President Biden noted, we believe the warrants are justified. The United States supports that investigation, as well as a range of other situations before the Court.

Twenty-five years on since the signing of the Rome Statute, the ICC's activities in situations around the world underscore its important role as a key element of the global architecture for accountability – and a reminder of the imperative for justice, even when it may take time to achieve.

While commending the achievements of ICC over the past year, the United States is troubled by its large number of outstanding arrest warrants, a matter that should concern all states. Individuals subject to warrants of arrest by the ICC must face justice before fair, independent, and credible judicial proceedings.

The United States continues to encourage the authorities in Sudan to transfer suspects to the Court, and we continue to offer monetary rewards for information leading to the arrest of Lord's Resistance Army leader Joseph Kony, to provide justice for victims of the LRA. We also call on all states to cooperate in ensuring that Nouradine Adam, accused of crimes against humanity in the Central African Republic, faces justice.

We are also troubled by recent actions taken against the Court's security and personnel. This includes the unprecedented cyber breach of the Court, and the arrest warrants issued by Russia against ICC officials. The United States deplores these actions and commends the ICC for remaining steadfast in pursuing its mandate for justice and accountability.

Justice is not only a moral imperative, it is essential for the maintenance of international peace and security. The United States is a strong supporter of meaningful accountability and justice for the victims of atrocities. These are core values, best advanced through a shared commitment, and the ICC is an integral component of that shared commitment to justice. Although the United States is not a party to the Rome Statute, there is much that we can do, and have done, to advance the work of the Court. This includes through practical cooperation to support the Court's activities across a range of situations and actively exploring additional ways to support victims and witnesses.

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On December 8, 2023, Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice, delivered the U.S. statement to the 22nd session of the Assembly of States Parties ("ASP") to the ICC. The statement is excerpted below and available at https://www.state.gov/statement-of-the-united-states-at-the-22nd-session-of-the-assembly-of-states-parties-of-the-international-criminal-court/.

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I…want to commend the Court for its achievements over the past year. The Court continues to demonstrate that it is an essential component of the ecosystem of international justice. This past year, we welcomed: progress in the Ongwen and Al Hassan cases; the Court's reauthorization of the investigation in Venezuela; and the Court's arrest warrants against Vladimir Putin and Maria Lvova-Belova for acts that constitute grave breaches of the Fourth Geneva Convention.

We are also pleased to see the ICC's meaningful progress in the first trial following a Security Council referral, in the case against a former Janjaweed commander.

We concur with the Prosecutor's conclusion that the ongoing situation in Darfur is a product of years of impunity, and we welcomed the Prosecutor's announcement that his office has commenced focused investigations on recent events. Indeed, just yesterday, U.S. Secretary of State Blinken released his determination that members of the Rapid Support Forces (RSF) and Sudanese Armed Forces (SAF) have committed war crimes in Sudan and that the RSF and allied militias have committed crimes against humanity and are responsible for ethnic cleansing in Darfur. The atrocities occurring today in Darfur are an ominous reminder of the prior genocide, in that they involve so many of the same perpetrators, the same communities being targeted, and the same patterns of criminality.

Like so many of you here, we are dismayed by the violence elsewhere, including in Ukraine, in Syria, and now in Israel and Gaza. In addition, around the world, entire communities are oppressed because of their identity or their faith—as in Xinjiang or Myanmar—or because they seek to express a disfavored political opinion—as in Venezuela or Belarus.

We are doing what we can in many of these situations to ensure good faith efforts towards a just and lasting peace, respond to the dire humanitarian situation on the ground, ensure robust and accurate documentation of what is happening and who is responsible, encourage the warring parties to faithfully adhere to their legal obligations, and forge pathways to justice. We know that responding meaningfully to demands for justice is not only an important objective in its own right but is a core element for a sustainable peace—a recognition embodied in the Rome Statute itself.

Last year, I described our progress implementing President Biden's "reset" of the U.S. relationship with the ICC. Since then, we have worked to put this relationship on a sustainable path. For example, we are providing practical assistance to the OTP across a range of its investigations. We are helping the Court track fugitives across several situations, including through offering rewards for their arrest. With others, we are providing input and commentary on the OTP's policy papers. We are convening meetings with experts from the U.S. government, the private sector, the Court, and other accountability mechanisms to identify practical solutions to some of the most difficult challenges facing international justice actors, including with respect to witness protection, insider witnesses, and cybersecurity.

Finally, we have been pleased to help facilitate engagements between Washington and The Hague. This includes visits to the Court by bipartisan members of Congress and their staff and Attorney-General Merrick Garland—the first by a member of the U.S. cabinet. These interactions have helped to foster a greater understanding of the ICC in the United States and are building connections across the various branches of government with the Court.

In addition, and in line with the principle of complementarity, the United States is pursuing a broad range of initiatives to strengthen the objectives of the Rome Statute system and support accountability for atrocity crimes globally. To these ends, we are funding comprehensive documentation by civil society organizations; catalyzing strategic litigation in courts around the world; investing in the physical, psychological, social, and financial rehabilitation of victims and

survivors, as an expression of solidarity but also as a justice imperative; and, looking for ways to track, constrain, and ultimately bring into custody perpetrators, including using our rewards program and our sanctions authorities.

We have also updated our own laws to close the impunity gap for accused war criminals. Just yesterday, our Department of Justice announced the first indictments under our War Crimes Act against four Russia-affiliated military personnel for war crimes against a U.S. citizen in Ukraine.

Another essential component of these efforts is being self-critical. We cannot advance justice abroad if we do not confront injustice at home. We know that, and we take very seriously allegations of misconduct by U.S. personnel, but also legacies of harm to communities of color and others in our own country. As Vice President Harris has noted "we know our work at home will make us stronger for the world."

Esteemed colleagues, in conclusion, the United States pledges to enhance our efforts on all these fronts, including through robust engagement and cooperation with the ICC and with friends of the Court—parties and non-party states alike. We know that our efforts are all the more powerful by standing with all of you, the community of states committed to global justice.

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b. Sudan

On January 25, 2023, Legal Advisor Mark Simonoff delivered remarks at a UN Security Council briefing by the ICC prosecutor for Sudan. The remarks follow, and are available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-by-the-icc-prosecutor-for-sudan-2/.

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Thank you, Mr. President. And thank you, Prosecutor Khan, for your report and for your briefing to the Council today on the Court's ongoing investigations and prosecutions regarding the situation in Darfur. We appreciate your dedication and the unwavering commitment of the judges, attorneys, and staff of the International Criminal Court to the pursuit of justice for the people of Darfur.

We continue to monitor the ongoing trial proceedings in the case involving former Janjaweed commander, Mr. Abd-Al-Rahman, also known as Ali Kushayb.

This is a landmark case – the first trial against any senior leader for atrocities committed by the Omar al-Bashir regime and government-supported forces in Darfur and, more importantly, the first real opportunity for justice that victims of Darfur have had. We acknowledge the bravery of all of those witnesses and victims who have come forward. We also appreciate the work of court personnel who have facilitated their participation and ensured their safety and security.

This is a crucial moment for Sudan's future. Just a few weeks ago, the parties signed onto a framework political agreement for the restoration of Sudan's democratic transition. After more than a year since the military takeover, this agreement, and the recent launch of Phase 2

dialogues on outstanding issues, are promising steps towards establishment of a final agreement to form a civilian government.

The Framework Political Agreement also reflects the values of the 2019 revolution, recognizing the diversity of the Sudanese people and committing to creating a new state based on core democratic principles and human rights norms. The fact that these negotiations have happened at all is a testament to the Sudanese women, men, and youth who have persistently and courageously taken to the streets to demand their rights and to call for civilian rule, despite facing violence at the hands of Sudanese security forces.

But some of the hardest challenges lie ahead as the parties begin to address a set of thorny issues in these Phase 2 dialogues, including transitional justice, the Juba Peace Agreement, and security sector reform. But the violence that we have continued to see in Darfur, Blue Nile, and elsewhere demonstrates the importance of addressing these issues in inclusive dialogues. As negotiations move forward, we underscore the importance of full respect for freedoms of association, expression, and peaceful assembly.

The impact of decades of dictatorship under Omar al Bashir will not be erased overnight. Sudan will need a holistic transitional justice strategy to address the needs of victims, rebuild trust, repair relationships among communities, and set Sudan on a path where human rights are respected.

As part of this broader strategy, we strongly urge Sudan's authorities to comply with their international legal obligations pursuant to Resolution 1593 and move forward in cooperating with the ICC in the areas that the Prosecutor has repeatedly outlined as priorities. There are three suspects subject to ICC arrest warrants who are currently in Sudanese custody: Omar al Bashir, Ahmed Harun, and Abdel Raheem Muhammad Hussein.

Cooperation with the ICC on these cases is central to finally delivering justice in Darfur. It would be a clear signal that Sudan's leaders are committed to the principles of justice and accountability as set forth in the Framework Political Agreement. The Sudanese authorities must continue to permit ICC teams to travel within the country. In addition, they must act on the many outstanding requests from the Prosecutor for evidence and other information and assistance, including by providing unimpeded access to key witnesses and taking steps to facilitate an enhanced ICC field presence.

Over the next few months, we will continue to stand with the Sudanese people as they work to find common ground on how transitional justice, including accountability for the violence in many decades of conflict, can advance truth, justice, reconciliation, and healing.

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On July 13, 2023, the State Department released a press statement on investigations and prosecutions of atrocities in Darfur. The statement is available at https://www.state.gov/investigations-and-prosecutions-of-atrocities-in-darfur/, and follows.

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The United States condemns in the strongest terms the continued atrocities and ethnically targeted killings committed by the Rapid Support Forces (RSF) and its allied militias in West Darfur, as

reported by credible sources. The destruction of the village of Misterei and mass killings of its inhabitants, reportedly at the hands of the RSF and allied militias, and the report by the United Nations Office of the High Commissioner for Human Rights of a mass grave found near El Geneina containing the bodies of 87 people, including women and children, are but the latest examples of the horrific human cost of this war.

The atrocities and violence in Darfur demand accountability, meaningful justice for victims and the affected communities, and an end to impunity. The United States applauds the International Criminal Court (ICC) Prosecutor's July 13 announcement that alleged war crimes and crimes against humanity committed during the current fighting may be subject to ICC investigation and prosecution and that the Prosecutor's office has commenced focused investigations on recent events. Let this be a message to all who commit atrocities, in Sudan and elsewhere, that such crimes are an affront to humanity. We urge all states to cooperate with the ICC to deliver the justice promised to the people of Darfur.

The United States joins international and regional parties in demanding an immediate end to the fighting, unimpeded humanitarian access, and for all combatants to adhere to international humanitarian law and international human rights law. The United States strongly objects to any form of external interference and military support for the belligerent parties, which will only intensify and prolong the conflict and contribute to regional instability. There is no military solution to this conflict. The Sudanese Armed Forces and the RSF must silence their guns and start negotiations on a permanent cessation of hostilities. The world is watching.

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c. Russia

On March 27, 2023, Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice, delivered remarks at the Nuremburg Principles meeting at the Catholic University of America. Remarks relating to the March 17, 2023 arrest warrants issued by the ICC against Russian president Vladimir Putin and Russia's Commissioner for Children's Rights Maria Lvova-Belova are excerpted below, and available at https://www.state.gov/ambassador-van-schaacks-remarks/.

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The International Criminal Court Office of the Prosecutor has now come forth with successful petitions that resulted in the Court issuing arrest warrants for President Vladimir Putin and Maria Lvova-Belova, Russia's Commissioner for Children's Rights, for terrible crimes against Ukraine's children. As President Joe Biden noted, by attempting to steal Ukraine's children, Russia is also endeavoring to steal Ukraine's future. The United States appreciates the significance of the announcement regarding the arrest warrants issued by the ICC, and President Biden has publicly stated that he believes the warrant for President Putin's arrest is justified.

The ICC occupies an important place in the ecosystem of international justice, and the United States supports the investigation by the ICC Prosecutor, who received an unprecedented referral of the situation in Ukraine by 43 States Parties last year.

At the end of last year, Congress passed, on an overwhelmingly bipartisan basis, legislative amendments to facilitate U.S. cooperation with the ICC relating to the situation in Ukraine. The legislative amendments make several important changes to U.S. law:

First, they make clear that the U.S. is not prohibited from assisting with ICC investigations and prosecutions of foreign nationals related to the situation in Ukraine, including support to victims and witnesses.

Second, they remove funding prohibitions in connection with such investigations and prosecutions.

Third, they permit the ICC to conduct in the United States investigative activities focused on foreign persons related to the situation in Ukraine that are undertaken in concurrence with the Attorney General.

Fourth, they enable the prosecution of individuals who stand accused of committing war crimes so long as they are present in the United States.

This new legislation follows a unanimous Senate resolution describing the ICC as "an international tribunal that seeks to uphold the rule of law, especially in areas where no rule of law exists." The implementation of the new legislative amendments to help the ICC Prosecutor is under review.

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On August 24, 2023, the State Department published a bulletin on the Kremlin's war against Ukraine's children, noting the ICC's March 17, 2023 arrest warrants and Russia's subsequent reaction. The bulletin in available at https://www.state.gov/the-kremlins-war-against-ukraines-children/, and includes the following:

> On March 17, 2023, the International Criminal Court **issued arrest warrants** for Russian President Vladimir Putin and Russia's Commissioner for Children's Rights, Maria Lvova-Belova, based on their alleged war crimes of unlawful transfer and unlawful deportation of Ukraine's children.
>
> Russia's propaganda machine reacted swiftly to the ICC's decision, with threats of nuclear strikes, false claims about Western "**experiments on children**" and anti-Russian "**hysteria**," calls for the arrest of ICC judges, and claims that Ukraine's children were taken away "**for their safety**." Russia's Deputy Chair of the Security Council Dmitry Medvedev **threatened** The Hague with a **hypersonic missile** and **compared** the warrants to **toilet paper**. Kremlin propagandists **Vladimir Solovyov** and **Margarita Simonyan** **claimed** that nuclear strikes await any country daring enough to arrest Putin. Meanwhile, Russian Foreign Ministry spokesperson **Maria Zakharova** **accused** the "enlightened West" of "criminalizing the rescue of children" while the same Western countries are "experimenting on kids with gender reassignments." Separately, Chairman of the State Duma Vyacheslav Volodin **claimed** that "the West is hysterical" and any "invectives" against Putin will be seen as aggression against Russia, adding, "Yankees, hands off Putin!" Similarly, **Russia's Embassy in Washington** called "U.S. validation" of the warrants "**reminiscent of sluggish schizophrenia**" and **pointed** to "U.S. atrocities" elsewhere. Several Russian **senators** proposed

issuing **arrest warrants** for the ICC judges and "**liquidating**" the International Criminal Court.

d. Libya

On May 11, 2023, Legal Adviser Mark Simonoff delivered the U.S. statement at a UN Security Council briefing by the ICC Prosecutor on Libya. The remarks are follow and are available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-libya-14/.

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Thank you, Madam President. And thank you, Prosecutor Khan, for your briefing to the Security Council on the International Criminal Court's work on the situation in Libya.

The International Criminal Court has an important role to play in the international system of justice, and the work of the ICC in Libya plays a critical role in support of our collective pursuit of accountability, peace, and security.

The United States commends the extraordinary dedication of the Court's staff and the sustained efforts of the Court to investigate and prosecute those most responsible for the heinous atrocities committed against the Libyan people since February 2011.

The Prosecutor's most recent report to the Council reflects considerable progress in the past six months. The investigative and cooperative activities undertaken by the Office of the Prosecutor, including conducting numerous investigative missions to Libya and building a proactive policy of cooperation with Libyan authorities, third states, regional organizations, and international partners, have laid the foundations for accountability in the face of ongoing challenges in Libya and a difficult operating environment.

In particular, we note the issuance of multiple arrest warrants, including some that remain under seal. We also commend the Prosecutor's office on its commitment to increasing cooperation and engagement with witnesses, victims, and civil society, and substantial progress in its investigations. And we welcome the strategic approach by the Prosecutor for renewed action in the Libya situation.

The United States also congratulates the Office of the Prosecutor for its role in the arrest in January of a suspect wanted by Dutch authorities for brutal crimes against migrants, and commends the United Arab Emirates for its role in his apprehension.

We remain deeply concerned about the fate of migrants, including women and children who have experienced sexual violence and who continue to be subjected to abuse. We urge Libyan authorities to take credible measures to dismantle the trafficking and smuggling routes.

We are encouraged by progress on ICC discussions with Libyan authorities to enhance the long-term presence of ICC staff, including by opening a liaison office in Libya as a key means to enhance cooperation with national authorities and victims.

However, more needs to be done. We call on Libyan authorities to do more to support and advance accountability efforts and to enhance cooperation with the ICC, including in ensuring that those subject to arrest warrants face justice as soon as possible.

The United States recognizes with gratitude the close and productive cooperation between the Prosecutor's Office and the UN Support Mission in Libya. We also welcome the ICC's collaboration with the Human Rights Council's Independent Fact-Finding Mission on Libya, and commend its work documenting reports of arbitrary detention, extrajudicial killing, torture, rape, enslavement, sexual slavery, and enforced disappearance. We note that the Fact-Finding Mission found reasonable grounds to believe that crimes against humanity were committed against Libyans.

The United States welcomes the increased contact with victims and civil society organizations in Libya as crucial to the delivery of justice for victims who have waited far too long to be heard. Victims and survivors deserve justice, which can be a powerful, stabilizing force for Libya's future.

We continue to believe that resolving political uncertainty and promoting accountability in Libya will go a long way towards addressing the chronic instability Libya continues to face, including the mobilization of armed groups. Human rights violations and abuses will continue unless meaningful steps are taken to address the chronic instability in Libya. A critical step towards peace and stability is the withdrawal of all armed groups and mercenaries from Libya without further delay, in line with Security Council Resolution 2656 and the October 2020 Libyan ceasefire agreement.

The people of Libya deserve stability and justice, and we support the International Criminal Court's effort to help bring justice to the people of Libya.

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3. International Criminal Tribunals for the Former Yugoslavia and Rwanda and the International Residual Mechanism for Criminal Tribunals

On June 5, 2023, the State Department issued a press statement affirming expanded sentences for Jovica Stanišić and Franko Simatović for war crimes and crimes against humanity. The press statement is available at https://www.state.gov/international-tribunal-expands-sentences-for-two-defendants-for-committing-atrocity-crimes-in-the-former-yugoslavia/, and follows:

> Yesterday's appeals judgment by the United Nations International Residual Mechanism for Criminal Tribunals (IRMCT) in the case of Jovica Stanišić and Franko Simatović, which recognized their responsibility for war crimes and crimes against humanity committed in Bosnia and Herzegovina and Croatia, has been long-awaited. This judgment marks the conclusion of the final IRMCT case arising out of the work of the International Criminal Tribunal for the former Yugoslavia (ICTY), closing an important chapter in international criminal justice in the former Yugoslavia. We are grateful for the decades of work by the judges, attorneys, and other court staff of the ICTY and its successor, the IRMCT, and their immense contributions to the rule of law and the fight against impunity.
>
> We also acknowledge and honor the courage and resilience of victims, survivors, and their loved ones who continue to fight for the official acknowledgment of these crimes. We recognize the courage of the thousands of

witnesses who participated in this and other trials and without whom justice could not be served. Atrocity crimes convictions underscore individual responsibility and are not a reflection of an entire people. The United States will continue to press for justice, mutual trust, and reconciliation as the foundation for peace and stability.

On June 12, 2023, Legal Adviser Mark Simonoff delivered remarks at a UN Security Council Briefing on the International Residual Mechanism for Criminal Tribunals. The remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-un-security-council-debate-on-international-residual-mechanism-for-criminal-tribunals/.

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Since the last briefing, the Mechanism has achieved a significant milestone with the capture and arrest of fugitive Fulgence Kayishema. We congratulate the Mechanism and the South African authorities for the arrest, and we are grateful for the indispensable role played by South Africa in the capture and arrest. Kayishema was indicted over twenty years ago, charged with genocide and extermination as a crime against humanity for his role in the cold-blooded murders of more than 2,000 Tutsi men, women, and children at the Nyange Parish Church.

His arrest cannot restore what was lost in April 1994 in Kivumu, but we hope that it will provide victims some comfort that the fight for justice for their loved ones will continue and the facts surrounding their death will be fully brought to light. We continue to offer a reward of up to $5 million for the three remaining Rwandan fugitives sought by the Mechanism. Let Kayishema's arrest be a message to all those responsible for similar crimes that they cannot escape accountability.

We also acknowledge the significance of the Mechanism's recent appeals judgment in the case of Jovica Stanišić and Franko Simatović. This long-awaited judgment, which confirmed their liability as participants in a joint criminal enterprise to forcibly remove civilians through the crimes of persecution, murder, deportation, and inhumane acts in Bosnia and Herzegovina and Croatia, is the final case involving atrocity crimes committed in the former Yugoslavia and closes an important chapter in the history of international criminal justice.

Just over thirty years ago, this Security Council adopted resolution 827 to establish the International Criminal Tribunal for the former Yugoslavia. The ICTY, the first international tribunal since Nuremberg and Tokyo to address atrocity crimes, demonstrated the international community's enduring commitment to holding those most responsible for atrocity crimes accountable.

We are grateful for the decades of work by the judges, attorneys, and other court staff of the ICTY and the Mechanism, and their immense contributions to the rule of law and the fight against impunity in the former Yugoslavia.

There is only one other remaining case involving core crimes pending before the court, the case of Félicien Kabuga, accused of acting as the primary financier of the militia and political groups that perpetrated the genocide in Rwanda. We note the Trial Chamber's decision last week finding Kabuga unfit for trial and deciding to adopt an alternative finding procedure.

Unfortunately, this year we mourn the loss of Judge Elizabeth Ibanda-Nahamya of Uganda, who served on the Kabuga Trial Chamber and worked on other matters of distinction at the Mechanism. Her contributions and service to the field of international criminal law were outstanding, and we appreciate and recognize her years of service.

As President Gatti Santana's report notes, the Mechanism is now preparing to enter a new phase in its life cycle. We appreciate the efforts of the Mechanism to manage a smooth transition away from active case work to focus on residual court functions, and learn lessons from the tribunals of Cambodia, Sierra Leone, and Lebanon on how best to address important issues including supporting national jurisdictions and managing and preserving evidence.

The success of the Mechanism has always depended on the cooperation and support of all states. We are grateful to the thirteen countries which serve as enforcement states holding those who were convicted. They are a fundamental pillar to the successful operation of the Mechanism. We also continue to urge all parties to find a durable solution for the acquitted and released persons who have been relocated.

We are also pleased to note the Prosecutor's report of increased cooperation between Bosnia and Herzegovina, Montenegro, and Serbia on war crimes cases, as well as the report that the Croatian Minister of Justice has been transferring requests for assistance to the appropriate judicial authorities for action. We hope that the region can continue to make progress on cooperation, as victims have waited too long for justice. In particular, we continue to urge Serbia to act on the outstanding arrest warrants for Jojić and Radeta.

Finally, we acknowledge and honor the courage and resilience of victims, survivors, and their loved ones who continue to fight for the official acknowledgment of the crimes that they have witnessed and experienced. We recognize the courage of the thousands of witnesses who participated in these and other trials and without whom justice could not be served. The United States will continue to press for justice, mutual trust, and reconciliation as the foundation for peace and stability.

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On October 18, 2023, Ambassador Chris Lu, U.S. Representative for UN Management and Reform, delivered remarks at a UN General Assembly debate on the report of the International Residual Mechanism for Criminal Tribunals. The remarks are available at https://usun.usmission.gov/remarks-at-a-un-general-assembly-briefing-and-debate-on-the-international-residual-mechanism-for-criminal-tribunals/, and excerpted below.

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Notably, in May, the Office of the Prosecutor's fugitive tracking team and South African authorities finally captured Fulgence Kayishema, who had evaded arrest for over twenty years.

Kayishema was a significant figure in the Rwandan genocide and was charged with genocide and extermination as a crime against humanity for his alleged role in the murders of more than 2,000 Tutsi men, women, and children at the Nyange Parish Church.

His arrest cannot restore what was lost in April 1994 in Kivumu, but we hope that it will provide victims some comfort that the fight for justice for their loved ones will continue and the facts surrounding their death will be fully brought to light. We look forward to the expeditious and fair conclusion to the legal proceedings surrounding the Mechanism's request to transfer him into its custody.

Time is particularly urgent in the remaining cases, almost three decades after the crimes were committed. The recent determination by the Appeals Chamber that Felicien Kabuga—captured 26 years after he was indicted—is not competent to stand trial, highlights the urgency of accountability and the risk that justice delayed can become justice denied.

Additional steps must be taken today in the name of justice and prevention of future atrocities. This includes the swift resolution of cases of the three remaining Rwandan fugitives. We call on Member States that may be harboring them, or that might be aware of their last known whereabouts, to cooperate with the Mechanism and its investigations.

With respect to the former Yugoslavia, we appreciate the significance of the Mechanism's recent appeals judgment in the case of Jovica Stanišić and Franko Simatović.

This long-awaited judgment, which recognizes the responsibility of these former government officials for war crimes and crimes against humanity committed in Bosnia and Herzegovina and Croatia, is the final case involving core crimes committed in the former Yugoslavia and closes an important chapter in the history of international criminal justice.

Just over thirty years ago, the UN Security Council passed resolution 827 to establish the International Criminal Tribunal for the former Yugoslavia, the first international tribunal since Nuremberg and Tokyo to address genocide, war crimes, and crimes against humanity.

That tribunal demonstrated that even the most senior military and political leaders can be held accountable for atrocity crimes. We are grateful for the decades of work by the judges, attorneys, and other court staff of the ICTY and the Mechanism, and their immense contributions to the rule of law and the fight against impunity in the former Yugoslavia.

As the work of the Mechanism on cases involving core international crimes draws to a close, we appreciate President Gatti's expressed priorities, including to streamline the functions of the Mechanism. Along these lines, we also appreciate the work of the Mechanism in responding to national authorities' requests for assistance and supporting their efforts to advance justice in their own systems.

The Mechanism has served an indispensable role in carrying out the legacy work of the ICTY and the ICTR, but national authorities must bear the primary responsibility of providing justice to victims.

The success of the Mechanism, at all phases of its life cycle, depends on the cooperation and support of all states. We are grateful in particular for the role played by South Africa in the capture and arrest of Kayishema and to the thirteen countries which serve as enforcement states holding those who have been convicted, as a fundamental pillar to the successful operation of the Mechanism.

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On December 12, 2023, Legal Adviser Mark Simonoff delivered remarks at a UN Security Council debate on the International Residual Mechanism for Criminal Tribunals. The remarks are available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-the-international-residual-mechanism-for-criminal-tribunals-5/, and include the following:

The Mechanism has served an indispensable role in carrying out the legacy of the ICTY and ICTR. We appreciate the Mechanism's efforts to help counter genocide denial by increasing access to the public judicial records of the ad hoc Tribunals and the Mechanism, and to enhance cooperation with affected States more broadly.

As the Mechanism moves to a fully residual phase, we appreciate President Gatti Santana's expressed priorities, including to streamline its functions. We very much look forward to discussions of the Mechanism's framework of operations to complete its functions, and we greatly appreciate the Mechanism's thoughtful analysis regarding this important phase of its work.

Along these lines, we appreciate the Mechanism's efforts to respond to national authorities' requests for assistance to advance justice in their own systems. Ultimately, national authorities must bear the primary responsibility of providing justice to victims.

As President Gatti Santana's report notes, one of the Mechanism's most important functions moving forward will involve supervising the enforcement of sentences handed down by the ad hoc Tribunals and the Mechanism. We recognize the twelve countries that serve as enforcement states holding those who have been convicted.

The Mechanism's successful operation will continue to depend on close cooperation with these and other states to ensure war criminals serve out their sentences.

4. Other Accountability Proceedings and Mechanisms

a. Ukraine: Supporting Efforts to Promote Accountability for Atrocity Crimes

See also Chapters 6 and 17 for additional discussion of Russia's aggression against Ukraine.

On March 27, 2023, Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice, delivered remarks on the U.S. proposal to prosecute Russian crimes of aggression. The remarks are available at https://www.state.gov/ambassador-van-schaacks-remarks/, and excerpted below.

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Support for Multifaceted Accountability Efforts

In response to these events, the international community has activated a number of justice initiatives since Russia's reinvasion a year ago. Given the justice and accountability imperatives occasioned by this brutal war, the U.S. government is contributing to, and stands ready to assist, the range of documentation efforts underway and all pathways to accountability. Our

contributions to justice include: training and technical assistance for civil society efforts to gather, document, and report on violations of international humanitarian law; expanding access to justice for victims and survivors of atrocities and other abuses; data collection, reporting, and information sharing on human rights abuses and atrocities including through analysis of satellite imagery and other data feeds; forensic assistance focused on the missing and disappeared, laying the foundation for restorative justice; and enhancing the ability of civil society, journalists, and other partners to safely and securely share information. We also helped to launch the investigations conducted by the UN Commission of Inquiry on Ukraine and the expert missions of the Moscow Mechanism of the Organization for Security and Cooperation in Europe.

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Complementarity in Action

As significant as these ICC arrest warrants are, the majority of cases arising out of this war will be prosecuted in Ukrainian courts. The situation in Ukraine thus exemplifies the principle of complementarity in action. The United States is continuing our support to Ukraine's Office of the Prosecutor General, who is working to document, investigate, and prosecute over 80,000 potential war crimes—a number that does not yet include consideration of the horrors that are unfolding in areas still under Russia's occupation or control.

Our assistance to the Office of the Prosecutor General includes working to hold perpetrators accountable for their war crimes and other atrocities through the Atrocity Crimes Advisory Group for Ukraine (ACA) launched with the European Union and the United Kingdom. Under the ACA umbrella, we and our implementing partners have deployed teams of multinational and multi-disciplinary international investigators and prosecutors to Ukraine—including to sites of alleged war crimes—to assist the Office of the Prosecutor General in its critical efforts to document the commission of crimes, preserve potential evidence, engage witnesses and survivors in a trauma-informed way, prepare war crimes dossiers for prosecution, and ultimately pursue effective and fair cases in Ukraine's courts.

While working to strengthen existing pathways to accountability in Ukraine's courts, we also hope to contribute to cases that might be brought in courts around the world if they establish jurisdiction over individuals accused of committing international crimes in connection with the war in Ukraine.

U.S. Support for Investigating and Prosecuting the Crime of Aggression

This brings us to the crime of aggression. As you've heard today, there are compelling arguments for why this crime must be prosecuted alongside the Rome Statute crimes. In my public remarks, I often emphasize that we are at an historic moment for international justice. Today's efforts reflect the tremendous legacy of the Nuremburg and Tokyo Tribunals established after World War II, the work of the ad hoc international tribunals dedicated to the conflicts in the former Yugoslavia and Rwanda, the establishment of a permanent International Criminal Court, and the plethora of international justice mechanisms that have followed since.

These were times when the world came together to deliver a measure of justice in the face of atrocities. I am proud that at each of these moments, the United States supported the advancement of international criminal law and accountability. At Nuremburg, for example, the United States led the prosecution of the crime of aggression—deemed "crimes against the peace" in the lexicon of the era.

Again now, at this critical moment in history, I am pleased to announce that the United States supports the development of an internationalized tribunal dedicated to prosecuting the crime of aggression against Ukraine. Although a number of models have been under consideration, and these have been analyzed closely, we believe an internationalized court that is rooted in Ukraine's judicial system, but that also includes international elements, will provide the clearest path to establishing a new Tribunal and maximizing our chances of achieving meaningful accountability. We envision such a court having significant international elements—in the form of substantive law, personnel, information sources, and structure. It might also be located elsewhere in Europe, at least at first, to reinforce Ukraine's desired European orientation, lend gravitas to the initiative, and enable international involvement, including through Eurojust.

This kind of model—an internationalized national court—will facilitate broader cross-regional international support and demonstrate Ukraine's leadership in ensuring accountability for the crime of aggression. It also builds upon the example of other successful hybrid justice mechanisms.

We are committed to working with Ukraine, and peace-loving countries around the world, to stand up, staff, and resource such a tribunal in a way that will achieve comprehensive accountability for the international crimes being committed in Ukraine.

The International Centre for the Prosecution of the Crime of Aggression

A tribunal of this type will complement the work that will be undertaken by the new International Centre for the Prosecution of the Crime of Aggression (ICPA) being established in the Hague, by ensuring that the information and evidence collected by that center can be quickly and effectively put towards accountability purposes.

As envisioned, the ICPA will coordinate the investigation of acts of aggression committed against Ukraine and build criminal dossiers against those leaders responsible for planning, preparing, initiating, or waging this war of aggression for future trials. The center's efforts will be complementary to other institutions dedicated to promoting justice and accountability. Apart from assisting any eventual prosecution of the crime of aggression, the evidence ICPA gathers could be of value to the ICC and national investigations of alleged war crimes, crimes against humanity, and genocide; for further sanctions designations; and in establishing compensation claims related to tremendous damage caused by Russia's aggression that will be collected by the registry of damages being stood up. As the first post-WWII institution empowered to actively investigate the crime of aggression, the center is poised to advance accountability for the crime of aggression in the context of an egregious set of facts flowing from Russia's war of aggression against Ukraine.

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On November 14, 2023, the State Department issued a press statement on U.S. assistance to international investigation of the crime of aggression against Ukraine. The press statement follows and is available at https://www.state.gov/u-s-assistance-to-international-investigation-of-the-crime-of-aggression-against-ukraine/.

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As Russia continues to blatantly violate international law, and as President Putin's war on Ukraine continues to result in extraordinary suffering, the United States remains focused on working with Ukraine and the international community to hold accountable those responsible for international crimes committed in Ukraine. As part of our unwavering commitment to Ukraine's territorial integrity and sovereignty, and to promoting comprehensive justice and accountability for international crimes against Ukraine and its people, the U.S. Department of State will provide $1 million to the International Centre for the Prosecution of the Crime of Aggression Against Ukraine (ICPA), which was established in The Hague at Eurojust with the support of the European Commission.

The ICPA will advance investigations into Russia's war of aggression by providing a forum for Ukraine and partner countries to collaborate in building the strongest possible cases for future prosecution. Prosecutors from multiple legal systems—including our own—are already working together at the ICPA to secure and share key evidence and pursue robust and independent investigations.

The United States is proud to stand with Ukraine and our international partners in reiterating our commitment to upholding the UN Charter and pursuing justice for the crime of aggression. We encourage others to support the ICPA and contribute to international efforts to ensure justice for Ukraine and accountability for Russia's war of aggression.

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On December 6, 2023, the Department of Justice announced the first ever charges under the U.S. war crimes statute against four Russia-affiliated military personnel for violations of the U.S. War Crimes Act in connection with Russia's invasion of Ukraine. See 18 U.S.C. § 2441. The indictment charges the defendants with the war crimes of unlawful confinement of a protected person, torture, and inhuman treatment, and with conspiracy to commit war crimes. The defendants are alleged to have severely beaten and tortured a U.S. national residing in Russia-occupied Ukraine. U.S. law does not provide for in absentia prosecutions; as such, the indictments are in anticipation of proceedings after the United States obtains custody of the individuals. The indictment and other information about the case is available at https://www.justice.gov/opa/pr/four-russia-affiliated-military-personnel-charged-war-crimes-connection-russias-invasion.

Attorney General Merrick Garland delivered remarks on December 6, 2023, announcing the charges, available at https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-announcing-four-russia-affiliated, and excerpted below.

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On February 24, 2022, Russia commenced its full-scale, unprovoked invasion of Ukraine.

In the nearly two years since, we have all seen invading Russian forces commit atrocities on the largest scale in any European armed conflict since the Second World War.

We have all heard the accounts of Ukrainian civilians targeted and executed, Ukrainian children forcibly deported, and Ukrainian women and girls sexually assaulted.

And as the world has witnessed the horrors of Russia's brutal invasion of Ukraine, so has the United States Department of Justice.

That is why the Justice Department has filed the first ever charges under the U.S. war crimes statute against four Russia-affiliated military personnel for heinous crimes against an American citizen. Congress passed the U.S. war crimes statute nearly 30 years ago to give us jurisdiction to prosecute war crimes committed against American citizens abroad.

In an indictment returned yesterday in the Eastern District of Virginia, we have charged four Russia-affiliated military personnel with war crimes against an American citizen living in Ukraine. The charges include conspiracy to commit war crimes, including war crimes outlawed by the international community after World War II — unlawful confinement, torture, and inhuman treatment.

Like all defendants in the U.S. criminal justice system, the defendants in this case are entitled to due process of law and are presumed innocent until proven guilty.

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These charges against four Russia-affiliated military personnel are the Justice Department's first criminal charges under the U.S. war crimes statute. They are also an important step toward accountability for the Russian regime's illegal war in Ukraine. Our work is far from done.

I want to recognize the Criminal Division, including the Human Rights and Special Prosecutions Section and the War Crimes Accountability Team, the U.S. Attorney's Office for the Eastern District of Virginia, the FBI, and the Department of Homeland Security, including Homeland Security Investigations. Their diligent and skillful work is what made these historic charges possible.

I also want to recognize the incredible courage of our partners in Ukraine, specifically our counterparts in the Ukrainian Prosecutor General's Office. In the midst of war, Ukrainian prosecutors and investigators have risked their lives to pursue justice for the Ukrainian people. We are honored to stand alongside them.

Finally, I want to recognize our partners in the international community.

We will continue to work closely alongside them to gather evidence and build cases so that when the time comes, the United States and our partners will be ready to ensure accountability for Russia's war of aggression.

This is an historic day for the Justice Department that builds on a long history.

The War Crimes Accountability Team prosecuting this case is modeled in part on the Justice Department's decades-long effort to identify, denaturalize, and deport Nazi war criminals in the United States.

During that effort, the Department's Office of Special Investigations brought more than 130 cases against perpetrators of Nazi crimes.

In the vast majority of those cases, the perpetrators were not identified until decades after they committed their horrific crimes.

This history should make clear that the Justice Department — and the American people — have a long memory. We will not forget the atrocities in Ukraine. And we will never stop working to bring those responsible to justice.

Throughout our work, we will continue to put our trust in the rule of law.

The rule of law is the best answer we have to crimes that cannot truly be answered.

The rule of law is how we pursue true accountability for the individuals responsible for those crimes, and how we deter future aggression.

And the rule of law is how we pursue justice in a way that protects people, and protects our shared humanity.

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Also on December 6, 2023, Acting Assistant Attorney General Nicole Argentieri delivered remarks, available at https://www.justice.gov/opa/speech/acting-assistant-attorney-general-nicole-m-argentieri-delivers-remarks-announcing-four. Department of Homeland Secretary Mayorkas delivered remarks on December 6, 2023, available at https://www.dhs.gov/news/2023/12/06/secretary-mayorkas-delivers-remarks-us-department-justice-press-conference.

b. Syria

On April 25, 2023, Acting Deputy Legal Adviser Lizzie Grosso delivered remarks at a meeting of the UN General Assembly on "Agenda Item 30(a): Prevention of Armed Conflict." The remarks follow and are available at https://usun.usmission.gov/remarks-at-a-meeting-of-the-general-assembly-on-agenda-item-30a-prevention-of-armed-conflict/.

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The Syrian people have suffered horrific abuses during more than 12 years of brutal war, at the hands of the Assad regime, and at the hands of Da'esh and other terror groups. A sustainable end to the conflict in Syria will require accountability for the atrocities committed, some of which have risen to the level of war crimes and crimes against humanity. Syria cannot achieve reconciliation while criminals continue their abuses with impunity.

Accountability requires dedicated effort, and the United States hails the work of the International, Impartial, and Independent Mechanism (IIIM) in support of investigating and prosecuting these crimes. The IIIM's experts have made remarkable strides in collecting, consolidating, preserving, and analyzing evidence of international humanitarian law violations and human rights violations and abuses. This grim record cannot be erased by time or regime propaganda. Perpetrators of murder, kidnapping, torture, sexual violence, and other crimes can be held to account with this evidence.

The IIIM's focus on inclusive justice is essential, as it recognizes the suffering and harm of women, which are distinct from those of men, and which must be reckoned with. The IIIM's

commitment to seeking justice for children, whose harrowing experience in this war cannot be overstated, will also help the Syrian people recover from this decade of trauma.

The IIIM's work has already paid considerable dividends. Evidence shared with national courts has led to convictions and indictments of regime members who have committed horrific crimes, including the recent indictment of three Assad regime officials in France.

We look forward to more investigations and prosecutions – possibly even here in the United States, thanks to the Justice for Victims of War Crimes Act that President Biden recently signed into law. This historic new law allows the United States to prosecute war crimes committed anywhere, regardless of the nationality of the alleged offender or victim, if offenders come to the United States.

We thank the Head of the IIIM, Catherine Marchi-Uhel, and the dedicated professionals of the IIIM for their work. We also thank the brave Syrians who have come forward, at great personal risk, to share information about the crimes committed in Syria.

We welcome the publication of the IIIM strategic plan. This impressive document lays out a vision for a professional, victim-centered approach to delivering justice, with a clear view of the long-term nature of the pursuit of accountability.

The United States supports the continued work of the IIIM and urges all who value justice and accountability to re-affirm the mandate of the IIIM and support its continued inclusion in the regular budget. We also urge states to make voluntary contributions to allow the IIIM to complete the full range of its mandate and serve the growing number of requests for assistance.

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Cross References

UN Cybercrime Treaty, **Ch.4.B.1**
UN Third Committee on accountability, **Ch. 6.A.3**
HRC on accountability, **Ch. 6.A.4**
Children in Armed Conflict, **Ch. 6.C.1**
UN Sixth Committee on criminal accountability of UN officials, **Ch. 7.A.6**
ICJ, **Ch.7.B**
ILC Draft Articles on Crimes Against Humanity, **Ch. 7.C.1**
ILC Draft Articles on criminal immunity of state officials, **Ch. 7.C.4**
U.S. v. Saab Moran *(case relating to diplomatic immunity from criminal prosecution),* **Ch. 10.D.3**
U.S. v. Dávila-Reyes and U.S. v. Reyes Valdiva *(case related to drug trafficking in violation of the Maritime Drug Law Enforcement Act)*, **Ch. 12.A.3**
Nature crime, **Ch. 13.C.4**
Cyber sanctions, **Ch. 16.A.10**
Terrorism sanctions, **Ch. 16.A.9**
Specially designated global terrorists, **Ch. 16.A.9**
Sanctions related to corruptions and human rights, **Ch. 16.A.11**
OFAC designation of Vitel'Homme Innocent, **Ch. 16.A.11**
Sanctions related to transnational organized crime and global drug trade, **Ch. 16.A.13**
Atrocities in Burma, **Ch.17.C.3**
Atrocities in Northern Ethiopia, **Ch.17.C.5**
Atrocities in Ukraine, **Ch.17.C.4**
Atrocities in Sudan, **Ch. 17.C.6**

CHAPTER 4

Treaty Affairs

A. TREATY LAW IN GENERAL

1. Publication, Coordination, and Reporting of International Agreements

On October 2, 2023, the State Department published a rulemaking that amended 22 CFR part 181 to reflect the enactment of Section 5947 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA), Pub. L. 117-263. 88 Fed. Reg. 67,643 (Oct. 2, 2023). Section 5947 of the 2023 NDAA amended the Case-Zablocki Act (1 U.S.C. 112b), which requires coordination with the Secretary of State prior to concluding international agreements, and timely reporting to Congress of concluded international agreements upon entry into force. Section 5947 of the 2023 NDAA contains several amendments to the Act that modify the reporting and listing requirements for international agreements. The NDAA also enacted for the first-time monthly reporting and publication requirements for "qualifying non-binding instruments" that "could reasonably be expected to have a significant impact on the foreign policy of the United States." See *Digest 2022* at 127. The amendments to 22 CFR part 181 add new criteria for identification of qualifying non-binding instruments and establishing a process for assessing whether particular non-binding instruments constitute "qualifying non-binding instruments" within the meaning of the statute. The amendments also address additional congressional reporting and publication requirements for international agreements and "qualifying non-binding instruments" as set out in the statute. On December 19, 2023, the State Department finalized the October 2, 2023 regulations. 88 Fed. Reg. 87,671 (Dec. 19, 2023).

2. The UN Treaty System

On October 18, 2023, Mark Simonoff, Legal Adviser of the U.S. Mission to the UN, addressed a meeting of the UN General Assembly Sixth Committee (Legal) on "Agenda

Item 87: Strengthening and Promoting the International Treaty Framework." The remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-meeting-of-the-sixth-committee-on-agenda-item-87-strengthening-and-promoting-the-international-treaty-framework/.

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The United States welcomes the opportunity to discuss strengthening and promoting the international treaty framework. In connection with this topic, we are pleased that the Committee is addressing best practices of depositaries of multilateral instruments.

We greatly appreciate the depositary work of the Secretary-General of the United Nations, including the adoption of an electronic system for depositary communications. The United States is depositary for more than 200 multilateral instruments. On January 1, 2020, we also moved to an electronic system for dissemination of all depositary communications. In doing so, we found the United Nations' system provided a helpful model.

In our experience, the electronic dissemination of depositary information has proven to be an effective and efficient means of communicating information. We encourage other states that are serving as depositaries similarly to consider ways in which electronic systems may contribute to their performance of depositary functions. We further encourage depositaries to maintain up-to-date websites that make publicly available the status information of signatories and parties.

In addition, we suggest that states that are parties to multilateral treaties make use of electronic depositary notification systems by subscribing to receive from depositaries information about treaty actions. Such systems typically allow states to tailor the information they receive and enable them to receive that information in a timely manner.

We hope to see continued expansion and utilization of electronic depositary notification systems, as the United States considers these systems to reflect depositary best practice.

Finally, we appreciate the work done in recent years to substantially revise the Secretariat's treaty registration and publication regulations, and, in light of those changes, we do not see a need for further revisions to those regulations at this time.

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B. NEGOTIATION, CONCLUSION, ENTRY INTO FORCE, ACCESSION, WITHDRAWAL, TERMINATION

1. Negotiation of UN Cybercrime Treaty

The United States participated in the sixth negotiating session of the Ad Hoc Committee (AHC) to elaborate a UN cybercrime convention convened in New York from August 21, 2023 to September 1, 2023. The session launched an in-depth negotiation of a draft text. On August 21, 2023, the State Department issued a media note on the sixth session, available at https://www.state.gov/ad-hoc-committee-to-elaborate-a-un-

cybercrime-convention-sixth-negotiating-session-at-the-united-nations-in-new-york/, and includes the following:

> The United States continues to seek consensus on the adoption of a narrowly focused criminal justice instrument that advances international cooperation to fight cybercrime, while respecting human rights and supporting multistakeholder engagement.

2. Treaties Transmitted by the President

On December 18, 2023, President Biden transmitted two bilateral maritime boundary treaties: the Treaty between the United States of American and the Republic of Cuba on the Delimitation of the Continental Shelf in the Eastern Gulf of Mexico beyond 200 Nautical Miles (the "United States-Cuba Treaty"), and the Treaty between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Maritime Boundary in the Eastern Gulf of Mexico (the "United States-Mexico Treaty") (the "Treaties"), to the U.S. Senate for its advice and consent to ratification. The Treaties were signed at Washington January 18, 2017. Treaty Doc. 118-1. The texts of the Treaties are available at https://www.congress.gov/118/cdoc/tdoc1/CDOC-118tdoc1.pdf. The President's message to the Senate on transmittal is available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/18/message-to-the-senate-transmitting-two-maritime-treaties/, and excerpted below.

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The purpose of the Treaties is to establish our continental shelf boundaries in the eastern Gulf of Mexico with Cuba and Mexico in areas beyond 200 nautical miles from shore. The United States-Cuba Treaty establishes a maritime boundary of approximately 30 nautical miles in length, and the United States-Mexico Treaty establishes a maritime boundary of approximately 79 nautical miles in length. The boundaries define the limit within which each country may exercise maritime jurisdiction with respect to its portion of the continental shelf. The boundaries address the only remaining area in the Gulf of Mexico where the maritime boundaries between the United States and its neighbors had not been agreed.

The United States-Cuba Treaty also establishes procedures for addressing the possibility of oil and gas reservoirs that extend across the continental shelf boundary, which will help protect related United States interests. With respect to Mexico, such procedures were developed and set forth in a separate agreement that is already in force, as described in the report of the Department of State accompanying this message.

I believe the Treaties to be fully in the interest of the United States. In light of the relevant coastal geography, the Treaties allocate approximately two-thirds of the area in question to the United States, and they provide legal certainty with respect to United States sovereign rights and jurisdiction over the continental shelf.

I recommend that the Senate give early and favorable consideration to the Treaties, and give its advice and consent to ratification.

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Cross References

Additional Protocol to the Agreement for Cooperation in the Examination of Refugee Status Claims from National of Third Countries, **Ch. 1.C.4**
Convention on Intercountry Adoption, **Ch. 2.B.1.d**
U.S.-Israel Agreement on Enhancing Cooperation in Preventing and Combatting Serious Crime and Terrorism, **Ch. 3.A.3**
UN Convention against Corruption, **Ch. 3.B.5.b**
Negotiations relating to Compacts of Free Association, **Ch. 5.C**
UN Third Committee on Human Rights Treaty Bodies, **Ch. 6.A.3.b**
Negotiations for an Instrument on Business and Human Rights, **Ch. 6.H**
Ukraine's Allegations against Russia under the Convention on the Prevention and Punishment of the Crime of Genocide, **Ch. 7.B.2.b**
Negotiations with Canada concerning the Transit Pipelines Treaty, **Ch. 8.D**
Air Transport Agreements, **Ch. 11.A.1**
U.S.-Taiwan Trade Agreement, **Ch. 11.D.2**
U.S.-Chile Tax Treaty, **Ch. 11.F.4**
Outer Space Cooperation Agreements, **Ch. 12.B.1**
International instrument to combat ocean plastic pollution, **Ch. 13.B.5**
International instrument on pandemic prevention, preparedness, and response, **Ch. 13.C.5.b(i)**
BBNJ Agreement or High Seas Treaty, **Ch. 13.C.2**
Colombia River Treaty negotiations, **Ch. 13.C.1**
Cultural property agreements, **Ch. 14.A**
Child Support Convention, **Ch. 15.B**
Defense agreements and arrangements, **Ch. 18.A.6**
Convention on Certain Conventional Weapons, **Ch. 18.B.2**
Nuclear arrangements and agreements, **Ch. 19.B**
Russia's Purported Suspension of Participation in the New START Treaty, **Ch. 19.C.1**
Chemical Weapons Convention, **Ch. 19.D.2**
Biological and Toxin Weapons Convention, **Ch. 19.D.3**

CHAPTER 5

Foreign Relations

A. LITIGATION INVOLVING FOREIGN RELATIONS, NATIONAL SECURITY, AND FOREIGN POLICY ISSUES

1. *Fuld* and other cases under the Promoting Security and Justice for Victims of Terrorism Act

Fuld v. Palestinian Liberation Organization ("PLO"), No. 20-cv-03374 (S.D.N.Y), and the similar cases of *Sokolow v. PLO*, No. 04-cv-00397 (S.D.N.Y) and *Shatsky v. PLO*, No. 18-cv-12355 (S.D.N.Y.) concern the constitutionality of the jurisdictional provisions of the Antiterrorism Clarification Act, as amended in 2019 by the Promoting Security and Justice for Victims of Terrorism Act, Further Consolidated Appropriations Act, 2020, Division J, title IX, sec. 903, Pub. L. 116-94, 133 Stat. 2534 ("PSJVTA"), codified at 18 U.S.C. § 2334(e). See *Digest 2021* at 143-50 for a discussion of 2021 U.S. briefs in *Fuld*. See also *Digest 2022* at 133-45 for a discussion of the 2022 district court finding that the PSJVTA's personal jurisdiction provisions are unconstitutional and the United States' appeal to the U.S. Court of Appeals for the Second Circuit. See *Fuld v. PLO*, 578 F. Supp. 3d 577 (S.D.N.Y. 2022).. On September 8, 2023, the United States Court of Appeals for the Second Circuit held that the deemed consent to personal jurisdiction provisions of the PSJVTA are not consistent with due process under the Fifth Amendment. See *Fuld v. PLO,* 82 F.4th 74 (2d. 2023). Excerpts from the Court's opinion follows (with footnotes omitted).

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A.

Consent to personal jurisdiction is a voluntary agreement on the part of a defendant to proceed in a particular forum. See Nat'l Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311, 316, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964) (a defendant "may agree ... to submit to the jurisdiction of a given court"); J.

McIntyre Mach., 564 U.S. at 880–81, 131 S.Ct. 2780 (plurality opinion) ("explicit consent" is among the "circumstances, or ... course[s] of conduct, from which it is proper to infer ... an intention to submit to the laws of the forum"); Knowlton v. Allied Van Lines, Inc., 900 F.2d 1196, 1199 (8th Cir. 1990) ("A defendant may voluntarily consent or submit to the jurisdiction of a court which otherwise would not have jurisdiction over it."). In several of its decisions, including, most recently, Mallory v. Norfolk Southern Railway Co., 600 U.S. 122, 143 S. Ct. 2028, 216 L.Ed.2d 815 (2023), the Supreme Court has explained why such consent suffices to establish personal jurisdiction: "Because the [due process] requirement of personal jurisdiction [is] first of all an individual right, it can, like other such rights, be waived." Ins. Corp. of Ireland, 456 U.S. at 703, 102 S.Ct. 2099; see Burger King, 471 U.S. at 472 n.14, 105 S.Ct. 2174 ("[T]he personal jurisdiction requirement is a waivable right[.]"); Mallory, 143 S. Ct. at 2043 (plurality opinion) ("[P]ersonal jurisdiction is a personal defense that may be waived or forfeited." (emphasis in original)); id. at 2051 (Alito, J., concurring in part and concurring in the judgment) ("If a person voluntarily waives th[e] [personal jurisdiction] right, that choice should be honored."). Thus, when a defendant has validly consented to personal jurisdiction, a court may exercise authority over that defendant in conformity with the Due Process Clause, even in the absence of general or specific jurisdiction. See, e.g., Mallory, 143 S. Ct. at 2039 (plurality opinion) (explaining that "consent can ... ground personal jurisdiction" apart from a defendant's forum contacts (internal quotation marks omitted)); see also Knowlton, 900 F.2d at 1199.

The Supreme Court has recognized a "variety of legal arrangements [that] have been taken to represent express or implied consent" to personal jurisdiction consistent with due process. Ins. Corp. of Ireland, 456 U.S. at 703, 102 S.Ct. 2099; see Mallory, 143 S. Ct. at 2038 n.5 (majority opinion). For example, a defendant's consent to personal jurisdiction may be implied based on litigation-related conduct, or where a defendant accepts a benefit from the forum in exchange for its amenability to suit in the forum's courts. See, e.g., Ins. Corp. of Ireland, 456 U.S. at 703–05, 102 S.Ct. 2099; Mallory, 143 S. Ct. at 2033 (majority opinion); id. at 2041 n.8 (plurality opinion). In such cases, it is often fair and reasonable to infer the defendant's voluntary agreement to submit itself to a court's authority. But consent cannot be found based solely on a government decree pronouncing that activities unrelated to being sued in the forum will be "deemed" to be "consent" to jurisdiction there. 18 U.S.C. § 2334(e)(1); cf. Ins. Corp. of Ireland, 456 U.S. at 705, 102 S.Ct. 2099 (distinguishing between litigation-related conduct that establishes personal jurisdiction and "mere assertions of ... power" over a defendant (quoting Chicago Life Ins. Co. v. Cherry, 244 U.S. 25, 29, 37 S.Ct. 492, 61 L.Ed. 966 (1917))). A prospective defendant's activities do not signify consent to personal jurisdiction simply because Congress has labeled them as such.

Thus, while "[a] variety of legal arrangements ... [may] represent ... consent to ... personal jurisdiction," id. at 703, 102 S.Ct. 2099, the PSJVTA is not among them. The PSJVTA's provision for consent-based jurisdiction over the PLO and the PA, in which Congress has "deemed" the continuation of certain conduct to constitute "consent," falls outside any reasonable construction of valid consent to proceed in a particular forum's courts.

1.

We begin with some of the "various ways" in which "consent may be manifested," either "by word or [by] deed." Mallory, 143 S. Ct. at 2039 (plurality opinion). It is well-established that a defendant may expressly consent to personal jurisdiction in a particular court by contract, usually through an agreed-upon forum-selection clause. See Ins. Corp. of Ireland, 456 U.S. at 703–04, 102 S.Ct. 2099; see also Szukhent, 375 U.S. at 316, 84 S.Ct. 411 ("[P]arties to a contract

may agree in advance to submit to the jurisdiction of a given court."). So long as such "forum-selection provisions have been obtained through 'freely negotiated' agreements and are not 'unreasonable and unjust,' their enforcement [against a defendant] does not offend due process." Burger King, 471 U.S. at 472 n.14, 105 S.Ct. 2174 (quoting Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972)); see also Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 595, 111 S.Ct. 1522, 113 L.Ed.2d 622 (1991) ("[F]orum selection clauses ... are subject to judicial scrutiny for fundamental fairness."). Likewise, a court may exercise authority over a defendant on the basis of express consent provided in a stipulation. See Ins. Corp. of Ireland, 456 U.S. at 704, 102 S.Ct. 2099; Petrowski v. Hawkeye-Sec. Co., 350 U.S. 495, 496, 76 S.Ct. 490, 100 L.Ed. 639 (1956) (per curiam) ("[The] respondent, by its stipulation, waived any right to assert a lack of personal jurisdiction over it.").

The Supreme Court has acknowledged that a defendant may, in certain circumstances, impliedly consent to personal jurisdiction through litigation-related conduct. See, e.g., Ins. Corp. of Ireland, 456 U.S. at 703–05, 102 S.Ct. 2099. Such conduct includes a defendant's voluntary in-court appearance, see id. at 703, 102 S.Ct. 2099, unless the defendant has appeared for the limited purpose of contesting personal jurisdiction (in which case, the defendant typically preserves the defense), see Mallory, 143 S. Ct. at 2044 (plurality opinion). Moreover, in keeping with the principle that "[t]he expression of legal rights is often subject to certain procedural rules," a defendant's "failure to follow [such] rules" with regard to personal jurisdiction may "result in a curtailment of [its] right[ ]" to enforce that requirement. Ins. Corp. of Ireland, 456 U.S. at 705, 102 S.Ct. 2099. "Thus, the failure to enter a timely objection to personal jurisdiction constitutes, under Rule 12(h)(1), a waiver of the objection." Id. Similarly, a defendant's failure to comply with certain pretrial orders concerning jurisdictional discovery may justify a "sanction under Rule 37(b)(2)(A) consisting of a finding of personal jurisdiction." Id. The Supreme Court has found that other litigation activities can subject a litigant to personal jurisdiction as well. See, e.g., id. at 704, 102 S.Ct. 2099; Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448, 451, 52 S.Ct. 238, 76 L.Ed. 389 (1932).

The Supreme Court has also recognized that a prospective defendant may be subject to personal jurisdiction if it has accepted a government benefit from the forum, in return for which the defendant is required to submit itself to suit in the forum. See Mallory, 143 S. Ct. at 2044 (plurality opinion) (explaining that personal jurisdiction may exist where the defendant has "accept[ed] an in-state benefit with jurisdictional strings attached"). The Supreme Court's recent decision in Mallory highlighted such an arrangement: Mallory approved the exercise of consent-based jurisdiction pursuant to a state business registration statute that "require[d] an out-of-state firm to answer any suits against it in exchange for status as a registered foreign corporation and the benefits that entails." Id. at 2033 (majority opinion). A plurality of the Justices noted that this sort of "exchange" between the defendant and the forum — in other words, "consent to suit in exchange for access to a State's markets" — "can signal consent to jurisdiction" in at least some cases. Id. at 2041 n.8 (plurality opinion) (alterations adopted).

The litigation-related activities or reciprocal bargains described above, just like "explicit consent," can supply a basis "from which it is proper to infer ... an intention to submit" to the forum, J. McIntyre Mach., 564 U.S. at 880–81, 131 S.Ct. 2780 (plurality opinion), or are otherwise "of such a nature as to justify the fiction" of consent to a court's authority, Int'l Shoe, 326 U.S. at 318, 66 S.Ct. 154; see also Ins. Corp. of Ireland, 456 U.S. at 705, 102 S.Ct. 2099 (explaining, with regard to litigation conduct, that "due process [is] secured" where the conduct supports a "presumption of fact" as to the existence of personal jurisdiction). Under such

circumstances, the assertion of consent-based personal jurisdiction does "not offend traditional notions of fair play and substantial justice," and is therefore consistent with constitutional due process. Ins. Corp. of Ireland, 456 U.S. at 702–03, 102 S.Ct. 2099 (quoting Int'l Shoe, 326 U.S. at 316, 66 S.Ct. 154).

2.

The appellants argue that the PSJVTA's "deemed consent" provision subjects the PLO and the PA to personal jurisdiction in a manner consistent with due process limits. But the statute's terms are insufficient to establish the defendants' valid consent, either express or implied, to waive their constitutional right not to be sued in a court that lacks personal jurisdiction over them.

It is undisputed that this case does not involve a defendant's express consent in any form — and for that reason, the plaintiffs' argument that a finding of consent "follows a fortiori from" Carnival Cruise is misplaced. See Pls.' Br. at 12–13, 28–29. In that case, the Supreme Court held that a specific forum-selection clause in a cruise ticket was enforceable against the parties who had assented to the agreement at issue. See Carnival Cruise, 499 U.S. at 587–89, 111 S.Ct. 1522. The decision in Carnival Cruise did not "infer[ ] consent" at all, see Pls.' Br. at 27–29, but instead enforced the express jurisdiction-conferring language of a contract after accounting for considerations of notice and fundamental fairness. See Carnival Cruise, 499 U.S. at 593–95, 111 S.Ct. 1522.

The appellants characterize the PSJVTA as establishing implied consent, but the statute provides no basis for a finding that the defendants have agreed to submit to the jurisdiction of the United States courts. The PSJVTA does not purport to determine that any litigation-related conduct on the part of the PLO or the PA constitutes implied consent to jurisdiction. Nor does the PSJVTA require submission to the federal courts' jurisdiction in exchange for, or as a condition of, receiving some in-forum benefit or privilege. Instead, Congress selected certain non-litigation activities in which the PLO and the PA had already engaged (or were alleged to have engaged) and decreed that those activities, if continued or resumed after a certain date, "shall be deemed" to constitute "consent[ ] to personal jurisdiction." 18 U.S.C. § 2334(e)(1); see, e.g., Klieman, 923 F.3d at 1123–24, 1127, 1129–30 (describing allegations of PLO and PA activity in the United States); Taylor Force Act § 1002, 132 Stat. at 1143 (discussing the relevant payments). The defendants' support for terrorism not targeted at the United States and their limited activities within the United States have already been found to be insufficient to establish general or specific jurisdiction over the PLO and the PA in similar ATA cases, see, e.g., Waldman I, 835 F.3d at 339–42, and those same activities cannot reasonably be interpreted as signaling the defendants' "intention to submit" to the authority of the United States courts, see J. McIntyre Mach., 564 U.S. at 881, 131 S.Ct. 2780 (plurality opinion). Rather, such activities allegedly constitute "consent" under the PSJVTA only because Congress has labeled them that way. Thus, under the statute, the defendants incur a jurisdictional penalty for the continuation of conduct that they were known to partake in before the PSJVTA's enactment — conduct which, on its own, cannot support a fair and reasonable inference of the defendants' voluntary agreement to proceed in a federal forum. This declaration of purported consent, predicated on conduct lacking any of the indicia of valid consent previously recognized in the case law, fails to satisfy constitutional due process.

Pursuant to the PSJVTA's first prong, the PLO and the PA "shall be deemed to have consented to personal jurisdiction" for "mak[ing] any payment" to the designees of incarcerated terrorists, or to the families of deceased terrorists, whose acts of terror "injured or killed a

national of the United States." 18 U.S.C. § 2334(e)(1)(A). This specific non-litigation conduct cannot reasonably be understood as signaling the defendants' agreement to submit to the United States courts. Accordingly, the effect of the first prong is to subject the defendants to a jurisdictional sanction — "deemed consent" to the federal courts' authority — for continuing to make the payments at issue. Illustrating the point, the appellants themselves repeatedly emphasize that the PSJVTA's first prong serves to deter a congressionally disfavored activity. See, e.g., Pls.' Br. at 11 (the first prong "incentivizes [the] [d]efendants to halt the universally condemned practice of making [the] payments" at issue); Intervenor Br. at 25–26 (the first prong "discourage[s]" payments that Congress has linked to terrorist activity). But Congress has a variety of other tools at its disposal for discouraging the payments in question. See, e.g., 22 U.S.C. § 2378c-1(a)(1)(B) (barring certain U.S. foreign aid that "directly benefits" the PA until both the PLO and the PA have "terminated" the relevant payments). Imposing consent to personal jurisdiction as a consequence for those payments, and thereby divesting the defendants of their Fifth Amendment liberty interest, is not among them.

The second prong of the PSJVTA similarly specifies predicate conduct that does not evince the defendants' agreement to subject themselves to the jurisdiction of the United States courts. This prong provides that the PLO and the PA "shall be deemed to have consented to personal jurisdiction" for "maintain[ing] any office" or "conduct[ing] any activity while physically present in the United States," with a limited set of exceptions. 18 U.S.C. § 2334(e)(1)(B). The appellants repeatedly suggest that this prong is consistent with relevant precedents because it "[c]ondition[s] permission" for the defendants to engage in such activities, and to receive the attendant benefits of doing so, "on their consent to personal jurisdiction in ATA actions." Intervenor Br. at 24; see Pls.' Br. at 48 (the defendants' "receipt of [certain] benefits" is "condition[ed] ... on their consent"). But this characterization is inaccurate, given that the statute does not provide the PLO or the PA with any such benefit or permission. With the exception of UN-related conduct and offices, which are protected pursuant to international treaty (and which, as set forth in 18 U.S.C. § 2334(e)(3), are exempt from the PSJVTA's second prong), federal law has long prohibited the defendants from engaging in any activities or maintaining any offices in the United States, absent specific executive or statutory waivers. See, e.g., Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria, 937 F.2d 44, 46, 51 (2d Cir. 1991) (explaining that "the PLO is prohibited from engaging in any activities in this country other than the maintenance of a mission to the UN"). The PSJVTA does not purport to relax or override these prohibitions, and the appellants have not identified any other change in existing law (for example, a statutory or executive waiver) that would otherwise authorize the restricted conduct. Thus, the statute's second prong cannot reasonably be construed as requiring a defendant's consent to jurisdiction in exchange for permission to engage in the predicate activities, because the defendants have not been granted permission to engage in those activities at all. Instead, the second prong exacts "deemed" consent as a price to be paid upon "conduct[ing] [such] activit[ies]," 18 U.S.C. § 2334(e)(1)(B), without conferring any rights or benefits on the defendants in return.

The appellants argue that the PSJVTA is constitutionally sound because it gives the defendants "fair warning" of the relevant jurisdiction-triggering conduct and "reasonably advances legitimate government interests in the context of our federal system." Pls.' Br. at 11. They derive this standard from a variety of cases describing basic principles of due process, including the Supreme Court's decisions on specific jurisdiction in Ford Motor Co., ––– U.S. ––––, 141 S. Ct. 1017, 209 L.Ed.2d 225, and Burger King, 471 U.S. 462, 105 S.Ct. 2174. However,

the concepts of "fair warning" and "legitimate government interests" establish only minimum due process requirements. These generalizations about due process do not resolve the precise issue in this case, which is whether the defendants have consented to suit in the absence of general or specific jurisdiction. None of the cases on which the appellants rely to support their broad due process test purported to answer that question.

Tellingly, the appellants have cited no case implying consent to personal jurisdiction under circumstances similar to those in this action. Instead, all of the appellants' authorities concerning such implied consent involved a defendant's litigation-related conduct, or a defendant's acceptance of some in-forum benefit conditioned on amenability to suit in the forum's courts. Those cases premised consent on activities from which it was reasonable to infer a defendant's submission to personal jurisdiction, but that is not the situation here.

For example, in Insurance Corporation of Ireland, a decision that the appellants have relied on extensively, a defendant appeared before the district court to assert a personal jurisdiction defense, but then repeatedly failed to comply with discovery orders "directed at establishing jurisdictional facts" related to its contacts with the forum. 456 U.S. at 695, 102 S.Ct. 2099; see id. at 698–99, 102 S.Ct. 2099. The district court accordingly imposed a discovery sanction pursuant to Federal Rule of Civil Procedure 37(b)(2)(A), which provides that certain facts may "be taken as established" when a party "fails to obey a[ ] [discovery] order" concerning those facts. Fed. R. Civ. P. 37(b)(2)(A). Consistent with that Rule, the district court treated the nonresident defendant's forum contacts as having been proven, which in turn established personal jurisdiction. See Ins. Corp. of Ireland, 456 U.S. at 695, 699, 102 S.Ct. 2099.

The Supreme Court rejected the defendant's argument that this discovery sanction violated due process. Id. at 696, 102 S.Ct. 2099. Relying on its previous decision in Hammond Packing Co. v. Arkansas, 212 U.S. 322, 29 S.Ct. 370, 53 L.Ed. 530 (1909), the Supreme Court explained that the "preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense." Ins. Corp. of Ireland, 456 U.S. at 705, 102 S.Ct. 2099 (quoting Hammond Packing, 212 U.S. at 350–51, 29 S.Ct. 370). In other words, the defendant's "failure to supply the requested information as to its contacts with [the forum]," after "[h]aving put the issue in question," could fairly be construed as a tacit acknowledgment that the sought-after facts would establish personal jurisdiction. Id. at 709, 102 S.Ct. 2099.

The current case bears no resemblance to Insurance Corporation of Ireland. In contrast to the "actions of the defendant" at issue there, id. at 704, 102 S.Ct. 2099, the relevant conduct under the PSJVTA takes place entirely outside of the litigation. Moreover, the Supreme Court made clear that the application of the Hammond Packing presumption in Insurance Corporation of Ireland, along with the exercise of personal jurisdiction that followed from it, was appropriate only because the defendant's litigation conduct related to whether personal jurisdiction existed. To underscore the point, the Supreme Court distinguished Hovey v. Elliott, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897), which held that due process was violated where a court rendered judgment against a defendant "as 'punishment' for failure" to pay a certain fee — conduct plainly unrelated to any "asserted defense" in that case. Ins. Corp. of Ireland, 456 U.S. at 705–06, 102 S.Ct. 2099. The effect of the PSJVTA is similar: the statute subjects the defendants to the authority of the federal courts for engaging in conduct with no connection to the establishment of personal jurisdiction, and indeed with no connection to litigation in the United States at all.

With respect to non-litigation conduct, the appellants rely heavily on cases finding consent to jurisdiction based on business registration statutes, which the plaintiffs described at oral argument as "no different" from the PSJVTA. However, the Supreme Court's recent decision in Mallory makes plain why those statutes are readily distinguishable. Mallory arose out of a Virginia resident's lawsuit in Pennsylvania state court against his former employer, a Virginia railroad corporation, for damages sustained as a result of work in Virginia and Ohio. See 143 S. Ct. at 2032–33. The plaintiff argued that the defendant had consented to personal jurisdiction in Pennsylvania when it registered as a foreign corporation under Pennsylvania law, which "requires out-of-state companies that register to do business in the [state] to agree to appear in its courts on 'any cause of action' against them." Id. at 2033 (quoting 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b) (2019)); see also id. at 2037 (noting that the Pennsylvania statute "explicit[ly]" provides for general jurisdiction over registered foreign ***95** corporations). The defendant did not dispute that it had registered under the Pennsylvania statute, but it "resisted [the plaintiff's] suit on constitutional grounds," raising the question of "whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there." Id. at 2033.

The Supreme Court rejected this due process challenge and held that the defendant was subject to jurisdiction in Pennsylvania based on the state's business registration statute. See id. at 2032, 2037–38. The majority reasoned that the case fell "squarely within [the] rule" of Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co., 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610 (1917), see Mallory, 143 S. Ct. at 2038, which, in the words of the plurality, established that the type of business registration statute at issue "comport[s] with the Due Process Clause," id. at 2033 (plurality opinion). Pennsylvania Fire specifically upheld the exercise of personal jurisdiction pursuant to a Missouri state law "requir[ing] any out-of-state insurance company desiring to transact any business in the State to ... accept service on [a particular state] official as valid in any suit." Id. at 2036 (plurality opinion) (internal quotation marks omitted). In that case, "there was 'no doubt' [the out-of-state insurance company] could be sued in Missouri by an out-of-state plaintiff on an out-of-state contract," because the corporation "had agreed to accept service of process in Missouri on any suit as a condition of doing business there." Id. (plurality opinion) (quoting Pennsylvania Fire, 243 U.S. at 95, 37 S.Ct. 344).

That language — "as a condition of doing business there" — explains why the statutes at issue in both Pennsylvania Fire and Mallory could support a finding of implied consent to personal jurisdiction. Consent may be fairly inferred when a prospective defendant "voluntarily invoke[s] certain [in-forum] benefits ... conditioned on submitting to the [forum's] jurisdiction," because the acceptance of the benefit implicitly signals the defendant's agreement to appear in the forum's courts. Id. at 2045 (Jackson, J., concurring). Put differently, a defendant may give its consent as part of a bargain: the defendant seeks and obtains a benefit that the forum has to offer, and the defendant agrees to be sued in that jurisdiction in exchange. Thus, the statute at issue in Mallory supported a finding of consent to jurisdiction because it "gave the [defendant] the right to do business in-state in return for agreeing to answer any suit against it." 143 S. Ct. at 2041 (plurality opinion). Indeed, in discussing why such statutes count among the "legal arrangements [that] may represent ... implied consent ... consistent with due process," both the majority and the plurality referred repeatedly to this sort of "exchange."12 Id. at 2044 n.10 (plurality opinion) (internal quotation marks omitted and alterations adopted); see also id. at 2044 (plurality opinion) ("[A]ccepting an in-state benefit with jurisdictional strings attached ...

can carry with [it] profound consequences for personal jurisdiction."). The plurality also stressed the fundamental fairness of Mallory's outcome, given the scale of the defendant's operations in the state. See id. at 2041–43. Because the defendant "had taken full advantage of its opportunity to do business" in the forum, the plurality found no due process concern in enforcing its consent to jurisdiction against it. Id. at 2041.

Mallory therefore underscores the lack of merit in the appellants' asserted analogy between the PSJVTA and business registration statutes. The PSJVTA does not require that the PLO and the PA consent to jurisdiction as a condition of securing a legal right to do business in the United States, which remains prohibited under current law, or to conduct any other presently unauthorized activity. Indeed, the statute does not offer any in-forum benefit, right, or privilege that the PLO and the PA could "voluntarily invoke" in exchange for their submission to the federal courts. Mallory, 143 S. Ct. at 2045 (Jackson, J., concurring). The defendants in this case cannot be said to have accepted some in-forum benefit in return for an agreement to be amenable to suit in the United States.13

The appellants' other examples of consent statutes are distinguishable on the same grounds. For example, the plaintiffs point to the state law at issue in Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927), which provided that a nonresident motorist's use of the public roads "shall be deemed equivalent" to appointing an agent for service of process in actions "growing out of any accident or collision in which said nonresident may be involved." Id. at 354, 47 S.Ct. 632 (internal quotation marks omitted). Such a statute conditions "the use of the highway," an in-state benefit from which states may "exclude" nonresidents, on the nonresident's "consent" to personal jurisdiction. Id. at 356–57, 47 S.Ct. 632. Indeed, the statute itself was phrased in those terms: it stated that "[t]he acceptance by a nonresident of the rights and privileges" associated with "operating a motor vehicle ... on a public way in the [state]" would be a "signification of his agreement" to service. Id. at 354, 47 S.Ct. 632 (internal quotation marks omitted). The same logic applies to state statutes providing that state courts, in certain classes of cases, can exercise consent-based jurisdiction over nonresident officers and directors of a business incorporated under that state's laws. See Pls.' Br. at 29 (citing Hazout v. Tsang Mun Ting, 134 A.3d 274, 289 (Del. 2016)). In "accepting and holding" the position of officer or director, Hazout, 134 A.3d at 277, a "privilege" that carries with it "significant [state-law] benefits and protections," id. at 292 n.66 (quoting Armstrong v. Pomerance, 423 A.2d 174, 176 (Del. 1980)), a nonresident can be said to have signaled an agreement to the jurisdictional consequences.

In short, when a potential defendant accepts a government benefit conditioned on submitting to suit in the forum, such conduct may fairly be understood as consent to jurisdiction there. The same is often true when a defendant engages in litigation conduct related to the existence of personal jurisdiction. But in the PSJVTA, Congress has simply declared that specific activities of the PLO and the PA — namely, certain payments made outside of the United States, and certain operations within the United States (which remain unlawful) — constitute "consent" to jurisdiction. No aspect of these allegedly jurisdiction-triggering activities can reasonably be interpreted as evincing the defendants' "intention to submit" to the United States courts. J. McIntyre, 564 U.S. at 881, 131 S.Ct. 2780 (plurality opinion). Congress cannot, by legislative fiat, simply "deem" activities to be "consent" when the activities themselves cannot plausibly be construed as such. Cf. McDonald v. Mabee, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608 (1917) (noting that, in "exten[ding] ... the means of acquiring [personal]

jurisdiction," "great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact").

Like the district court, we need not decide whether, "under different circumstances, Congress or a state legislature could constitutionally 'deem' certain conduct to be consent to personal jurisdiction." Fuld, 578 F. Supp. 3d at 587. But for such a statute to pass muster, "the predicate conduct would have to be a much closer proxy for actual consent than the predicate conduct at issue" here. Id. Because the PSJVTA's predicate activities cannot reasonably be understood as signifying the defendants' consent, the statute does not effect a valid waiver of the defendants' due process protection against the "coercive power" of a foreign forum's courts. Goodyear, 564 U.S. at 918, 131 S.Ct. 2846; see Waldman I, 835 F.3d at 328, 329.

B.

Our conclusion also follows from College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666, 119 S.Ct. 2219, 144 L.Ed.2d 605 (1999). That decision concerned a federal statute, the Trademark Remedy Clarification Act ("TRCA"), which provided that states would forgo their Eleventh Amendment immunity from federal Lanham Act litigation if they committed "any violation" of the Lanham Act's prohibitions on false and misleading advertising. Id. at 670, 119 S.Ct. 2219 (quoting 15 U.S.C. § 1122(b)). As relevant here, the petitioner argued that a state could be said to have " 'impliedly' or 'constructively' waived its immunity" upon engaging in the relevant predicate conduct — namely, "the activities regulated by the Lanham Act" — after "being put on notice by the clear language of the TRCA that it would be subject to [suit] for doing so." Id. at 669, 676, 680, 119 S.Ct. 2219.

The Supreme Court rejected that proposition. It concluded that even with "unambiguous[ ]" advance notice from Congress, a state's "voluntarily elect[ing] to engage in the federally regulated conduct" at issue would not suffice to render the state suable. Id. at 679–81, 119 S.Ct. 2219. Such conduct, the Supreme Court explained, supplied no basis "to assume actual consent" to suit in federal court. Id. at 680, 119 S.Ct. 2219. To hold otherwise would ignore the "fundamental difference between a State's expressing unequivocally that it waives its immunity" (in which case, one can "be certain that the State in fact consents to suit") and "Congress's expressing unequivocally its intention that if the State takes certain action it shall be deemed to have waived that immunity." Id. at 680–81, 119 S.Ct. 2219. The decision explained:

> In the latter situation, the most that can be said with certainty is that the State has been put on notice that Congress intends to subject it to suits brought by individuals. That is very far from concluding that the State made an altogether voluntary decision to waive its immunity.

Id. at 681, 119 S.Ct. 2219 (emphasis in original) (internal quotation marks omitted). The Supreme Court also saw no merit in the notion that a state could be "deemed to have constructively waived its sovereign immunity" simply because "the asserted basis for [the] waiver [was] conduct that the State realistically could choose to abandon." Id. at 679, 684, 119 S.Ct. 2219. This fact, the decision noted, "ha[d] no bearing upon the voluntariness of the waiver." Id. at 684, 119 S.Ct. 2219.

This reasoning underscores the unconstitutionality of the PSJVTA's "deemed consent" provision. The statute purports to extract consent to personal jurisdiction using the very same template that College Savings Bank condemned in the sovereign immunity context: it identifies activities that, in Congress's judgment, the PLO and the PA "realistically could choose to abandon," and it "express[es] unequivocally [Congress's] intention that if [either defendant]

takes [those] action[s] it shall be deemed to have" consented to a federal court's authority. Id. at 681, 684, 119 S.Ct. 2219. The appellants repeatedly contend that this statutory framework gives rise to constructive consent because the predicate conduct is itself "voluntary," and the defendants "knowing[ly]" continued such conduct with "notice" of the statute's terms. Pls.' Br. at 19–20; see Intervenor Br. at 2–3. But College Savings Bank rejected that precise theory of constructive consent, making clear that the ability to "abandon" the relevant predicate conduct "ha[s] no bearing upon the voluntariness of the [asserted] waiver." 527 U.S. at 684, 119 S.Ct. 2219. Instead, as College Savings Bank explained with regard to the state respondent, "the most that can be said" about the defendants here "is that [each] has been put on notice that Congress intends to subject it to [certain] suits" in federal court. Id. at 681, 119 S.Ct. 2219. That is a "very far" cry from an "altogether voluntary decision" on the part of either defendant to submit to a court's jurisdiction. See id.

The appellants argue that the logic of College Savings Bank is inapplicable here because the decision concerned the "special context" of state sovereign immunity, where the standard for waiver is "particularly strict." Pls.' Br. at 30–31 (internal quotation marks omitted); see Coll. Sav. Bank, 527 U.S. at 675, 119 S.Ct. 2219 (describing the "test for determining whether a State has waived its immunity" as a "stringent one" (internal quotation marks omitted)). But the relevant aspects of the Supreme Court's reasoning were not so cabined. To the contrary, the decision emphasized that "constructive consent is not a doctrine commonly associated with the surrender of constitutional rights," and it noted that constructive waivers like the one considered there — a close match for the sort of "deemed consent" at issue here — "are simply unheard of in the context of ... constitutionally protected privileges." 527 U.S. at 681, 119 S.Ct. 2219 (internal quotation marks omitted and alteration adopted). The Supreme Court illustrated this point with an analogy to an entirely different constitutional context:

> [I]magine if Congress amended the securities laws to provide with unmistakable clarity that anyone committing fraud in connection with the buying or selling of securities in interstate commerce would not be entitled to a jury in any federal criminal prosecution of such fraud. Would persons engaging in securities fraud after the adoption of such an amendment be deemed to have "constructively waived" their constitutionally protected rights to trial by jury in criminal cases? After all, the trading of securities is not so vital an activity that any one person's decision to trade cannot be regarded as a voluntary choice. The answer, of course, is no. The classic description of an effective waiver of a constitutional right is the intentional relinquishment or abandonment of a known right or privilege.

Id. at 681–82, 119 S.Ct. 2219 (internal quotation marks and citations omitted, alterations adopted).

This example was pertinent, the Supreme Court explained, because the Eleventh Amendment privilege of "[s]tate sovereign immunity, no less than the [Sixth Amendment] right to trial by jury in criminal cases, is constitutionally protected." Id. at 682, 119 S.Ct. 2219. The same is true with regard to the "due process right not to be subjected to judgment in [a foreign forum's] courts," J. McIntyre Mach., 564 U.S. at 881, 131 S.Ct. 2780 (plurality opinion), which, like the Sixth Amendment jury trial right, is a "legal right protecting the individual," Ins. Corp. of Ireland, 456 U.S. at 704, 102 S.Ct. 2099. The plaintiffs nevertheless suggest that we should ignore the lessons of College Savings Bank because its general statements regarding waivers of constitutional rights are nonbinding "dicta." Pls.' Br. at 13, 30, 32. But "it does not at all follow that we can cavalierly disregard" those statements. United States v. Bell, 524 F.2d 202, 206 (2d

Cir. 1975). Even if Supreme Court dicta do not constitute established law, we nonetheless accord deference to such dicta where, as here, no change has occurred in the legal landscape. United States v. Harris, 838 F.3d 98, 107 (2d Cir. 2016) (citing Newdow v. Peterson, 753 F.3d 105, 108 n.3 (2d Cir. 2014)); Bell, 524 F.2d at 206 (noting that Supreme Court dicta "must be given considerable weight"). That deference is especially warranted in this case, given the close parallels between the PSJVTA and the statutory framework that College Savings Bank rejected.

Indeed, the voluminous briefing in this case makes clear that the PSJVTA's approach to deemed consent is "simply unheard of," Coll. Sav. Bank, 527 U.S. at 681, 119 S.Ct. 2219, because those papers, while extensive, fail to identify a single case approving a similar constructive waiver of the personal jurisdiction requirement. The briefs instead rely entirely on personal jurisdiction cases that are inapposite or distinguishable, for all of the reasons discussed above.

The appellants also cite various cases involving waivers of other constitutional rights, but those cases do not support the constitutionality of the "deemed consent" imposed in the PSJVTA. For example, in arguing that waiving a constitutional right does not require any exchange of benefits, the appellants point to United States v. O'Brien, 926 F.3d 57 (2d Cir. 2019). In O'Brien, however, the defendant had expressly consented to the warrantless searches of his properties, in writing, rendering that case a plainly inapt comparison on the question of constructive consent. Id. at 77. The appellants' authorities concerning valid waivers of the Fifth Amendment privilege against self-incrimination are similarly far afield. See Moran v. Burbine, 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986); Oregon v. Elstad, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985). The criminal suspects' actions in those cases, taken upon receiving clear and comprehensive warnings pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), left "no doubt" (in Moran) or "no question" (in Elstad) that each had knowingly and voluntarily waived his Fifth Amendment protections. See Moran, 475 U.S. at 417–18, 421–22, 106 S.Ct. 1135 (respondent executed "written form[s] acknowledging that he understood his [Miranda] right[s]," and then gave a free and uncoerced confession); Elstad, 470 U.S. at 314–15, 315 n.4, 105 S.Ct. 1285 (respondent gave affirmative verbal responses confirming that he understood his Miranda rights, then provided a free and uncoerced description of his offense).

The PSJVTA also finds no support in the plaintiffs' cases concerning implied waivers of a litigant's right to proceed before an Article III court. See Wellness Int'l Network, Ltd. v. Sharif, 575 U.S. 665, 135 S.Ct. 1932, 191 L.Ed.2d 911 (2015); Roell v. Withrow, 538 U.S. 580, 123 S.Ct. 1696, 155 L.Ed.2d 775 (2003). In these decisions, the Supreme Court explained that such waivers could be fairly inferred based on specific litigation conduct, namely, "voluntarily appear[ing] to try [a] case before [a] non-Article III adjudicator" after "[being] made aware of the need for consent and the right to refuse it." Wellness Int'l Network, 575 U.S. at 685, 135 S.Ct. 1932 (internal quotation marks omitted) (discussing implied consent to a bankruptcy judge's resolution of certain claims); Roell, 538 U.S. at 586 n.3, 591, 123 S.Ct. 1696 (discussing implied consent to a magistrate judge's disposition of an action). Those authorities are unlike this case, where the defendants have not engaged in any conduct (litigation-related or otherwise) evincing an "intention of ... submitting to the court's jurisdiction." Roell, 538 U.S. at 586 n.3, 123 S.Ct. 1696 (internal quotation marks omitted).

In sum, Congress cannot take conduct otherwise insufficient to support an inference of consent, brand it as "consent," and then decree that a defendant, after some time has passed, is "deemed to have consented" to the loss of a due process right for engaging in that conduct. This

unprecedented framework for consent-based jurisdiction, predicated on conduct that is not "of such a nature as to justify the fiction" of consent, cannot be reconciled with "traditional notions of fair play and substantial justice." Int'l Shoe, 326 U.S. at 316, 318, 66 S.Ct. 154 (internal quotation marks omitted). Thus, the PSJVTA's "deemed consent" provision is incompatible with the Fifth Amendment's Due Process Clause.

* * * *

2. *Sakab v. Aljabri*

Plaintiff Sakab Saudi Holding Company, a Saudi Arabian company, sought an order freezing the assets of Dr. Saad Aljabri, a former Saudi official, in Massachusetts. The United States intervened in the federal district court proceedings and asserted the state secrets privilege to protect sensitive information that could reasonably be expected to cause harm to national security if disclosed. In 2021, the court then dismissed the case, determining that the defendants could not fairly defend themselves against Sakab's claims without the use of privileged information. *Sakab Saudi Holding Co. v. Aljabri*, 578 F. Supp. 3d 140 (D. Mass. 2021). In 2022, the U.S. filed an intervenor-appellee brief in the United States Court of Appeals for the First Circuit. No. 22-1052. See *Digest 2022* at 145-49. On January 27, 2023, the First Circuit affirmed the district court dismissal in *Sakab Saudi Holding Co. v. Aljabri*, 58 F.4th 585. Excerpts from the Court's opinion follow (footnotes omitted).

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State Secrets: Guiding Principles

> Many of the Government's efforts to protect our national security are well known. It publicly acknowledges the size of our military, the location of our military bases, and the names of our ambassadors to Moscow and Peking. But protecting our national security sometimes requires keeping information about our military, intelligence, and diplomatic efforts secret.

Gen. Dynamics Corp. v. United States, 563 U.S. 478, 484, 131 S.Ct. 1900, 179 L.Ed.2d 957 (2011).

The state secrets privilege, "an evidentiary rule 'bas[ed] in the common law of evidence,' " Wikimedia, 14 F.4th at 294 (quoting El-Masri, 479 F.3d at 304), "permits the Government to prevent disclosure of information when that disclosure would harm national security interests," United States v. Zubaydah, —— U.S. ——, 142 S. Ct. 959, 967, 212 L.Ed.2d 65 (2022). Indeed, as the high Court has said, "the privilege applies where 'there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged.' " Fed. Bureau of Investigation v. Fazaga, —— U.S. ——, 142 S. Ct. 1051, 1061, —— L.Ed.2d —— (2022) (quoting Reynolds, 345 U.S. at 10, 73 S.Ct. 528); see also Gen. Dynamics Corp., 563 U.S. at 484, 131 S.Ct. 1900 (observing that the privilege serves the "sometimes-compelling necessity of governmental secrecy" over "military, intelligence, and diplomatic" information).

This "expansive and malleable" privilege can apply to different types of state secrets, such as materials and information that could, if made public, disclose our intelligence communities' information-gathering methods and/or capabilities, impair our country's defenses, and "disrupt[ ] ... diplomatic relations with foreign governments." Ellsberg v. Mitchell, 709 F.2d 51, 57 (D.C. Cir. 1983). Indeed, even if a party has made a "strong showing of necessity" for the discovery or use of such information, Reynolds, 345 U.S. at 11, 73 S.Ct. 528, the state secrets privilege still applies in the face of "a reasonable danger" that the disclosure of the evidence in question would harm our national-security interests, Fazaga, 142 S. Ct. at 1061 (quoting Reynolds, 345 U.S. at 10, 73 S.Ct. 528); see also Reynolds, 345 U.S. at 11, 73 S.Ct. 528 ("[E]ven the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that [state] secrets are at stake.").

Now, in the instant matter, as we know, the district court concluded the government's privilege assertion was properly interposed as a matter of procedure, and the information it covered was indeed privileged. Sakab I, 2021 WL 8999588, at *3 ("[T]he government's assertion of the state secrets privilege is procedurally proper and validly taken."). That conclusion had the effect of completely excising the privileged material from the case. See Wikimedia, 14 F.4th at 302-03 (explaining that, "[o]nce a court determines that certain facts are state secrets, they are 'absolutely protected from disclosure,' " and there can be "no attempt ... to balance the need for secrecy of the privileged information against a party's need for the information's disclosure' " (quoting El-Masri, 479 F.3d at 306)); Al-Haramain Islamic, Inc. v. Bush, 507 F.3d 1190, 1204 (9th Cir. 2007) (reasoning that "[t]he effect of the government's successful invocation of privilege 'is simply that the evidence is unavailable, as though a witness had died' " (quoting Ellsberg, 709 F.2d at 64)).

As mentioned above, this is where that pivotal final part of the tripartite inquiry kicks in: What happens to a case in the wake of a successful assertion of the state secrets privilege? Well, "[i]f a proceeding involving state secrets can be fairly litigated without resort to the privileged information, it may continue." Wikimedia, 14 F.4th at 303 (quoting El-Masri, 479 F.3d at 306). But "if 'any attempt to proceed will threaten disclosure of the privileged matters,' " id. (quoting El-Masri, 479 F.3d at 306 (cleaned up)) -- if "the circumstances make clear that privileged information will be so central to the litigation that any attempt to proceed will threaten that information's disclosure," El-Masri, 479 F.3d at 308, and "maintenance of [the] suit" would risk disclosure, Mohamed, 614 F.3d at 1077, 1089 (quoting Totten v. United States, 92 U.S. 105, 107, 23 L.Ed. 605 (1875)) -- then dismissal is not only appropriate, but necessary, El-Masri, 479 F.3d at 308. Indeed, "[t]he Supreme Court has recognized that some matters are so pervaded by state secrets as to be incapable of judicial resolution once the privilege has been invoked." El-Masri, 479 F.3d at 306 (citing Totten, 92 U.S. at 107; Reynolds, 345 U.S. at 11 n.26, 73 S.Ct. 528).

Some situations that have required dismissal include those where: "the very subject matter of the action" (an espionage agreement being the oft-cited illustration) is a "matter of state secret," Reynolds, 345 U.S. at 11 n.26, 73 S.Ct. 528; a plaintiff cannot prove the prima facie elements of a claim without the use of privileged evidence; even supposing a plaintiff can make out a prima facie case without resort to privileged information, "the defendants could not properly defend themselves without using privileged evidence"; and any "further litigation would present an unjustifiable risk of disclosure," Wikimedia, 14 F.4th at 303 (quoting Abilt v. Central Intelligence Agency, 848 F.3d 305, 313-14 (4th Cir. 2017)).

With these foundational guideposts laid out, "cognizant of the delicate balance to be struck in applying the state secrets doctrine," El-Masri, 479 F.3d at 308, we turn to our review.

Dismissal as a Consequence of the State Secrets Privilege Assertion

Our de novo review confirms that the district court was correct: Litigation of ***597** this case cannot proceed in the wake of the government's assertion of the state secrets privilege, and thus dismissal was necessary. Sakab urges otherwise, and we'll get to that, but as an initial matter, it is apparent to us that the privileged information is so central to this case that any attempt to proceed with litigation of the suit would unduly risk disclosure and thereby compromise our national security. We explain, parrying Sakab's unavailing arguments and rejoinders as we go.

As the precedent shows, when the state secrets privilege is successfully interposed over information that is so central to the case that any further litigation presents too much risk of exposure of that information, the case must not go on. Here, as Appellees argue, the privileged information (as covered in the government's remarkably sweeping privilege assertion) forms the basis of the factual disputes in this case, so the case cannot be fairly litigated, and any attempt to do so would risk disclosure of state secrets. They are correct.

Courts should dismiss a state secrets case, even at the pleadings stage, see Fazaga, 142 S. Ct. at 1062 (observing that "the state secrets privilege ... sometimes authorizes district courts to dismiss claims on the pleadings"), when "the circumstances make clear that privileged information will be so central to the litigation that any attempt to proceed will threaten that information's disclosure," Abilt, 848 F.3d at 313 (quoting El-Masri, 479 F.3d at 308); Mohamed, 614 F.3d at 1079 (cautioning that dismissal is necessary when litigation "would present an unacceptable risk of disclosing state secrets"); see also In re Sealed Case, 494 F.3d 139, 153 (D.C. Cir. 2007) [hereinafter Sealed Case] (reasoning that if "the subject matter of a case is so sensitive that there is no way it can be litigated without risking national secrets, then the case must be dismissed"). Critically, "[t]he controlling inquiry is not whether the general subject matter of an action can be described without resort to state secrets. Rather, we must ascertain whether an action can be litigated without threatening the disclosure of such state secrets." El-Masri, 479 F.3d at 308. And "[t]hus, for purposes of the state secrets analysis, the 'central facts' and 'very subject matter' of an action are those facts that are essential to prosecuting the action or defending against it." Id.

Recall that the privilege assertion here covered "information concerning sources, methods, capabilities, activities, or interests of the [U.S. Intelligence Community]," plus "information that might tend to reveal or disclose the identities of U.S. Government employees, affiliates, or offices with whom one or more of the parties or the [KSA] may have had certain interactions and the disclosure of which would be damaging to U.S. national security interests." This is not a narrow interposition of privilege. Cf. Wikimedia, 14 F.4th at 282 (privilege assertion covered certain categories of information concerning a surveillance system used by the National Security Agency); Sealed Case, 494 F.3d at 153 (privilege was interposed over certain portions of two internal government reports). This privilege assertion covers a wide swath of information -- and was "intended to specifically include information known to [Aljabri] about such matters that he seeks to introduce or disclose in this action, whether through documents, testimony, affidavits, or declarations, as part of his response and defense to pending claims and motions."

Now recall that the basic theory of Sakab's case is that Aljabri misappropriated massive sums of money from Sakab, and Appellees say the allegedly fraudulent transactions were

actually legitimate, directed by the then-leadership of the KSA and made in connection with Aljabri's work on sensitive operations with, or at least alongside, the U.S. Intelligence Community. So, if the case were to proceed, the facts critical to its litigation and adjudication would center on getting to the bottom of those transactions and their nature. To that end, the parties would be seeking, inter alia, evidence about Aljabri's role and relationships with U.S. agencies, the degree of Aljabri's authority, how he participated in the programs and operations, who else was involved, the existence and execution of the operations themselves, who authorized and paid for them, and who then directed payment to or through Aljabri -- not to mention the whens, wheres, whys, and inverses of any of these things.

All of this is suffused with sensitive information, and discovery of any of this cannot be undertaken without risking disclosure of information that has been swept into oblivion by the incredibly broad privilege assertion. See, e.g., El-Masri, 479 F.3d at 309 ("Even marshalling the evidence necessary to make the requisite showings would implicate privileged state secrets, because El-Masri would need to rely on witnesses whose identities, and evidence the very existence of which, must remain confidential in the interest of national security."); see also Mohamed, 614 F.3d at 1087 (finding dismissal was required "because there [was] no feasible way to litigate [the] alleged liability without creating an unjustifiable risk of divulging state secrets"); Sterling v. Tenet, 416 F.3d 338, 347-49 (4th Cir. 2005) (affirming dismissal at the pleading stage when the facts central to the action's litigation consisted of state secrets, noting that "the very methods by which evidence would be gathered in this case are themselves problematic"). Indeed, all of this information comprises the "central facts" of the action, i.e., "facts that are essential to prosecuting the action or defending against it." El-Masri, 479 F.3d at 308. The district court was right when it observed as much. See, e.g., Sakab I, 2021 WL 8999588, at *2 (stating that "the disposition of this matter threatens th[e government's] interest" in preventing disclosure of state secrets, and "[n]otwithstanding [Sakab]'s request for a disposition without consideration of the merits, the subject matter of [this] action for fraud is [Appellees'] property and transactions which implicate the state secrets claim asserted by the government").

This dynamic is compounded by the fact that, as both Appellees and the government point out, "both sides have an incentive to probe up to the boundaries of state secrets" -- or even beyond. Gen. Dynamics Corp., 563 U.S. at 487, 131 S.Ct. 1900. Indeed, we're mindful that when parties "have every incentive to probe dangerously close to the state secrets themselves," it's possible that "state secrets could be compromised even without direct disclosure." Fitzgerald v. Penthouse Intl'l, Ltd., 776 F.2d 1236, 1243 & n.10 (4th Cir. 1985) ("For example, if a witness is questioned about facts A and B, the witness testifies that fact A is not a military secret, and the government objects to any answer regarding fact B, by implication one might assume that fact B is a military secret."). It is all too easy to envision discovery and trial scenarios in which each side would press for information, documents, or answers to questions (perhaps posed to "witnesses with personal knowledge of relevant [state] secrets," id.) that flirt with the boundaries of the state secrets privilege here. With this privilege assertion being so broad, the parties would crash into its outer limits with nearly every propounded discovery request or deposition question, not to mention the risks of probing things at trial.

Sakab suggests that some of this information would be discoverable without running afoul of the privilege's bounds or that it could be disentangled from that which is privileged. Sakab complains that no one has even tried to litigate what, exactly, could be litigated, so that

litigation could proceed on an unprivileged record. But such a feat is impossible on the facts of a case like this, with a very broad privilege assertion and a complaint that centers on conduct and events awash in privileged secrecy. Even an attempt to do what Sakab is asking could risk disclosure. This is the whole point. All of the pertinent information is simply too entwined, and (emphasis ours) "any attempt to proceed [with litigation would] threaten disclosure of the privileged matters." Wikimedia, 14 F.4th at 303 (quoting El-Masri, 479 F.3d at 306 (cleaned up)); see also Mohamed, 614 F.3d at 1088; El-Masri, 479 F.3d at 308-09.

Sakab would have us fault the district court for neglecting to isolate the privileged information from that which is public and discoverable. But the district court was not permitted to disentangle the information here, certainly not after it had already deemed the privilege assertion valid (and nobody objected to that conclusion). Remember, a district court can look to any evidence it deems necessary when it is trying to figure out whether the information at issue encompasses state secrets, "[b]ut after a court makes that determination, the privileged evidence is excised from the case," Wikimedia, 14 F.4th at 303, like a witness died, Al-Haramain, 507 F.3d at 1204, and (emphasis ours) "not even the court may look at such material in camera" after that, Wikimedia, 14 F.4th at 303 (collecting cases). So at this juncture, the evidence cannot be evaluated ex parte and in camera to disentangle it. See Sterling, 416 F.3d at 348, 349 (explaining that a court is "neither authorized nor qualified to inquire further" into privileged matters -- "even in camera").

And in any event, even if some non-privileged evidence could have been extracted for use in litigation, recall that litigants must be able to do more than just discuss a case in general terms -- they need to have access to the information necessary to actually litigate the case. See El-Masri, 479 F.3d at 310; see also, e.g., Wikimedia, 14 F.4th at 303-04 (observing that " 'it would be a mockery of justice ...' to permit Wikimedia to substantiate its claims by presenting its half of the evidence to the factfinder as if it were the whole" (quoting Sealed Case, 494 F.3d at 148)). Whether some facts can be set forth without revealing state secrets -- and perhaps that has been the case to some extent here -- isn't our inquiry. The point is that the essential factual questions central to the resolution of this case can't be fairly litigated without unduly threatening disclosure of state secrets. See El-Masri, 479 F.3d at 308.

Related to its "disentangle the secret materials" proposition, Sakab urges that the government's proposed protective order was a perfectly viable alternative to dismissal. According to Sakab, the district court should have just safeguarded the sensitive materials using the government-approved protective order and proceeded with litigation from there.

Our response to this suggestion echoes what has already been carefully elucidated by the Ninth Circuit:

> Our conclusion [that further litigation poses an unacceptable risk of disclosure of state secrets] holds no matter what protective procedures the district court might employ. Adversarial litigation, including pretrial discovery of documents and witnesses and the presentation of documents and testimony at trial, is inherently complex and unpredictable. Although district courts are well equipped to wall off isolated secrets from disclosure, the challenge is exponentially greater in exceptional cases like this one, where the relevant secrets are difficult or impossible to isolate and even efforts to define a boundary between privileged and unprivileged evidence would risk disclosure by implication. In these rare circumstances, the risk of disclosure that further proceedings would create cannot be averted through the use of devices such as protective orders or restrictions on testimony.

Mohamed, 614 F.3d at 1089. So it is here.

Bottom line: "[S]ome matters are so pervaded by state secrets as to be incapable of judicial resolution once the privilege has been invoked," El-Masri, 479 F.3d at 306, and this is one such matter. "[T]he circumstances make clear that privileged information [is] so central to the litigation that any attempt to proceed will threaten that information's disclosure." Id. at 308; see also Wikimedia, 14 F.4th at 303; Mohamed, 614 F.3d at 1077, 1089 (quoting Totten, 92 U.S. at 107); Sterling, 416 F.3d at 347-49; Fitzgerald, 776 F.2d at 1243.

Before we move along, a few final words. We recognize that the successful assertion of the state secrets privilege can result in a harsh outcome for litigants who want a case to proceed. See, e.g., Sealed Case, 494 F.3d at 148 ("As Judge Learned Hand observed, a claim of the state secrets privilege will often impose a grievous hardship, for it may deprive parties ... of power to assert their rights or to defend themselves. That is a consequence of any evidentiary privilege." (cleaned up)); Fitzgerald, 776 F.2d at 1238 n.3 ("When the state secrets privilege is validly asserted, the result is unfairness to individual litigants -- through the loss of important evidence or dismissal of a case -- in order to protect a greater public value."). In this matter, the specific reasons for the government's assertion of the state secrets privilege were explained in the classified declarations we mentioned many pages ago. Those declarations provide detailed descriptions of the nature of the information that our Executive wants to protect, and they also explain why disclosure would threaten our national security. The declarations decisively inform and support our conclusion today. We can appreciate the frustration of not being in the know when it comes to some of the specific (classified) reasons supporting dismissal here. Sakab voices concerns about "graymail tactics" being used by Appellees (or, as a policy matter, by any defendants who happen to have knowledge of state secrets) to thwart litigation against them by harnessing or weaponizing state secrets that aren't actually at issue to secure a dismissal. Perhaps these concerns are understandable in the abstract, but they are misplaced: The requisite layers of review and scrutiny we've already described in detail provide protection against that type of strategic gamesmanship and prevent attempts to abuse state secrets, and here, that review and scrutiny counsel our outcome.

3. *Halkbank v. United States*

See Chapter 10 of this *Digest* for discussion of the 2023 decision in *Türkiye Halk Bankasi A.S., aka Halkbank v. United States*, 598 U.S. 264, 143 S. Ct. 940 (2023) which held that sovereign immunity in criminal proceedings is governed by the common law rather than the Foreign Sovereign Immunities Act, which applies only to civil proceedings.

4. *Bartlett v. Baasiri*

See Chapter 10 of this *Digest* for discussion of the 2023 decision in *Bartlett v. Baasiri, et al.*, 81 F.4th 28 (2d Cir.), which addresses the entitlement to sovereign immunity under the Foreign Sovereign Immunities Act of a defendant that becomes an agency or instrumentality of a foreign state after suit is filed.

B. ALIEN TORT STATUTE AND TORTURE VICTIM PROTECTION ACT

1. Overview

The Alien Tort Statute ("ATS"), sometimes referred to as the Alien Tort Claims Act ("ATCA"), was enacted as part of the First Judiciary Act in 1789 and is codified at 28 U.S.C. § 1350. It provides that U.S. federal district courts "shall have original jurisdiction of any civil action by an alien for tort only, committed in violation of the law of nations or a treaty of the United States." In 2004 the Supreme Court held that the ATS is "in terms only jurisdictional" but that, in enacting the ATS in 1789, Congress intended to "enable federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law." *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). *Sosa* established a two-step framework for determining whether to recognize a common-law cause of action under the ATS: (1) whether the alleged violation is of a specific, universal, and obligatory international law norm; and (2) whether the political branches should grant specific authority before imposing liability. 542 U.S. at 732-33. See *Digest 2004* at 340-54.

In *Kiobel* v. *Royal Dutch Petroleum Co*., 569 U.S. 108 (2013), the Supreme Court determined that the presumption against extraterritoriality applies to the ATS such that, "even where the claims touch and concern the territory of the United States, they must do so with sufficient force" to state a domestic claim. See *Digest 2013* at 111-17. In *Jesner v. Arab Bank*, 584 U.S. 541 (2018), the Supreme Court held that foreign corporations are not subject to ATS liability. See *Digest 2018* at 146-56. In *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 141 S. Ct. 1931 (2021), the Supreme Court found that generic allegations of domestic corporate activity (such as corporate decision-making) are not sufficient to support domestic application of the ATS where nearly all conduct relevant to the claim occurred overseas. See *Digest 2021* at 151-53.

The Torture Victim Protection Act ("TVPA"), which was enacted in 1992, Pub. L. No. 102-256, 106 Stat. 73, appears as a note to 28 U.S.C. § 1350. It provides a cause of action in federal courts against "[a]n individual … [acting] under actual or apparent authority, or color of law, of any foreign nation" for individuals, including U.S. nationals, for torture and/or extrajudicial killing. The TVPA contains an exhaustion requirement and a ten-year statute of limitations.

2. *Doe I v. Cisco Sys., Inc.*

On July 7, 2023, the U.S Court of Appeals for the Ninth Circuit issued a decision on the question of liability for domestic corporations for aiding and abetting violations of the law of nations under the ATS. See *Doe I v. Cisco Sys., Inc.*, 73 F.4th 700. Plaintiffs, members of the Falun Gong movement, brought a class action against technology corporation Cisco Systems, Inc. for aiding and abetting alleged violations of international human rights norms by the government of the People's Republic of China, in violation of the ATS, the TVPA, and other federal and state laws. The district court dismissed

Plaintiffs' claims under the ATS and ruled that Plaintiffs did not allege conduct sufficient to satisfy the standard for aiding and abetting liability under international customary law. See *Doe I v. Cisco Sys., Inc.*, 66 F.Supp.3d 1239 (N.D. Cal. 2014). The Ninth Circuit reversed the dismissal, recognizing aiding and abetting liability under the ATS and holding that Plaintiffs allegations against Cisco were sufficient to meet the aiding and abetting standard. The Court did not request views from the United States. The following excerpts discuss the Court's holdings on the availability of aiding and abetting as a mode of liability under the ATS and the availability of liability for U.S. corporations under the ATS (footnotes omitted).

* * * *

1. Aiding and Abetting Liability under the ATS

Our Circuit has acknowledged several times the availability of aiding and abetting liability under the ATS. *See* Nestle I, 766 F.3d at 1023; *Sarei v. Rio Tinto*, 671 F.3d 736, 749, 765 (9th Cir. 2011) (en banc), *vacated, Rio Tinto PLC v. Sarei*, 569 U.S. 945, 133 S.Ct. 1995, 185 L.Ed.2d 863 (2013). We now revisit the question and conclude again, in agreement with every circuit to have considered the issue, that aiding and abetting liability is a norm of customary international law with sufficient definition and universality to establish liability under the ATS. Because recognizing aiding and abetting liability does not raise separation-of-powers or foreign policy concerns under *Sosa* step two, we further decide, such liability is cognizable for the purposes of the ATS.

As noted, *Sosa* and *Jesner* caution federal courts to adopt a "restrained conception" of our discretion to recognize new causes of action under the ATS. *Sosa*, 542 U.S. at 725, 124 S.Ct. 2739; *see Jesner*, 138 S. Ct. at 1402 (majority op.). Although "the door is still ajar" to such actions, the ATS is "subject to vigilant doorkeeping, and thus open to a narrow class of international norms today." *Sosa*, 542 U.S. at 729, 124 S.Ct. 2739. Again, any new cause of action must meet the two-part test elaborated by *Sosa* and reiterated in *Jesner*: First, the international norms must be "specific, universal, and obligatory." *Jesner*, 138 S. Ct. at 1399 (plurality op.) (quoting *Sosa*, 542 U.S. at 732, 124 S.Ct. 2739). Second, a court must determine "whether allowing [a] case to proceed under the ATS is a proper exercise of judicial discretion." *Id.* (plurality op.). The two prongs of the *Sosa* test are interrelated and "not altogether discrete." *Id.* (plurality op.).

Questions as to the scope of liability under the ATS, including accomplice liability, are determined under international law and so are subject to *Sosa*'s two-part test. *Sosa* directed courts to international law to determine "the scope of liability for a violation of a given norm." 542 U.S. at 732 n.20, 124 S.Ct. 2739; *see also Khulumani v. Barclay Nat. Bank Ltd.*, 504 F.3d 254, 268–69 (2d Cir. 2007) (Katzmann, J., concurring) (looking to the law of nations to determine the standard for aiding and abetting claims under the ATS). We thus analyze whether, and what form of, accomplice liability is available under the ATS by considering whether international law specifically and universally provides for aiding and abetting liability. We then look to whether any practical or foreign policy considerations caution against recognizing this form of liability, generally or in this case in particular.

a. Sosa's First Step

To evaluate the contours of an international law norm, *Sosa* instructs courts to look to "those sources we have long, albeit cautiously, recognized," which include "the customs and usages of civilized nations; and, as evidence of these, ... the works of [qualified] jurists and commentators." 542 U.S. at 733–34, 124 S.Ct. 2739 (quoting *The Paquete Habana*, 175 U.S. 677, 700, 20 S.Ct. 290, 44 L.Ed. 320 (1900)). Article 38(I) of the Statute of the International Court of Justice ("ICJ"), annexed to the Charter of the United Nations, similarly outlines the following authoritative sources of international law: "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states," "international custom, as evidence of a general practice accepted as law," "the general principles of law recognized by civilized nations," and "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." Statute of the International Court of Justice, art. 38, ¶ 1; *see also* Restatement (Third) of Foreign Relations Law § 102 (Am. L. Inst. 1987). We accordingly proceed to survey the types of international law sources identified by *Sosa* and Article 38(I), as applicable to aiding and abetting liability. The available sources establish that customary international law recognizes aiding and abetting liability as a specific and universal form of liability, satisfying the first prong of the *Sosa* two-part test.

In *Khulumani*, the Second Circuit determined that aiding and abetting liability is cognizable under the ATS, but the judges differed as to their reasoning. 504 F.3d at 260 (per curiam). Judge Katzmann, concurring, comprehensively reviewed criminal trials in the seminal tribunals of Nuremberg and the U.S. occupation zone after World War II, a plethora of treaties and conventions, actions of the U.N. Security Council, the decisions of two modern international tribunals—the International Criminal Tribunal for Yugoslavia ("the Yugoslavia Tribunal") and the International Criminal Tribunal for Rwanda ("the Rwanda Tribunal")—and the Rome Statute of the International Criminal Court ("Rome Statute"), July 17, 1998, 37 I.L.M. 999 (1998), all of which recognize some form of accomplice liability for violations of international law. *Id.* at 270–77. Based on those sources, Judge Katzmann concluded that aiding and abetting liability was sufficiently well defined and universally recognized to be cognizable under the ATS. *Id.* at 277. The Second Circuit later adopted Judge Katzmann's reasoning, in *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 258 (2d Cir. 2009).

Since *Khulumani*, the Second, Fourth, and Eleventh Circuits have all held that aiding and abetting liability claims may proceed under the ATS. *See Talisman*, 582 F.3d at 258; *Aziz v. Alcolac, Inc.*, 658 F.3d 388, 396 (4th Cir. 2011); *Romero v. Drummond Co.*, 552 F.3d 1303, 1315 (11th Cir. 2008) (citing *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1157–58 (11th Cir. 2005)); *cf. Doe v. Exxon Mobil Corp.* ("*Doe v. Exxon*"), 654 F.3d 11, 32 (D.C. Cir. 2011), *vacated on other grounds*, 527 Fed. Appx. 7 (D.C. Cir. 2013).**11** No circuit to consider the issue has held otherwise.

In light of this domestic consensus, our Court's prior holdings, and the universality of aiding and abetting liability under international law as demonstrated by Judge Katzmann's analysis in *Khulumani*, we again conclude that aiding and abetting liability is sufficiently definite and universal to be a viable form of liability under the ATS.

b. Sosa's Second Step

Even where a norm of international law is sufficiently definite and universal to meet *Sosa*'s first requirement, "it must be determined further whether allowing [a] case to proceed under the ATS is a proper exercise of judicial discretion, or instead whether caution requires the political branches to grant specific authority before [a new form of liability] can

be imposed." *Jesner*, 138 S. Ct. at 1399 (plurality op.). *Sosa* and *Jesner* together describe the contours of the second step of this analysis, which includes two broad categories of inquiry: foreign policy consequences and deference to Congress.

First, federal courts must consider the foreign policy implications and general "practical consequences of making [a] cause available to litigants in federal courts." *Sosa*, 542 U.S. at 732–33, 124 S.Ct. 2739. Of gravest concern in *Sosa* was the risk of U.S. courts interfering with the sovereign actions of another government:

> It is one thing for American courts to enforce constitutional limits on our own State and Federal Governments' power, but quite another to consider suits under rules that would go so far as to claim a limit on the power of foreign governments over their own citizens, and to hold that a foreign government or its agent has transgressed those limits.

Id. at 727, 124 S.Ct. 2739 (citing *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 431–32, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964)) (concerning the act of state doctrine). To address that concern, a federal court must consider whether recognizing a cause of action under the ATS serves the original purposes of the Act, to "promote harmony in international relations by ensuring foreign plaintiffs a remedy for international-law violations in circumstances where the absence of such a remedy might provoke foreign nations to hold the United States accountable." *Jesner*, 138 S. Ct. at 1397, 1406 (majority op.).

Additionally, because of the international comity and foreign policy concerns inherent in enforcing international law norms in U.S. courts, *Sosa* suggests that in certain "case-specific" instances, federal courts have good reason to defer to the views of the Executive Branch as to whether a given case should proceed, although *Sosa* itself did not present such concerns. 542 U.S. at 733 n.21, 124 S.Ct. 2739. Discussing *In re South African Apartheid Litigation*, 238 F. Supp. 2d 1379 (J.P.M.L. 2002), in which the U.S. State Department submitted written objections to the suit, *Sosa* noted that an objection by the State Department to a particular claim under the ATS would present a "strong argument" to defer to "the Executive Branch's view of the case's impact on foreign policy." 542 U.S. at 733 n.21, 124 S.Ct. 2739.

Jesner held that practical consequences precluded recognition of a cause of action in that case. Pointing to "significant diplomatic tensions" caused by the suit, the Court determined that foreign corporations cannot be liable under the ATS and that diplomatic tensions counseled against allowing the particular case to proceed. 138 S. Ct. at 1406–07 (majority op.). The Court in *Jesner* noted, first, that the Hashemite Kingdom of Jordan had filed an amicus brief objecting that the litigation against Arab Bank was "a 'grave affront' to its sovereignty" and that the suit would "threaten[ ] to destabilize Jordan's economy." *Id.* at 1407 (majority op.). The Court also referenced the U.S. State Department's amicus brief describing Jordan as "a key counterterrorism partner, especially in the global campaign to defeat the Islamic State in Iraq and Syria," and discussing the "significant diplomatic tension" the lawsuit had caused in its initial thirteen years. *Id.* at 1406 (majority op.). Ultimately, the foreign relations tensions the case engendered—"the very foreign relations tensions the First Congress sought to avoid"—cautioned against holding that foreign corporations could be defendants in suits brought under the ATS. *Id.* at 1406–07 (majority op.). After *Sosa* and *Jesner*, then, courts must carefully consider whether allowing a cause of action to proceed will cause or has already caused diplomatic tension, as indicated by the statements of foreign countries and the U.S. government.

Second, federal courts must consider whether "there are sound reasons to think Congress might doubt the efficacy or necessity of a ... remedy" before recognizing a new cause of action. *Jesner*, 138 S. Ct. at 1402 (majority op.) (*quoting Ziglar v. Abbasi*, 582 U.S. 120, 137 S.

Ct. 1843, 1857, 198 L.Ed.2d 290 (2017)). *Sosa* instructed federal courts to use restraint in recognizing new causes of actions in part for this separation-of-powers reason. 542 U.S. at 728, 124 S.Ct. 2739. The Court in *Sosa* recognized that the absence of a congressional mandate to allow new causes of action under the ATS and the lack of legislation "to promote such suits"—with the exception of the TVPA—provide strong reason to be "wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." *Id.* at 727–28, 124 S.Ct. 2739. Exercising this caution, *Jesner* concluded that "absent further action from Congress it would be inappropriate for courts to extend ATS liability to foreign corporations." 138 S. Ct. at 1403 (majority op.).

Considering the potential impact of this case in these two arenas—identifiable foreign relations concerns and deference to Congress—we see no prudential reason to decline to recognize aiding or abetting liability or to bar this particular action from proceeding.

First, recognizing aiding and abetting liability does not trigger *Sosa*'s principal foreign policy concern—that ATS claims could impose liability on sovereign nations for behavior with respect to their own citizens. 542 U.S. at 727, 124 S.Ct. 2739. Rather, accomplice liability, historically and as shown here, is much more likely to be used to address the transgressions of nongovernmental actors than the actions of foreign governments themselves. *See, e.g., Nestle II*, 141 S. Ct. at 1935 (majority op.); *Kiobel*, 569 U.S. at 111–12, 133 S.Ct. 1659; *Balintulo v. Ford Motor Co.*, 796 F.3d 160, 163 (2d Cir. 2015). Dating back to the military tribunals after World War II, aiding and abetting liability has been alleged frequently in proceedings against private individuals and corporations. *See, e.g., The Zyklon B Case*, 1 Trials of War Criminals ("T.W.C.") 93, 93–95 (1946); *The Flick Case*, 6 T.W.C. 1, 11, 13 (1947); *United States v. Krauch ("The I.G. Farben Case")*, 8 T.W.C. 14, 1081, 1084–95, 1107 (1948). Suits against nongovernmental actors do not raise the same international comity and sovereignty issues inherent in "claim[ing] a limit on the power of foreign governments over their own citizens" that animated *Sosa*'s concerns regarding the broader foreign policy effects of ATS litigation. 542 U.S. at 727, 124 S.Ct. 2739. Particularly after *Jesner*, which forecloses suit under the ATS against foreign corporations, 138 S. Ct. at 1407 (majority op.), and *Kiobel*, which requires a close relationship between the alleged violation and the territory of the United States, 569 U.S. at 124, 133 S.Ct. 1659, aiding and abetting liability is most likely to be alleged, as here, in suits against U.S. citizens and corporations, not foreign governments.

Further, recognizing aiding and abetting liability, particularly for U.S. defendants, well serves the original goals of the ATS: to provide a forum for violations of international law that, if lacking, could cause foreign relations strife or "embarrass[ment]" to the United States. *Id.* at 123, 133 S.Ct. 1659. In this instance, of course, China is unlikely to take issue with a federal court's discretionary refusal to recognize imposing accomplice liability on Cisco. But international concern with violations of human rights or the failure to provide an adequate forum for their vindication may also be of some relevance—in this instance, potential scrutiny by the international community generally for a failure to provide a forum in which U.S. citizens and corporations can be held accountable for violating well-defined and universal international norms, including aiding and abetting liability.

Additionally, the current record does not reflect any case-specific foreign policy considerations that present a reason to bar this action. Unlike cases in which both U.S. and foreign government actors raise objections to the litigation, no foreign government or Executive Branch agency has submitted an amicus brief, declaration, or letter objecting to this lawsuit. *See, e.g., Jesner*, 138 S. Ct. at 1406–07 (majority op.); *In re S. Afr. Apartheid Litig.*, 238 F. Supp. 2d

1379 (JPML 2002). There has been no lack of time to do so: Plaintiffs first filed suit in May 2011. In sharp contrast, the Chinese government and the U.S. State Department *have* become involved in other cases relating to the Chinese government's persecution of Falun Gong practitioners. Both China and the U.S. State Department, for example, submitted statements of interest in *Doe v. Qi*, a case involving ATS and TVPA claims brought by Falun Gong adherents against Chinese government officials directly. 349 F. Supp. 2d 1258, 1264, 1296–1301 (N.D. Cal. 2004). That neither the government of China nor the U.S. Executive Branch has taken action regarding this case indicates that the foreign affairs implications here are not comparable to cases in which the Chinese government or Chinese government officials are parties. In *Jesner*, in contrast to this case, the Court was presented with forceful and strategic warnings by the U.S. State Department as well as an amicus brief by a foreign government. 138 S. Ct. at 1406–07 (majority op.). No similar case-specific, articulated foreign policy concerns have been raised in this case. *See Sosa*, 542 U.S. at 733 n.21, 124 S.Ct. 2739.

The dissent notes that district courts (and on occasion appellate courts) have sometimes requested the State Department submit analysis regarding the foreign policy implications of an ATS suit. *See* Dissent at 749-50 (citing, *e.g., Doe v. Exxon Mobil Corp.*, 473 F.3d 345, 347 (D.C. Cir. 2007); *Kadic v. Karadzic*, 70 F.3d 232, 250 (2d Cir. 1995)). The district court here did not ask the State Department to submit its views on the case. For several reasons, we do not consider the lack of affirmative solicitation of the State Department's views to be a barrier to our analysis of case-specific foreign policy concerns on the current record.

First, neither *Sosa* nor *Jesner* states that affirmatively soliciting the government's view is required. *See Sosa*, 542 U.S. at 733 n.21, 124 S.Ct. 2739; *Jesner*, 138 S. Ct. at 1406–07. And, although district courts have at times sua sponte requested the views of the State Department, *see, e.g., Exxon Mobil Corp.*, 473 F.3d at 347, others have done so only after a party's request, *see Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164, 1169 (C.D. Cal. 2005); after allowing the parties to be heard on the necessity of requesting the government's views, *see, e.g., Nat'l Coal. Gov't of Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329, 335 (C.D. Cal. 1997); or when a foreign government has filed an ex parte declaration urging the court to dismiss the suit, *see Khulumani*, 504 F.3d at 259. Here, Cisco did not request that the district court solicit the views of the State Department. And, as we have discussed, the Chinese Government has not submitted any declarations objecting to the suit.

Second, we disagree with the dissent that we may not infer a lack of concern from the government's silence. The dissent notes that the State Department, in an area of litigation similarly rife with foreign policy ramifications—the Foreign Sovereign Immunities Act — "intervenes only selectively" where suit is brought against a high-ranking foreign government official. Dissent at 750. The State Department's passive approach in cases such as the one before us, in which no foreign government actor or head of state is directly party to the suit, offers support for the conclusion that the State Department views such cases as less likely to harm foreign relations.

We also decline to request the State Department's analysis ourselves. The foreign policy implications of a lawsuit, where contested, would constitute a factual dispute that we would be required to remand to the district court. *See DeMarco v. United States*, 415 U.S. 449, 450, 94 S.Ct. 1185, 39 L.Ed.2d 501 (1974); *Spokane County v. Air Base Housing, Inc.*, 304 F.2d 494, 499 (9th Cir. 1962). Our decision on the current record does not foreclose the district court from considering on remand whether to request the views of the State Department.

Second, we consider whether "there are sound reasons to think Congress might doubt the

efficacy or necessity" of recognizing aiding and abetting liability under the ATS. *Jesner*, 138 S. Ct. at 1402 (majority op.). Cisco puts forward two such arguments against the recognition of aiding and abetting liability here.

First, Cisco argues that *Central Bank of Denver N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994), established a presumption that Congress has not provided for aiding and abetting liability in a civil statute unless it has done so expressly. We reject this reading of *Central Bank of Denver*, as explained in our analysis of the TVPA claim. *See infra* Discussion, Part II.A.

For present purposes, it is enough to observe that *Central Bank of Denver* does not govern whether aiding and abetting liability is available under the ATS, as the Second Circuit has recognized. *See Khulumani*, 504 F.3d at 282 (Katzmann, J., concurring), *cited with approval in Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 130 (2d Cir. 2010); *see also Khulumani*, 504 F.3d at 288 n.5 (Hall, J., concurring); *cf. Doe v. Exxon*, 654 F.3d at 28–29. The ATS is a jurisdictional statute. Decisions as to the appropriate scope of liability, as we have discussed, depend on international law, not on statutory text delineating the scope of liability or the elements of the permissible causes of action. *See supra* Discussion, Part I.B.1. Because ATS liability is generally determined under international law, *Central Bank of Denver*'s rejection of a presumption of aiding and abetting liability for federal civil statutes delineating new causes of action is not apposite to the question whether the ATS provides accomplice liability.

To be sure, under *Sosa*'s step two, caution from Congress *against* recognizing a particular form of international law liability under the ATS would be relevant. *Jesner*, 138 S. Ct. at 1402 (majority op.). But, again, there is no ATS-specific caution pertinent here.

Cisco next argues with respect to the congressional doubt consideration that this case would improperly interfere with the system of U.S. trade regulation of export sales to China, regulation that takes into account human rights concerns. Specifically, Cisco cites U.S. Commerce Department regulations concerning the export of crime control equipment, 15 C.F.R. § 742.7 (2010), and part of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, Pub. L. No. 101-246, §§ 901–902, 104 Stat. 15, 80–85 (1990) ("Tiananmen Act").

The Commerce Department regulations implement a licensing regime for the export of crime control equipment, including police batons, whips, helmets, and shields, to most countries, including China. 15 C.F.R. § 742.7(a); *see* 50 U.S.C. §§ 4801–4852**.** The regulations do not cover the export of computer networking software or hardware. Cisco argues that this omission is intentional and represents a decision not to ban exports to China of such software or hardware.

The Tiananmen Act was passed in response to the "unprovoked, brutal, and indiscriminate assault on thousands of peaceful and unarmed demonstrators and onlookers in and around Tiananmen Square by units of the People's Liberation Army." Pub. L. No. 101-246, § 901(a)(1). Among other sanctions, the Act suspended the granting of the requisite licenses for exports of crime control equipment to China until the President of the United States issued a report meeting enumerated statutory requirements. *Id.* § 902(a)(4). This suspension did not affect exports of computer networking software or hardware, for which no license is required, as just discussed.

The Commerce Department regulations and the Tiananmen Act, Cisco maintains, were "carefully designed to strike a balance between the Nation's policy of economic and political engagement with China and concerns about China's respect for civil and human rights." As a consequence, Cisco asserts, it was entitled to rely on the fact that U.S. trade regulations do not restrict the sale of internet infrastructure components to Chinese law enforcement officials.

This argument, premised on what is *not* in the Commerce Department regulations or the Tiananmen Act, calls to mind one made in *Jesner* and adopted by three Justices but not by the majority of the Court. *See* 138 S. Ct. at 1405 (plurality op.). Those Justices—Chief Justice Roberts and Justices Kennedy and Thomas—would have declined to recognize the liability of foreign corporate banks in light of the Anti-Terrorism Act, "part of a comprehensive statutory and regulatory regime that prohibits terrorism and terrorism financing." *Id.* (plurality op.). Justice Kennedy explained:

> The detailed regulatory structures prescribed by Congress and the federal agencies charged with oversight of financial institutions reflect the careful deliberation of the political branches on when, and how, banks should be held liable for the financing of terrorism. It would be inappropriate for courts to displace this considered statutory and regulatory structure by holding banks subject to common-law liability in actions filed under the ATS.

Id. (plurality op.).

Putting aside the absence of a majority ruling on the Anti-Terrorism Act argument in *Jesner*, the circumstances in *Jesner* are not parallel to those here. The regulations and congressional actions Cisco cites lack the comprehensive and direct regulation of the subject matter present in *Jesner.* Unlike the Anti-Terrorism Act's treatment of banks, which the Supreme Court described as "part of a comprehensive statutory and regulatory regime that prohibits terrorism and terrorism financing," *id.*, neither the Commerce Department regulations nor the Tiananmen Act specifically address or attempt to regulate the export of computer networking software or hardware. So recognizing an aiding and abetting claim involving the sale of such software and hardware under the ATS does not displace, or even affect, an existing, comprehensive regulatory scheme.

Ultimately, Congress and the Executive's decision not to regulate or prohibit generally the export of computer networking software does not conflict with the recognition that U.S. corporations may be liable, in designing and selling *certain* software under *certain* circumstances, for aiding and abetting violations of international law. Put another way, the Commerce Department regulations and the Tiananmen Act do not regulate the sale of computer networking software or hardware at all, for crime control or any other purpose, and so do not insulate such sales from otherwise applicable legal regimes, domestic or international.

We conclude that no general or case-specific foreign policy considerations caution against recognizing accomplice liability under the ATS. Nor is there any indication that Congress "might doubt the efficacy or necessity" of recognizing aiding and abetting liability under the ATS generally or as to the design and sale of computer networking software and hardware to China. *Jesner*, 138 S. Ct. at 1402 (majority op.).

* * * *

3. Extraterritoriality

Cisco maintains that Plaintiffs have failed to plead facts sufficient to overcome the presumption against extraterritoriality articulated in *Kiobel*, 569 U.S. at 124–25, 133 S.Ct. 1659, and *Nestle II*, 141 S. Ct. at 1936. Specifically, Cisco contends that the complaint fails to connect the illegal acts of Chinese security on Chinese soil to Cisco's corporate conduct in San Jose, California. According to Cisco, Plaintiffs have pleaded only domestic conduct amounting to general corporate activity, which is not actionable under the ATS.

We disagree as to corporate defendant Cisco. Plaintiffs' allegations, taken as true, state a plausible claim that the corporation took substantial actions domestically that aided and abetted violations of international law.

a. Background

Kiobel held that the ATS does not apply extraterritorially. 569 U.S. at 124, 133 S.Ct. 1659. When plaintiffs seek to apply a statute that "does not apply extraterritorially, [they] must establish that 'the conduct relevant to the statute's focus occurred in the United States.' " *Nestle II*, 141 S. Ct. at 1936 (majority op.) (quoting *RJR Nabisco*, 579 U.S. at 337, 136 S.Ct. 2090); *see Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 266, 130 S.Ct. 2869, 177 L.Ed.2d 535 (2010). If so, "the case involves a permissible domestic application even if other conduct occurred abroad." *Id.* (quoting *RJR Nabisco*, 579 U.S. at 337, 136 S.Ct. 2090).

Kiobel and *Nestle II* held that "mere corporate presence," *Kiobel*, 569 U.S. at 125, 133 S.Ct. 1659, and "allegations of general corporate activity," including corporate decision-making, are insufficient to show domestic conduct warranting application of the ATS, *Nestle II*, 141 S. Ct. at 1937 (majority op.). In both cases, the plaintiffs also alleged that the defendants took specific actions that aided and abetted violations of international law, but those alleged actions by defendants took place entirely (or nearly entirely) abroad. *Kiobel*, 569 U.S. at 124, 133 S.Ct. 1659; *Nestle II*, 141 S. Ct. at 1936–37 (majority op.).

In *Kiobel*, petitioners sued several foreign oil companies under the ATS for aiding and abetting the Nigerian government in committing violations of international law. 569 U.S. at 111–12, 133 S.Ct. 1659. The petitioners alleged the companies provided Nigerian forces with food, transportation, and money and allowed the forces to make use of company land in Nigeria. *Id.* at 113, 133 S.Ct. 1659. "[A]ll the relevant conduct took place outside the United States," and the only alleged conduct within the United States was "mere corporate presence." *Id.* at 124–25, 133 S.Ct. 1659. The Court concluded that the defendants' actions did not "touch and concern the territory of the United States ... with sufficient force to displace the presumption against extraterritorial application." *Id.*

Likewise, in *Nestle II*, the Court held that "the conduct relevant to the statute's focus" did not occur in the United States. 141 S. Ct. at 1936 (majority op.) (quoting *RJR Nabisco*, 579 U.S. at 337, 136 S.Ct. 2090). The parties disputed what conduct was relevant to the focus of the ATS. *Id.* The plaintiffs contended that "the 'focus' of the ATS is conduct that violates international law, that aiding and abetting forced labor is a violation of international law, and that domestic conduct can aid and abet an injury that occurs overseas." *Id.* Assuming but not deciding that the plaintiffs were correct in these respects, the Court held that the complaint impermissibly sought extraterritorial application of the ATS. *Id.* at 1936–37. "Nearly all the conduct" alleged to constitute aiding and abetting child slavery, including "providing training, fertilizer, tools, and cash to overseas farms," "occurred in Ivory Coast," the Court noted. *Id.* at 1937. And the Court reiterated that "allegations of general corporate activity—like decisionmaking—cannot alone establish domestic application of the ATS." *Id.*

The analysis in *Nestle II* treated the specific actions the defendants were alleged to have taken to assist the principal—that is, the *actus reus* of the alleged aiding and abetting—as the "conduct relevant to the statute's focus." 141 S. Ct. at 1936–37 (majority op.). The Second Circuit has applied a similar approach, explaining that the "relevant conduct" in assessing whether plaintiffs seek to apply the ATS extraterritorially is "the conduct constituting the alleged offenses under the law of nations"—in cases such as this one, "conduct that constitutes aiding and abetting another's violation of the law of nations." *Mastafa v. Chevron Corp.*, 770 F.3d 170,

184–85 (2d Cir. 2014).

For purposes of assessing the "focus" of the ATS to apply the extraterritoriality limitation, conduct that occurs within the United States and violates customary international law is most relevant to the ATS's aim of providing a forum to address violations of international norms that take place in U.S. territory. *See Jesner*, 138 S. Ct. at 1396–97 (majority op.). As discussed, *supra* Discussion, Part I.B.1, aiding and abetting a violation of international law establishes individual or corporate liability for a violation of the law of nations. Under the assumption the Supreme Court applied in *Nestle II*, in accord with the Second Circuit's approach in *Mastafa*, conduct within the United States that constitutes aiding and abetting a violation of international law, "even if other conduct [i.e., the principal's acts] occurred abroad," is a violation of the law of nations that falls within the "focus" of the ATS. *See Nestle II*, 141 S. Ct. at 1936 (majority op.) (quotation omitted).

As we have established, Plaintiffs have plausibly alleged that Cisco took actions that satisfied the *actus reus* and *mens rea* of aiding and abetting liability. *See supra* Discussion, Part I.B.2. We now consider whether those alleged actions took place in the United States.

b. Application

(i) Corporate Defendant Cisco

As discussed, *supra* Discussion, Part I.B.2.a(ii), Cisco is alleged to have supplied significant software, hardware, and ongoing support to the Party and Chinese authorities, thereby providing assistance with substantial effect on the commission of international law violations. Specifically, the complaint alleges that the Golden Shield apparatus was "designed and developed by Defendants in San Jose," and that "[a]ll of the high level designs provided by Cisco to its Chinese customers were developed by engineers with corporate management in San Jose, the sole location where Cisco cutting edge integrated systems and components were researched and developed."

The complaint also alleges corporate decision-making and oversight in San Jose of actions taken in China to build and integrate Golden Shield technology provided by Cisco. But the complaint further notes that "*[i]n addition* [to general decision-making], the Defendants, *from their San Jose headquarters*, handled all aspects of the high-level design phases including those enabling the *douzheng* of Falun Gong." During the request for proposal and design phases, for example, "the Defendants *in San Jose* described sophisticated technical specification linked to the ... functions of the Golden Shield, including ... who can access information, how the information is transmitted, transmission speeds, [and] data storage location and capacity."

The complaint additionally alleges "[f]or technologically advanced important overseas projects like the Golden Shield, [Cisco] operating out of San Jose routinely assigns its own engineering resources to design and implement the project in its entirety and in particular through its Advanced Services Team[,] ... a specialized service offered by San Jose Defendants that employs experts and engineers in network technology for large-scale overseas projects or important clients." For the Golden Shield technology, specifically, the "operation and optimization phases" were "orchestrated" from San Jose, and system practices were "carefully analyzed and made more efficient as well as increased in scope by Cisco engineers in San Jose." Additionally, the "post-product maintenance, testing and verification, [and] training and support" that "Cisco provided to Public Security" "required intensive and ongoing involvement by Cisco employees in San Jose." Finally, "San Jose manufactured key components of the Golden Shield in the United States, such as Integrated circuit chips that function in the same manner as the

Central Processing Unit of a computer."

Additionally, Plaintiffs have plausibly alleged that Cisco's domestic activities satisfied the *mens rea* for aiding and abetting liability. For example, the "anti-Falun Gong objectives communicated to Cisco were ... outlined in Cisco internal reports and files ... kept in San Jose." Cisco materials using the term *douzheng* to describe the purpose of the Golden Shield, and referring to "Strike Hard" campaigns against "evil cults," "were identified as emanating from Cisco San Jose." And, as discussed above, U.S. government entities and news media widely reported on the torture and detention of Falun Gong adherents in China.

In sum, Plaintiffs allege that Cisco designed, developed, and optimized important aspects of the Golden Shield surveillance system in California; that Cisco manufactured hardware for the Golden Shield in California; that Cisco employees in California provided ongoing maintenance and support; and that Cisco in California acted with knowledge of the likelihood of the alleged violations of international law and with the purpose of facilitating them.

Contrary to Cisco's arguments, the corporation's domestic actions, as plausibly alleged in the complaint, well exceeded "mere corporate presence" or simple corporate oversight and direction. *Kiobel*, 569 U.S. at 125, 133 S.Ct. 1659. Rather, the design and optimization of integrated databases and other software, the manufacture of specialized hardware, and ongoing technological support all took place in California. Unlike in *Kiobel* and *Nestle*, in which all or nearly all the actions that constituted assistance to the principal occurred abroad, the domestic activities alleged here constituted essential, direct, and substantial assistance for which aiding and abetting liability can attach. So, with regard to corporate defendant Cisco, Plaintiffs' allegations support application of the ATS.

The Second Circuit's holding in *Balintulo v. Ford* supports our conclusion. The plaintiffs in *Balintulo* alleged that IBM aided and abetted violations of international law through the design and provision of technology to the apartheid regime of South Africa. 796 F.3d at 165. Specifically, the *Balintulo* plaintiffs alleged that IBM in the United States "developed both the hardware and the software—both a machine and a program—to create" a particular identity document in an apartheid regime in which identity documents "were an essential component." *Id.* at 169. The Second Circuit concluded that "designing particular technologies in the United States that would facilitate South African racial separation" would be sufficient to overcome the presumption against extraterritoriality if that activity, considered separately, satisfied the *actus reus* and *mens rea* of aiding and abetting liability. *Id.* at 169–70. The design and provision of hardware and software in *Balintulo* closely resembles what Plaintiffs here allege to have occurred in San Jose.

We conclude that Plaintiffs' case against Cisco "involves a permissible domestic application [of the ATS] even if other conduct occurred abroad." *Nestle II*, 141 S. Ct. at 1936 (majority op.) (quotation omitted).

* * * *

C. NEGOTIATIONS RELATING TO THE COMPACTS OF FREE ASSOCIATION

As discussed in *Digest 2019* at 155-56, the United States began negotiations on new agreements relating to Compacts of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

On May 22, 2023, the United States and Palau signed the U.S.-Palau 2023 Agreement following the Compact of Free Association 432 Review.* The State Department issued a media note, which is included below and available at https://www.state.gov/secretary-blinken-witnesses-the-signing-of-the-u-s-palau-2023-agreement-following-the-compact-of-free-association-section-432-review/.

* * * *

On May 22, Secretary of State Antony Blinken participated in the signing ceremony of the U.S.-Palau 2023 Agreement following the Compact of Free Association Section 432 Review marking the successful conclusion of Compact-related negotiations with the Republic of Palau regarding the extension of economic assistance.

The United States has a special and historic relationship with the Republic of Palau and intends to continue Compact-related assistance at significant levels that recognize our special relationship, support economic development, bolster resiliency to tackle challenges such as climate change, and assist in building a prosperous, healthy, and more self-sustaining future.

This agreement marks a major milestone in U.S.-Palau relations, which is underpinned by the Compact of Free Association, and continues to support freedom, security, and prosperity in the Indo-Pacific. The United States is a Pacific nation, and we have a deep and longstanding partnership with the Republic of Palau and strong people-to-people ties to Pacific Island countries, who are not only our neighbors but also our friends.

Congressional approval is necessary before the agreement can be brought into force, and we are engaged with Congress on this. Additional negotiations are underway to continue federal programs and services that are currently provided under a Federal Programs and Services Agreement.

* * * *

On May 23, 2023, the United States and the Federated States of Micronesia signed three agreements related to the U.S.-FSM Compact of Free Association: (1) an Agreement to Amend the Compact, as Amended, (2) a new Fiscal Procedures Agreement, and (3) a new Trust Fund Agreement. The State Department issued a media note, available at https://www.state.gov/signing-of-the-u-s-fsm-compact-of-free-association-related-agreements/, and included below.

* * * *

On May 23, Charge d'Affaires Alissa Bibb of the U.S. Embassy in Pohnpei, Federated States of Micronesia (FSM), and Chief Negotiator Leo Falcam, Jr., of the FSM Joint Committee on

* Editor's note: The 2023 Compact Section 432 Review Agreement (Palau 24-315), which entered into force March 15, 2024, is available at https://www.state.gov/palau-24-315.

Compact Review and Planning signed three agreements related to the U.S.-FSM Compact of Free Association: (1) an Agreement to Amend the Compact, as Amended, (2) a new Fiscal Procedures Agreement, and (3) a new Trust Fund Agreement, marking the successful conclusion of negotiations with FSM regarding the extension of Compact- related economic assistance.

The United States has a special and historic relationship with the FSM and intends to continue Compact-related assistance at significant levels that recognize our special relationship, support economic development, bolster resilience to tackle challenges such as climate change, and assist in building a prosperous, healthy, and more self-sustaining future.

These agreements mark a major milestone in U.S.-FSM relations, which is underpinned by the Compact of Free Association and continues to support freedom, security, and prosperity in the Indo-Pacific. The United States is a Pacific nation, and we have a deep and longstanding partnership with the FSM and strong people-to-people ties to Pacific Island countries that are not only our neighbors but also our friends.

Congressional approval is necessary before the agreements can be brought into force, and we are engaged with Congress on this matter. Additional negotiations are underway to continue federal programs and services that are currently provided under a Federal Programs and Services Agreement.

* * * *

On September 29, 2023, the United States and the Federated States of Micronesia signed the 2023 Federal Programs and Services Agreement.[**] The State Department issued a media note, available at https://www.state.gov/the-united-states-of-america-and-the-federated-states-of-micronesia-signed-the-2023-federal-programs-and-services-agreement/, and includes the following:

> Yesterday, the Government of the United States of America and the Government of the Federated States of Micronesia signed the 2023 Federal Programs and Services Agreement on the continuation of essential programs and services provided by U.S. agencies to the Federated States of Micronesia. The conclusion of this Agreement is an affirmation of our close and continuing partnership…
>
> The Federal Program[s]and Services Agreement was signed as part of the negotiations related to Compact of Free Association and confirms the shared desire to strengthen the special and historic partnership between our nations.

On October 16, 2023, the United States and the Republic of Marshall Islands signed three agreements related to the U.S.-Republic of the Marshall Islands (RMI) Compact of Free Association: (1) an Agreement to Amend the Compact, as Amended, (2) a new Fiscal Procedures Agreement, and (3) a new Trust Fund Agreement. The State Department issued a media note, available at https://www.state.gov/the-united-states-and-the-republic-of-the-marshall-islands-sign-three-compact-of-free-association-related-agreement/, and includes the following:

[**] Editor's note: The 2023 Federal Programs and Services Agreement, which entered into force March 18, 2024, is available at https://www.state.gov/micronesia-24-318.1.

> The conclusion of these agreements affirms the close and continuing partnership between the United States and the RMI…
>
> The signing of these three agreements reflects the strong and historic cooperation between our nations and affection between our people. The U.S.-RMI Compact continues to underpin our special relationship that is deep and enduring, and that furthers the U.S. commitment to a Pacific that is secure, free and open, and more prosperous.
>
> U.S. Congressional and RMI Parliament (Nitijela) action is necessary before the agreements can be brought into force, and we appreciate Congress' bipartisan and bicameral support on this matter.

On June 15, 2023, the Administration submitted to Congress, for the enactment of legislation to bring the agreements into force, the following agreements related to the Compacts of Free Association between the Governments of the Federated States of Micronesia (FSM) and the Republic of Palau (Palau):

- The Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia to Amend the Compact of Free Association, as Amended;[***]
- The Agreement Between the Government of the United States of America and the Government of the Federated States of Micronesia Regarding the Compact Trust Fund;[****]
- The Agreement Concerning Procedures for the Implementation of United States Economic Assistance provided in the 2023 Amended Compact Between the Government of the United States of America and the Government of the Federated States of Micronesia; and,[*****]
- The Agreement Between the Government of the United States of America and the Government of the Republic of Palau Resulting from the 2023 Compact of Free Association Section 432 Review.

On December 5, 2023, President Biden transmitted five agreements related to the Compacts of Free Association between the Government of the United States of America and the Governments of the FSM and the Republic of the Marshall Islands (RMI) to the U.S. Congress for the enactment of legislation to bring the agreements into force. The White House press release is available at https://www.whitehouse.gov/briefing-room/statements-

[***] Editor's note: The Agreement to Amend the Compact of Free Association, as Amended (Micronesia 24-318), which entered into force March 18, 2024, is available at https://www.state.gov/micronesia-24-318.

[****] Editor's note: The Compact Trust Fund Agreement, which entered into force March 18, 2024, is available at https://www.state.gov/micronesia-24-318.2.

[*****] Editor's note: The Procedures for Implementation of Economic Assistance under the 2023 Compact, which entered into force March 18, 2024, is available at https://www.state.gov/micronesia-24-318.3.

releases/2023/12/05/president-biden-transmits-compacts-of-free-association-related-agreements-to-u-s-congress/, and included below.

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* * * *

Today President Biden transmitted to the U.S. Congress five agreements related to the Compacts of Free Association, signed by the Department of State, with the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI). The Biden Administration is working closely with the U.S. Congress to enact legislation to allow for the implementation of these five agreements, which will fulfill our commitments and strengthen our enduring relationships with our Compact of Free Association partner nations. These five agreements are:

1. The Agreement Concerning Procedures for the Implementation of United States Economic Assistance provided in the 2023 Amended Compact Between the Government of the United States of America and the Government of the Federated States of Micronesia;
2. The 2023 Federal Programs and Services Agreement Between the Government of the United States and the Government of the Federated States of Micronesia with Annexes;
3. The Agreement Concerning Procedures for the Implementation of United States Economic Assistance Provided in the 2023 Amended Compact Between the Government of the United States of America and the Government of the Republic of the Marshall Islands;
4. The Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands Regarding the Compact Trust Fund; and
5. The Agreement Between the Government of the United States of America and the Government of the Republic of the Marshall Islands to Amend the Compact of Free Association, as Amended.

The Biden Administration appreciates the bipartisan work in Congress to advance legislation necessary to bring these agreements into force. The Administration calls on Congress to pass Compacts-related legislation as soon as possible.

* * * *

These Compact-related agreements include economic assistance to support essential government services such as health, education, and infrastructure, and U.S. contributions to Compact Trust Funds, which will support the countries' self-sufficiency in the future. Extending such assistance, including Federal programs and services, is a critical component of the Biden-Harris' Administration's Indo-Pacific, Pacific Partnership, and National Security Strategies.

* * * *

On October 19, 2023, Special Presidential Envoy for Compact Negotiations Joe Yun testified before Congress, alongside other U.S. government officials, regarding the

concluded agreements; they urged the passage of legislation that would provide necessary authorities and appropriate funds for the concluded agreements and allow them to enter into force. The testimony is available at https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=414959.

Cross References

Halkbank v. United States, **Ch. 10.A.1**
Bartlett v. Baasiri, **Ch. 10.A.2**
Germany v. Philipp *and* Hungary v. Simon, **Ch. 10.A.3**

CHAPTER 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On March 20, 2023, the Department of State released the 2022 Country Reports on Human Rights Practices. The Department submits the reports to Congress annually per §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for accounts of human rights practices in other countries. While the Country Reports describe facts relevant to human rights concerns, the reports do not reach conclusions about human rights law or contain legal definitions. The Country Reports are available at https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/. Secretary Blinken delivered remarks on the release of the 2022 Country Reports, which are available at https://www.state.gov/secretary-antony-j-blinken-on-the-2022-country-reports-on-human-rights-practices/.

2. International Covenant on Civil and Political Rights

On October 10, 2023, the State Department announced that Ambassador Michèle Taylor, Ambassador to the UN Human Rights Council ("HRC"), would lead a delegation to the Human Rights Committee in Geneva, Switzerland on October 17-18, 2023. The U.S. Delegation presented on its 2021 report on the implementation of U.S. obligations under the International Covenant on Civil and Political Rights ("ICCPR"). See *Digest 2021* at 167-68 for discussion of the U.S. fifth periodic report. The delegation included Special Assistant to the President for Democracy and Civil Participation Justin Vail, Senior Director for Multilateral Affairs for the National Security Council Joshua Black, U.S. Department of State's Principal Deputy Assistant Secretary in the Bureau of Democracy, Human Rights, and Labor Robert Gilchrist, the Attorney General for the State of Nevada, Aaron Ford, Mayor of Montgomery, Alabama, Steven Reed, with nine other participants from eight federal agencies. The media note is available at https://www.state.gov/u-s-delegation-to-the-human-rights-committee-on-the-international-covenant-on-civil-and-political-rights-iccpr/.

On October 17, 2023, Ambassador Michèle Taylor delivered opening remarks at the U.S. presentation to the Human Rights Committee concerning the U.S. review under

the ICCPR. The statement is available at https://geneva.usmission.gov/2023/10/17/u-s-presentation-to-the-un-human-rights-committee/.

Justin Vail, Special Assistant to the President for Democracy and Civic Participation delivered additional opening remarks for the U.S. delegation on October 17, 2023. The remarks are available at https://geneva.usmission.gov/2023/10/18/u-s-presentation-to-the-un-human-rights-committee-justin-vail/.

On October 18, 2023, Ambassador Michèle Taylor delivered a closing statement at the U.S. presentation to the Human Rights Committee concerning the U.S. review under the ICCPR. The statement is available at https://geneva.usmission.gov/2023/10/18/iccpr-ambassador-taylor-closing-statement/.

3. UN Third Committee

a. General Statement

The United States submitted a long-form general statement to the UN Secretariat for the 78th session of the UN Social, Humanitarian and Cultural Affairs Committee, or Third Committee. On November 16, 2023, the United States posted the statement to the website of the U.S. Mission to the UN at https://usun.usmission.gov/unga-78-third-committee-general-statement/ and included in full below.

* * * *

The United States thanks the Third Committee Bureau and our colleagues for their cooperation. We wish here to make important points of clarification on some of our key priorities for the Third Committee.

We underscore that UN General Assembly resolutions are non-binding documents that do not create rights or obligations under international law. The United States understands that General Assembly resolutions do not change the current state of conventional or customary international law. We do not read resolutions to imply that Member States must join or implement obligations under international instruments to which they are not a party. Any reaffirmation of such conventions or treaties, or obligations set forth therein, applies only to those States that are party to them.

We understand abbreviated references to certain human rights in these resolutions to be shorthand references for the more accurate and widely accepted terms used in the applicable treaties or the Universal Declaration of Human Rights, and we maintain our long-standing positions on those rights. We do not read references in resolutions to specific principles, such as proportionality, to imply that states have an obligation under international law to apply or act in accordance with those principles. We also reiterate our long-standing position that the International Covenant on Civil and Political Rights (ICCPR) applies only to individuals who are both within the territory of a State Party and subject to its jurisdiction. The United States strongly condemns harassment, gender-based violence, and other acts that can amount to human rights violations or abuses, but believes it is important for resolutions to accurately characterize these

terms, consistent our international obligations and our understanding of these terms under U.S. law. Moreover, U.S. co-sponsorship of, or our joining consensus on, resolutions does not imply endorsement of the views of special rapporteurs or other special procedures mandate holders as to the contents or application of international law.

Specific Points of Clarification

Freedom of Expression: While the United States condemns the advocacy of national, racial, or religious hatred and other hateful ideologies, we do not do so at the expense of our strong support for freedom of opinion and expression. To the extent that a resolution refers to efforts to prevent, prohibit, or eliminate hateful ideas or speech, such efforts must be carried out in a manner that fully respects freedom of opinion and expression and is consistent with the requirements in Article 19 of the ICCPR.

References to Violence: The United States notes that certain resolutions inaccurately refer to a range of activities and concepts, including hate speech and racism, as "forms of violence." We reiterate our long-standing concern with equating speech and ideas with violence, noting that, however odious they may be, ideas and hateful speech that do not rise to the level of a true threat or incitement to imminent violence are protected under the right to freedom of opinion and expression. Likewise, harassment and bullying, while condemnable, do not necessarily constitute violence.

2030 Agenda for Sustainable Development (2030 Agenda): The United States is fully committed to the achievement of the Sustainable Development Goals and implementation of the 2030 Agenda, which represents one of our best vehicles to expand economic opportunity, ensure respect for human rights, care for our planet, promote good governance, and ensure no one is left behind. We reaffirm that commitments to the UN Charter and the Universal Declaration of Human Rights are fundamental to our efforts to achieve sustainable development. Societies that that respect human rights, uphold the rule of law and access to justice, promote gender equality, tackle corruption, and support inclusive and accountable governance for all citizens are best equipped to deliver lasting development gains and a more peaceful, prosperous, and inclusive future for their citizens.

The United States also underscores that paragraph 18 of the 2030 Agenda calls for countries to implement the agenda in a manner that is consistent with the rights and obligations of States under international law. We also highlight our mutual recognition in paragraph 58 that 2030 Agenda implementation must respect, and be without prejudice to, the independent mandates of other institutions and processes, including negotiations, and does not prejudge or serve as precedent for decisions and actions underway in other fora. For example, the 2030 Agenda does not represent a commitment to provide new market access for goods or services. The 2030 Agenda also does not interpret or alter any World Trade Organization (WTO) agreement or decision, including with respect to the Agreement on Trade-Related Aspects of Intellectual Property Rights. Furthermore, citizen-responsive governance, including respect for human rights, sound economic policy and fiscal management, government transparency, and the rule of law are essential to the implementation of the 2030 Agenda. We understand references to "internationally agreed development goals" to refer to the 2030 Agenda.

Trade: The United States supports strong and growing trade relationships around the globe. We welcome efforts to bolster those relationships, increase economic cooperation, and advance prosperity for all people, within the appropriate institutions.

It is our view that the UN must respect the independent mandates of other processes and institutions, including trade negotiations, and must not comment on decisions and actions in

other fora, including at the WTO. While the UN and WTO share some common interests, they have different roles, rules, and memberships.

The UN is not the appropriate venue for these discussions, and the United States does not consider recommendations made by the General Assembly or the Economic and Social Council on these issues to be binding. This includes calls to adopt approaches that may undermine incentives for innovation, such as technology transfer that is not both voluntary and on mutually agreed terms.

We underscore our position that trade language negotiated or adopted by the General Assembly or Economic and Social Council, or under their auspices, has no relevance to U.S. trade policy, for our trade obligations or commitments, or for the agenda at the WTO, including discussions or negotiations in that forum.

Technology Transfer: The United States firmly considers that strong protection of intellectual property and enforcement of intellectual property rights provide critical incentives needed to drive the innovation that will address the health, environmental, and development challenges of today and tomorrow. The United States understands that references to dissemination of technology and transfer of, or access to, technology are to voluntary technology transfer on mutually agreed terms and that all references to access to information and/or knowledge are to information or knowledge that is made available with the authorization of the legitimate holder. The United States underscores the importance of regulatory and legal environments that support innovation.

The "Right to Development": We note that the "right to development" is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and, unlike with human rights, is not recognized as a universal right held and enjoyed by individuals and which every individual may demand from his or her own government. Indeed, we continue to be concerned that the "right to development" identified within the text protects States instead of individuals.

Environment and Human Rights: The United States believes environmental protection is a means of supporting the well-being and dignity of people around the world and the enjoyment of all human rights. That said, a right to a clean, healthy, and sustainable environment, including the content of any such right, has not been established in international law, and the adoption of non-binding resolutions in multilateral fora does not change that fact. Moreover, such a right is not justiciable in U.S. courts.

Economic, Social, and Cultural Rights: As the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides, each State Party undertakes to take the steps set out in Article 2(1) "with a view to achieving progressively the full realization of the rights." We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we believe that these resolutions should not try to define the content of those rights. Furthermore, to the extent resolutions refer to the right or rights to water and sanitation we understand these references to refer to the right derived from economic, social, and cultural rights contained in the ICESCR. Similarly, we understand references to the right to housing or right to food, as recognized in the ICESCR, to refer to the rights as components of the right to an adequate standard of living. The United States is not a party to the ICESCR, and we note that obligations on States relating to economic, social, and cultural rights, as recognized in the ICESCR, exist only for State Parties thereto and that such references do not create obligations for States under other human rights treaties. While the United States supports policies to advance respect for

economic, social, and cultural rights, both domestically and in our foreign policy, the rights contained in the ICESCR are not justiciable in U.S. courts.

Justice and Accountability: The United States strongly supports calls for justice and accountability for human rights violations and abuses. We understand language regarding the responsibility of States to investigate or prosecute those responsible for violations of international law and human rights abuses to refer only to those actions that constitute criminal violations under applicable law and understand references to State "obligations" to investigate or prosecute in light of applicable international obligations. We do not necessarily understand the characterization of certain acts or situations using international criminal law terms of art to mean that, as a matter of law, such terms are applicable to any specific act or situation.

Access to Justice and Legal Assistance: The United States strongly supports access to justice for all. However, the United States does not recognize an independent human right to access to justice or equal access to justice. There is no such right recognized in any of the core UN human rights conventions, and the United States does not believe such language to have an agreed international meaning. The United States likewise disagrees with language suggesting that such a purported right entitles individuals to legal assistance at all stages of proceedings, regardless of circumstances. The United States acknowledges that access to justice and access to legal assistance are critical to the enjoyment of many human rights and fundamental freedoms. We note, however, that Articles 14 and 26 of the ICCPR recognize specific rights related to this, including the right of all persons to be equal before the law and to the equal protection of the law, as well as rights related to legal representation. The United States therefore understands references to such a purported right to access to justice, including as it relates to legal assistance, as referring to the rights recognized in Articles 14 and 26 of the ICCPR.

Right to Education: The United States strongly supports the realization of the right to education. As educational matters in the United States are primarily determined at the state and local levels, we understand that when resolutions attempt to define, direct, or prescribe various aspects of education, or call on States to strengthen, ensure or address them, including curricula, quality, programs, or policies, this is done in terms consistent with our respective federal, state, and local authorities.

International Humanitarian Law: The United States is deeply committed to promoting respect for international humanitarian law (IHL) and the protection of civilians in armed conflict. We note that IHL and international human rights law are in many respects complementary and mutually reinforcing. However, we understand that, with respect to references in resolutions to both bodies of law in situations of armed conflict, such references refer to those bodies of law only to the extent that each is applicable. IHL is the lex specialis during situations of armed conflict and, as such, is the controlling body of law with regard to the conduct of hostilities. We do not necessarily understand references to conflict, IHL, or IHL terms of art in these resolutions to mean that, as a matter of law, an armed conflict exists in a particular country, that such terms are applicable to any specific act or situation, or that a particular legal determination has been made. The United States also does not understand any reference to IHL in these resolutions to supplant States' existing obligations under IHL.

Legal Obligations of an Occupying Power: The law governing belligerent occupation, including as reflected in the 1949 Geneva Convention Relative to the Protection of Civilians in Time of

War, imposes important obligations on Occupying Powers to provide for the interests and welfare of the civilian population. The United States does not understand the resolution on the

situation of human rights in the temporarily controlled or occupied territories of Ukraine as changing the law of belligerent occupation. We also understand that the use of the term "temporarily controlled or occupied territories" to describe areas of Ukraine is not meant to denote a legal determination as to whether the area is occupied.

Humanitarian Access: The United States fully supports the provision of live-saving humanitarian assistance to those in need, consistent with the humanitarian principles of humanity, neutrality, impartiality, and independence. However, we note that there is not a general, binding obligation under international law for States to provide humanitarian access. Likewise, there is no international obligation that requires the completely unrestricted delivery of humanitarian or other assistance at all times. We further note that the humanitarian principles do not constitute binding obligations under international law.

International Refugee Law: The United States strongly supports and advocates for the protection of refugees and other displaced persons around the world, and we urge all States to respect the principle of non-refoulement, while also supporting safe, dignified, and sustainable repatriation or return of migrants who are ineligible to remain. In underscoring our support for this principle, we wish to clarify that U.S. international obligations with respect to non-refoulement are the provisions contained in Article 33 of the 1951 Convention relating to the Status of Refugees (applicable to the United States by its incorporation in the 1967 Protocol relating to the Status of Refugees) and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We note that we understand references to international refugee law in certain resolutions to refer to the obligations of States under the relevant treaties to which they are party.

Global Compact for Safe, Orderly, and Regular Migration: The United States is committed to promoting safe, orderly, and humane migration and to strengthening access to international protection for displaced populations. While the United States did not vote to adopt the Global Compact for Migration (GCM) in 2018, in December 2021, we issued a Revised National Statement endorsing the vision of the GCM, reflecting certain clarifications and limitations, as consistent with our commitment to working with countries to enhance cooperation to manage migration. That statement remains our position on this instrument. To the extent that certain resolutions may reaffirm the GCM, we understand such reaffirmation to be only to the extent set forth in our Revised National Statement.

Right to a Nationality: The United States fully supports the right to a nationality as articulated in Article 15 of the Universal Declaration of Human Rights. We understand references to the "right to a nationality" as referring to the right included the Universal Declaration of Human Rights, which is not legally binding on States. We emphasize that resolutions do not modify States' obligations related to the reduction of statelessness, which are defined in applicable human rights treaties to which they are party.

Rights and Obligations Related to Travel: The United States interprets references to the "right to return" or the right to return to one's own country, as well as references to the right to freedom of movement and residence, as referring to the rights included in Article 13 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Civil and Political Rights. Furthermore, the United States interprets the purported obligation of States to readmit their own nationals as referring to the obligation in Article 12(4) of the International Covenant on Civil and Political Rights to refrain from arbitrarily depriving persons of the right to enter their own country.

Rights of Indigenous Peoples: The United States reaffirms its support for the UN Declaration on the Rights of Indigenous Peoples. As explained in our 2010 Statement of Support, the Declaration is an aspirational document of moral and political force and is not legally binding or a statement of current international law. The Declaration expresses the aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies. As also detailed in our 2010 Statement of Support, the United States reaffirms that human rights belong to individuals, including Indigenous Persons, and that Indigenous Peoples have certain additional collective rights. The United States reads the provisions of the Declaration and resolutions in this session in light of this understanding of human rights and collective rights.

Sanctions: The United States does not accept that sanctions amount to violations of human rights and firmly rejects the use of the term "unilateral coercive measures." Economic sanctions are a legitimate, important, appropriate, and effective tool for responding to harmful activity and addressing threats to peace and security. The United States is not alone in that view or in that practice. In cases where the United States has applied sanctions, we have done so consistent with international law and with specific objectives in mind, including as a means to promote a return to rule of law or democratic systems, to promote respect for human rights and fundamental freedoms, or to respond to threats to international peace and security.

Rights of the Child: The United States does not understand references to the rights of the child or principles derived from the Convention on the Rights of the Child, including the principle that the best interests of the child should be a primary consideration in all actions concerning children, as implying that the United States has obligations in that regard. We also understand references to recruitment or use of children as referring to the recruitment or use of children in violation of international law, including, where applicable, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

Child Labor: The United States notes that work performed by persons under the age of 18 is legal in the United States, with minimum age requirements and certain restrictions depending on the work in which the individual is engaging, as well as in many other countries. The United States strongly supports the elimination of the worst forms of child labor, as that term is defined by Article 3 of the Worst Forms of Child Labour Convention, but notes that not all work done by persons under the age of 18 should be classified as child labor that is to be targeted for elimination.

Equal Pay: The United States strongly supports the right to equal pay for equal work, as that right is articulated in Article 23 of the Universal Declaration of Human Rights, as a means to eradicate discrimination in employment and occupation and to realize women's right to work. The United States' understanding of that right is that it requires equal pay (including salary and other pecuniary and non-pecuniary benefits) for work that requires substantially equal skill, effort, and responsibility under similar working conditions within the same establishment. The United States does not interpret such right, however, to require equal pay for work of equal value.

Quotas/Temporary Special Measures for Women and Girls: With respect to quotas, affirmative action measures, temporary special measures, and other measures intended to achieve parity for women and girls, the U.S. position is that each country must determine for itself whether such measures are appropriate. We do not believe it is a useful exercise to urge the use of quotas and rigid numerical targets, particularly in the context of political representation and

government employment, without consideration for domestic anti-discrimination legal frameworks and obligations under international law to ensure every citizen has an equal right and opportunities, without discrimination, to take part in the conduct of public affairs. The best way to improve the situation of women and girls is through legal and policy reforms that end discrimination and promote and provide equal access to opportunities.

Enjoyment of Human Rights: The United States notes that States cannot "ensure" the enjoyment of human rights by individuals because non-state actors, or other factors beyond State control, can impact their enjoyment as well.

References to Human Rights "Violations" in Connection with Non-State Actors: The United States notes that generally only States have obligations under international human rights law and, therefore, the capacity to commit violations of human rights. References in resolutions to human rights "obligations" in connection with non-State actors or "violations" of human rights by such actors should not be understood to imply recognition by the United States or any other State that such actors constitute a government or bear obligations under the international human rights treaties to which the State is a party. Nevertheless, the United States remains committed to promoting accountability for human rights abuses by non-state actors.

Human Rights-Based Approach: There is no internationally agreed upon understanding of the term "human rights-based approach." To the extent the term is used in resolutions, the United States reiterates that such uses do not create obligations under international human rights law or other international commitments, including with respect to particular actions States may take in fulfilling their obligations.

Privacy: Given differences in views as to the meaning and scope of privacy as a human right under international law, the United States does not support use of the term "right to privacy" unless it is directly tied to the language in Article 12 of the Universal Declaration of Human

Rights or Article 17 of the ICCPR. To the extent this term is used in resolutions that we support, we read it as specifically referencing the right not to be subjected to arbitrary or unlawful interference with one's privacy as set forth in Article 17 of the ICCPR. We further note our understanding that expressions of concern regarding interference with anonymity and encryption tools specifically refer to situations where such interference is arbitrary or unlawful.

Torture: The United States understands that the definition of torture, to the extent this term is used in resolutions that we support, is the same as that in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and, therefore, is consistent with the United States' interpretations of its legal obligations under that instrument and does not expand them under international law. Hence, references to "torture" do not include the imposition of the death penalty or lawful means to do so. Likewise, we do not consider interrogation methods that are legal under U.S. law to be prohibited "intimidation," "ill-treatment," or "coercion," such that they would be addressed in any work to elaborate standards for non-coercive interviews by law enforcement. Finally, we read language referring to investigation, redress, and rehabilitation in relation to torture as being consistent with U.S. law regarding government obligations to provide post-arrest or -detention accommodations, investigate credible allegations of torture, to provide opportunities for victims of torture to seek relief or redress, and to provide rehabilitation services for victims of torture or the availability of such redress or services in U.S. courts.

Use of Force: The United States fully supports the use of less-than-lethal devices when appropriate, and we have federal programs in place to encourage their use under appropriate

circumstances. Many subnational law enforcement agencies also employ them. However, we cannot agree that the use of less-than-lethal devices may decrease the need to use any kind of weapon in all circumstances. In some situations, the use of less-than-lethal devices can increase the risk of injury or death to law enforcement officers. We support a balanced approach that recognizes that situations are fact specific and that some situations may not be appropriate for less-than-lethal devices. The use of force by law enforcement officers in peacetime in the United States is governed by the "objective reasonableness" standard set forth by the U.S. Supreme Court. Additionally, we note that use of the terms "conform" and "to ensure" suggest, incorrectly, that Member States have undertaken obligations to apply the Mandela Rules, the Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which are non-binding.

Finally, it is our intention that this statement applies to action on all agenda items in the Third Committee. We request that this statement be made part of the official record of the meeting. Thank you, Chairperson.

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b. Other thematic statements at the UN General Assembly Third Committee

Additional thematic statements at the UN General Assembly Third Committee, below other sections of this chapter.

On November 3, 2023, Ambassador Lisa Carty, U.S. Permanent Representative to the Economic and Social Council, provided the explanation of vote on a Third Committee Resolution on combatting glorification of Nazism. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-combating-glorification-of-nazism/.

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The United States is proud to have fought with our World War II allies, including the Soviet Union, to achieve victory over Nazi Germany in 1945. We categorically condemn the glorification of Nazism and all modern forms of violent extremism, antisemitism, Islamophobia, racism, xenophobia, discrimination, and related intolerance.

That said, the United States continues to oppose the Russian Federation's manipulation of the UN system to spread disinformation. This resolution is a glaring attempt by Russia to further its geopolitical aims. It invokes the Holocaust and the Second World War to malign countries that rightfully reject the celebration of their brutal domination by the Soviet Union. This is more egregious now, when Russia uses false accusations of Nazism to try to justify its war of aggression against Ukraine.

The Russian Federation's resolution is not a serious effort to combat Nazism, antisemitism, racism, or xenophobia – all of which are abhorrent and unacceptable. Instead, Russia's attempts to instrumentalize history to justify its aggression is an affront to Holocaust victims and to all who fought against Nazism. This resolution is a shameful political ploy.

We fully support the amendment presented today, which introduces into this resolution language that rejects the cynical use of propaganda by Russia to smear its neighbors.

In addition, we continue to have serious concerns with the resolution's invocation of Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination and Article 20 of the International Covenant on Civil and Political Rights to justify undue restrictions on freedom of expression.

Finally, we note our concerns regarding the process by which this resolution was run. The Russian Federation failed to provide any opportunity for Member States to meaningfully engage in negotiations, holding only one sham informal in which no suggestions were taken on board.

For these reasons, we will continue to vote "No" on this resolution, as we have done since 2005, and we call on all countries to do the same.

In closing, the United States calls on the Russian Federation to immediately cease all military actions against Ukraine, withdraw its forces from all of Ukraine's sovereign territory including Crimea, refrain from any further unlawful threat or use of force against any other Member State, and finally, drop the false narrative by which it has been exploiting one of history's darkest moments to further its twisted aims.

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On November 3, 2023, Jessica Brzerski, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on inclusive policies and programs to address homelessness. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-inclusive-policies-and-programmes-to-address-homelessness/.

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Thank you. The United States is pleased to join consensus on this resolution on addressing homelessness. The Biden Administration remains committed to finding solutions that help to eradicate homelessness.

With regard to this resolution's references to economic, social, and cultural rights and the 2030 Agenda, we refer you to the U.S. general statement, and the unabridged version of our statement, which will be posted on the U.S. Mission's website on the final day of this session and included in the Digest of U.S. Practice in International Law.

We interpret references to the obligations of States as applicable only to the extent that they have assumed such obligations, and with respect to States Parties to the International Covenant on Economic, Social, and Cultural Rights, in light of its Article 2(1). The United States is not a Party to the Covenant; it is not binding on the United States; and the rights contained therein are not justiciable as such in U.S. Courts.

We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. We therefore believe that resolutions should not try to define the content of those rights, or related rights, including those derived from other instruments.

Further, we join consensus with the express understanding that this resolution, including its reference to a right to adequate housing, does not alter the current state of conventional or customary international law, which does not contain a standalone right to adequate housing.

We understand the reference to a right to adequate housing in this resolution to be an abbreviated reference to the right to an adequate standard of living, including housing, in the International Covenant on Economic, Social, and Cultural Rights and the Universal Declaration of Human Rights.

We also support the statement made by the distinguished delegate of Japan.

Finally, we are concerned that the oral statement that was delivered by the Secretariat just hours before consideration of this resolution. We encourage the Secretariat to share information as early in the process as possible in well in advance of the tabling of a draft resolution. We will discuss this issue thoroughly in 5C.

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On November 7, 2023, Eric Merron, U.S. Adviser to the Third Committee, provided the explanation of vote a Third Committee resolution on human rights and unilateral coercive measures. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-human-rights-and-unilateral-coercive-measures-3/.

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This resolution does not advance respect for or protection of human rights. The United States is committed to working with all States parties to achieve our common objectives related to advancing human rights. However, a small number of Member States insist on advancing a politically motivated agenda related to so-called Unilateral Coercive Measures. Economic sanctions are a legitimate, appropriate, and effective tool for responding to harmful activity and addressing threats to peace and security. Sanctions can be used to promote accountability for human rights violations and abuses, respond to malign behavior, and counter transnational crime, terrorism, and proliferation of weapons of mass destruction. Sanctions are expressly a tool for promoting positive and enduring behavior change. We are clear and transparent about these goals.

The United States uses sanctions in a manner consistent with international law with these objectives in mind; it is not alone in that view or practice.

This resolution inappropriately challenges the ability of States to determine their economic relations and protect legitimate national interests, including taking actions in response to national security concerns. The resolution also attempts to undermine the international community's ability to respond to human rights violations and abuses.

The United States is mindful of the potential unintended consequences of sanctions. Our efforts are intended to constrain the abuses of governments, not harm their people. Internationally, we co-penned UN Security Council Resolution 2664 to create a clear carveout for humanitarian efforts in all UN sanctions regimes. This historic initiative eased the delivery of humanitarian aid to those in need while helping ensure aid is not diverted or abused by malicious

actors. The United States has numerous humanitarian authorizations in our domestic sanctions programs that are specifically designed to ensure our sanctions impact intended targets while limiting the unintended consequences on innocent people. These authorizations include the humanitarian-related general licenses we announced in December 2022 that implement and build upon UNSCR 2664. Making sure our sanctions are truly targeted and smart is essential to achieving our intended goals, including preventing nefarious actors from abusing the international financial system or undermining respect for human rights.

Those who suggest sanctions are inherently unjustified advance a false narrative, and we cannot support this language. Simply put, it is not sanctions that undermine respect for human rights; it is, rather, those who commit human rights violations and abuses.

For these reasons, we request a vote, and we will vote against this resolution.

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On November 7, 2023, Eric Merron, U.S. Adviser for the Third Committee, provided the U.S. explanation of position on a Third Committee resolution on the enhancement of international cooperation in the field of human rights. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-enhancement-of-international-cooperation-in-the-field-of-human-rights-2/.

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The United States continues to support increased international cooperation to further the protection and promotion of human rights.

However, we must dissociate from preambular paragraph 5, because of the incorrect assertion that the enhancement of international cooperation is essential for the effective promotion and protection of all human rights. While international cooperation may help promote the implementation of human rights, each individual State maintains primary responsibility to promote and protect human rights. States' human rights obligations and commitments are not contingent upon international cooperation. So, the absence of cooperation does not justify or excuse the failure to honor these obligations and commitments; similarly, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights. We further note that Vienna Declaration and Programme of Action is a nonbinding document that does not create obligations for States, while noting that its nonbinding nature does not undermine the value of its important goals.

Additionally, the United States and others have longstanding concerns with particular elements of the Durban Declaration and Programme of Action that single out the State of Israel and include overbroad restrictions on freedom of expression.

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On November 7, 2023, Eric Merron, U.S. Adviser to the Third Committee, provided the explanation of vote on a Third Committee Resolution on promotion of equitable geographical distribution in the membership of the human rights treaty bodies. The U.S. statement is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-promotion-of-equitable-geographical-distribution-in-the-membership-of-the-human-rights-treaty-b/ and follows:

> We are voting against this resolution and urge other States to do likewise. As in previous years, we remain concerned that this draft resolution purports to establish requirements pertaining to the selection of experts to human right treaty bodies, though the qualifications of members of treaty bodies and the procedures for their elections are already expressly set forth in those treaties. We strongly believe that these independent treaty bodies benefit from having experts who come from all over the world and from a wide range of different cultures and legal systems. This diversity is in fact demonstrated in the current composition of the human rights treaty bodies.
>
> As the States Parties to each human rights treaty have already agreed to the relevant considerations that apply to the election of members of that treaty body, it is not appropriate for the General Assembly to attempt to substitute its judgement for those of States Parties. It is important that human rights treaty bodies remain independent and objective in carrying out their work and be free from political or other interference. This resolution could undermine the independence of these important treaty-based human rights mechanisms and, ultimately, the perceived objectivity and independence of their work. For these reasons, we request a vote, and we will vote against this resolution.

On November 7, 2023, Eric Merron, U.S. Adviser to the Third Committee, provided the explanation of vote on a Third Committee Resolution on the use of mercenaries. The U.S. statement follows and is available at: https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-the-use-of-mercenaries-2/.

> The United States condemns the grave threat that certain non-state armed groups continue to present to States' ability to promote and protect human rights and maintain order. However, we continue to draw a sharp contrast between destabilizing mercenary activities and the proper role that private military and security companies can play. The United States has consistently championed innovative and effective approaches to international frameworks and codes of conduct addressing the activities of private military and security companies. We accordingly believe that the UN Working Group on Mercenaries should best focus its attention solely on the issue of mercenaries in accordance with its mandate.

For these reasons the United States maintains today its long-standing position regarding this resolution. We will vote "no," and we encourage other delegations to do the same.

On November 7, 2023, Eric Merron, U.S. Adviser to the Third Committee, provided the explanation of vote on a Third Committee Resolution on human rights and cultural diversity. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-human-rights-and-cultural-diversity/.

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As the United States has stated previously, we continue to support the promotion of cultural pluralism, tolerance, cooperation, and dialogue among individuals from different cultures and civilizations. The United States believes that societal diversity contributes to a country's strength, and diversity within institutions make them more creative and capable of dealing effectively with modern-day problems in an interconnected world. We also firmly believe that States are responsible for complying with their obligations under international human rights law. The UN Charter commits us to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction to race, sex, language, or religion.

Communities that have been historically underserved, in the United States and many other countries, have played an extremely important role in shaping our history and our world – a role that was long unacknowledged and is only now beginning to be fully appreciated.

Despite our commitment to cultural diversity and the important role played throughout the world by communities of different backgrounds, we are concerned that the concept of "cultural diversity" expressed in this resolution could be misused to elevate a particular nation, people, or social group above another and legitimize human rights abuses. Efforts to promote "cultural diversity" should not infringe on the enjoyment of human rights, nor justify unreasonable limitations on their scope. This resolution misrepresents the relationship between "cultural diversity" and international human rights law by raising the concept of cultural diversity to the level of an essential objective, while also failing to reflect potential concerns about its misuse.

Furthermore, in this context we do not believe UNESCO should take up initiatives that are proposed in this resolution aimed at promoting intercultural dialogue on human rights and do not support the resolution's request for a report to be prepared on the implementation of this resolution.

For these reasons, we request a vote, and we will vote against this resolution.

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On November 7, 2023, Eric Merron, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on the right to food. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-right-to-food-2/.

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The need for action in combatting food insecurity has never been greater. The world continues to face extreme levels of food insecurity and humanitarian crisis. 811 million people are going hungry around the world including over 150 million children according to the World Food Programme. Conflict, impacts of climate change, and other factors forcibly displaced more than 110 million this year, with many unable to access clean water, emergency medicine, shelter, and food without assistance.

Food insecurity is a global challenge that requires a global solution, and the United States will continue to lead in the response to this crisis as we come together to support those who need it most. Food security is essential for broader peace and prosperity. Since January 2021, we've committed over $17.5 billion in lifesaving humanitarian and development assistance to build resilient food systems, increase sustainable agricultural production, and save lives through emergency interventions, through bilateral programs of the U.S. flagship initiative on global hunger, Feed the Future. Additionally, at the G7 Summit earlier this year, the United States joined nations around the world in launching an Action Statement for Resilient Global Food Security, reaffirming that access to affordable, safe, and nutritious food is a basic human need. The United States remains the largest contributor to the World Food Program, providing over $7.2 billion – or over 50 percent of its budget – in 2022 alone. In February of this year, the United States, the African Union, and the Food and Agriculture Organization came together and launched The Vision for Adapted Crops and Soils (VACS), which is part of Feed the Future, the U.S. government's global hunger and food security initiative. With an initial focus on the African continent, VACS seeks to boost agricultural productivity and nutrition by developing diverse, climate-resilient crop varieties and building healthy soils.

This resolution rightfully acknowledges the hardships millions of people are facing, and importantly calls on States to support the emergency humanitarian appeals of the UN. Although we will not block consensus, we are, however, disappointed that this resolution contains problematic, inappropriate language that does not belong in a resolution focused on human rights. Further, while we appreciate the informals hosted by Cuba and the Non-Aligned Movement, we are disappointed the facilitators took very few edits offered by a variety of delegations. As a result, we are dissociating from preambular paragraph 13 and operative paragraph 24.

With regard to preambular paragraph 13, sanctions are an important, appropriate, and effective tool for responding to threats to peace and security. They can be used to promote accountability for those who abuse human rights, undermine democracy, or engage in corrupt activities. In cases where the United States has applied sanctions, we have done so with specific objectives in mind, including the promotion of democratic systems, rule of law, and respect for human rights and fundamental freedoms, or to respond to security threats. They are a legitimate

way to achieve foreign policy, national security, and other national and international objectives, and the United States is not alone in that view or in that practice.

The United States continues decades of support for strong and growing trade relationships around the globe. We welcome efforts to bolster those relationships, increase economic cooperation, and advance prosperity for all people, within the appropriate institutions. We underscore our position that trade language negotiated or adopted by the General Assembly has no relevance for U.S. trade policy, for our trade obligations or commitments, or for the agenda at the World Trade Organization, including discussions or negotiations in that forum. While the UN and WTO share common interests, they have different roles, rules, and memberships. Similarly, this includes calls to adopt approaches that may undermine incentives for innovation, such as technology transfer that is not both voluntary and on mutually agreed terms.

The United States is concerned with the concept of "food sovereignty" mentioned in operative paragraph 24 as it could support unjustified restrictive import or export measures that increase market volatility and threaten food security, sustainability, and income growth. We cannot ignore varying local contexts and the vital role global trade plays in promoting food security. Improved access to local, regional, and global markets helps ensure food flows to people who need it most and mitigates price volatility. Food security depends on appropriate domestic action by governments, consistent with international commitments.

Regarding operative paragraph 41, we stress that the World Bank and the International Monetary Fund have their own governance structures, mandates, and decision-making processes that are independent of the UN and are essential to helping ensure that they remain fiscally solvent and able to support the objectives of their shareholders. These institutions' governing bodies include broad country memberships at all income levels, including borrowing and nonborrowing members. As such, it is inappropriate – and potentially undermines the intended function of these entities – for the UN to seek to directly influence or to make specific recommendations targeting these institutions.

We are also concerned with the new language on "international financial architecture" in operative paragraph 51 as it has no internationally agreed meaning. Access to adequate and appropriate financing, including grants, concessional and non-concessional trade credit and other lending sourced from domestic, international, private, public, and non-profit sources, should not be conflated with the international financial architecture, however defined. The US strongly supports mobilizing financing to transform food systems and has been highly responsive to calls for support and reform, including through its championing of MDB

evolution, which is moving the institutions to be more responsive to borrowers and to global challenges.

The United States recognizes the right of everyone to an adequate standard of living, including food, as reflected in the UDHR and ICESCR. We respect the importance of promoting access to food and understand that efforts to do so can involve distinctive approaches. We do not concur with any reading of this resolution or related documents that would suggest that States have particular extraterritorial obligations arising from a right to food, and we do not accept all of the analyses and conclusions in the Committee's general comments mentioned in this resolution. The U.S. position with respect to the ICESCR and other issues are addressed further in the United States' general statement, to be posted online at the conclusion of this session.

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On November 10, 2023, Jonathan Shrier, U.S. Deputy Representative to the Economic and Social Council, provided the explanation of vote on a Third Committee Resolution on the right of the Palestinian people to self-determination. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-the-right-of-the-palestinian-people-to-self-determination-2/.

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As underscored by President Biden, the United States remains committed to the Palestinian people's right to self-determination. Regrettably, however, we cannot support this resolution.

One-sided resolutions, whether they are put forward in the Security Council or the General Assembly, will not help to advance peace or to achieve the highest aspirations of the Palestinian people. Not when they ignore the facts on the ground. One-sided resolutions are purely rhetorical documents that seek to divide us at a time when we should all be coming together. As President Biden said, there is no going back to the status quo of October 6th. We cannot abide a Hamas that terrorizes Israel and uses Palestinian civilians as human shields. And we cannot allow violent extremist settlers to attack and terrorize Palestinians in the West Bank. This status quo is untenable, and it is unacceptable. More than anything else, we cannot countenance a continuing situation where so many innocent civilians on both sides have had to pay with their lives.

This means that when this crisis is over, there has to be a vision of what comes next. In our view, that vision must be centered around a two-state solution. We are not naïve; we know that getting there will not be easy. It will require concerted efforts by all of us – Israelis, Palestinians, regional partners, and global leaders – to put us on a path toward peace. To integrate Israel with the region, while insisting that the aspirations of the Palestinian people be part of a more hopeful future.

We deeply regret that the resolution now under consideration is detrimental to this vision. The United States will continue to work with all Member States to chart a future where Israelis and Palestinians have equal measures of security, freedom, justice, opportunity, and dignity. And a future where Palestinians realize their legitimate right to self-determination and a state of their own.

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On November 10, 2023, Timothy Johnson, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on the International Convention for the Protection of All Persons from Enforced Disappearance. The U.S. statement is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-international-convention-for-the-protection-of-all-persons-from-enforced-disappearance/ and follows:

The United States is pleased to join consensus on this resolution. Enforced disappearances are devastating to both the victim and their families who are left not knowing the fate of their loved ones.

The United States is not party to the International Convention for the Protection of All Persons from Enforced Disappearance and believes it is important to be clear about the international legal basis of the paragraphs of this resolution, which are specific to the convention. The United States notes that the obligations articulated in PP7, PP8 and PP9 apply only to States that have undertaken these obligations as parties to the Enforced Disappearance Convention, and that this resolution does not create any new rights or obligations.

On November 14, 2023, Kara Eyrich, U.S. Adviser to the Third Committee, provided a general statement on a Third Committee resolution on the Promotion and Protection of Human Rights in the Context of Digital Technologies. The U.S. statement follows and is available at https://usun.usmission.gov/general-statement-on-a-third-committee-resolution-on-the-promotion-and-protection-of-human-rights-in-the-context-of-digital-technologies/.

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Thank you, Chair. The United States is pleased to cosponsor this important resolution promoting and protecting human rights in the context of digital technologies. Digital technologies, when used properly and with adequate safeguards, can promote human rights, advance inclusive economic growth, and further progress towards the Sustainable Development Goals (SDGs). In cosponsoring, the United States reaffirms its strong support for utilizing digital technologies to further these goals while protecting against risks to human rights.

Regarding the references to the principle of proportionality in PP20, OP13 and OP16, we reiterate our longstanding position that there is no textual basis in the ICCPR, or other international human rights conventions to which the United States is a party, for asserting states have an obligation under international human rights law to apply or act in accordance with such a principle. We note further that whether the application of other principles, such as necessity, are required under a state's obligations is determined by the text of the specific obligation at issue. There is, for example, no necessity requirement stated in ICCPR Article 17.

Regarding the reference in OP20a concerning legal responsibility and the reference to legal safeguards in OP20d, the United States believes that regulation is essential to ensure that these technologies are designed, developed, and used in a manner that upholds and protects the public's rights and safety. This is why the Biden-Harris Administration plans to pursue bipartisan legislation to help America lead the way in responsible innovation while mitigating the risks or harms posed by AI technology. However, the United States notes that we understand the references in OP20(a) and OP20(d) concerning legal responsibility and legal safeguards to mean such actions should be put in place as appropriate and in line with domestic legislation.

Regarding the reference in OP21 concerning the participation of relevant stakeholders, the United States strongly supports multistakeholder participation in decisions concerning the development, deployment and use of artificial intelligence and understands the term all relevant stakeholders to mean those who can represent diverse perspectives on the development, deployment, and use of artificial intelligence.

Despite these concerns, the United States will cosponsor in recognition of our dedication to promoting and protecting human rights in the context of digital technologies.

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On November 14, 2023, Timothy Johnson, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on countering terrorism and promoting and protecting human rights. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-countering-terrorism-and-promoting-and-protecting-human-rights/.

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The United States thanks Mexico and Egypt for their continued efforts in the UN system to address the critical issue of promoting and protecting human rights while countering terrorism.

The United States remains concerned, however, that the resolution does not reflect important updates or Member State-agreed language from other UN bodies charged with these issues – most importantly, the eighth review of the Global Counter-Terrorism Strategy adopted in June – and risks becoming obsolete.

Additionally, the United States disassociates from OP15. We fully support increasing humanitarian assistance and access for those in need consistent with both counterterrorism and humanitarian imperatives. We agree that Member States, when designing and applying counterterrorism measures, should take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.

While underscoring our support for the critical role humanitarian actors play, we emphasize that there is no obligation under international law that requires the completely unrestricted delivery of humanitarian or other assistance to terrorist groups or individual terrorists at all times. We must also underscore that paragraph 15 has no impact upon the binding obligation, which requires Member States to ensure their laws establish criminal offenses that provide the ability to prosecute and penalize the willful financing of terrorist groups and individual terrorists for any purpose, even in the absence of a link to a terrorist act.

Further, the United States dissociates from OP31 given it could hinder speech beyond the narrow exceptions to freedom of expression under the U.S. Constitution and Article 19 of the ICCPR. We remain committed to cooperating to counter violent extremist propaganda and incitement to violence on the Internet and social media and believe the term "preventing" could be used to support excessive restrictions on speech, particularly online.

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On November 14, 2023, Patrick Breen, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on addressing the challenges of persons living with a rare disease and their families. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-addressing-the-challenges-of-persons-living-with-a-rare-disease-and-their-families/.

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The United States is very sympathetic to and supportive of the needs and concerns of the community of persons with rare diseases. We realize persons with rare diseases face many challenges and we are fully committed to championing their rights.

This resolution rightfully acknowledges the hardship millions of persons with disabilities, including persons with rare conditions, face. However, this resolution also contains provisions that do not capture the full scope of protection that persons with rare diseases and conditions should be afforded.

The United States believes this text continues to set a worrying precedent for the Third Committee. As it stands, this resolution does not maintain an appropriate nexus to existing international human rights conventions or incorporate disability framing, which is necessary to avoid the suggestion that individuals with disabilities resulting from rare conditions are somehow not a part of the disability community or covered by the Convention on the Rights of Persons with Disabilities.

Unfortunately, edits that the United States has proposed during deliberations to reflect this important nexus were not taken.

Despite these concerns, because of the importance of the subject matter we will join consensus on this resolution. For additional explanation of our positions the United States refers you to our general statement that will be posted in full on the U.S. Mission's website and included in the Digest of U.S. Practice in International Law.

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On November 15, 2023, Ambassador Christopher Henzel, U.S. Area Adviser for Near Eastern Affairs, provided the explanation of vote on a Third Committee Resolution on the situation of human rights in the Islamic Republic of Iran. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-the-situation-of-human-rights-in-the-islamic-republic-of-iran/.

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More than a year after the protests sparked by the death in custody of Jina Mahsa Amini, we see the human rights situation in Iran continuing to deteriorate dramatically.

We remain deeply concerned that the Iranian regime responded to peaceful protests by killing hundreds of protesters, including children, torturing and threatening detained protesters and activists, and carrying out death sentences against people merely for exercising their rights. Reports of abuses involving extrajudicial killings, disproportionate use of force, arbitrary arrests and detention, gender-based violence, unfair trials, internet shutdowns, and targeted harassment demonstrate the cruelty of the regime and its hostility to universal human rights.

Sadly, Iranian authorities refuse to grant access to the country for the UN Special Rapporteur on the situation of human rights in Iran. We urge the government to allow the Rapporteur to visit Iran immediately.

We firmly support civil society activists, human rights defenders, and other Iranians who continue to protest their government's human rights abuses, including gender-based violence against women, and restrictions on Iranians' exercise of their human rights and fundamental freedoms. We join Iranians and millions of others around the world in calling for those responsible to be held accountable.

This resolution helps to promote this essential accountability. And we are pleased that this resolution provides updates on the situation over the past year, including support for the Fact-Finding Mission created during the Special Session of the Human Rights Council last November.

We are proud to vote "yes" on this resolution.

Today's result strongly condemns the Iranian regime's continued human rights violations and abuses. And, just as importantly, it sends a strong signal of support to the brave Iranians, including women and children, demanding respect for human rights and fundamental freedoms.

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On November 15, 2023, Kara Eyrich, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on the situation of human rights in the Democratic People's Republic of Korea. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-the-situation-of-human-rights-in-the-democratic-peoples-republic-of-korea/.

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Ten years after the creation of the UN Commission of Inquiry on Human Rights in the DPRK, the situation remains dire.

The DPRK is one of the world's most repressive states, imposing severe restrictions on freedoms of expression, peaceful assembly, association, religion or belief, and movement. There are credible reports of unlawful or arbitrary killings by the government; forced disappearances; torture and other forms of cruel, inhumane, and degrading punishment; harsh and life-threatening prison conditions, including in political prison camps; forced abortion and sterilization; and the worst forms of child labor.

The DPRK continues to commit widespread human rights abuses and violations, and as with many authoritarian governments, it continues to expand its repressive policies beyond its borders in the form of transnational repression.

In addition to its efforts to control and monitor North Koreans overseas, the government also exploits its overseas citizens, forcing them to work in inhumane conditions without freedom of movement, often for 18 hours a day.

These workers are often forced to send their wages back to the regime, sustaining it in power and enabling it to pursue its unlawful WMD and ballistic missile programs.

We remain deeply concerned that North Korean escapees seeking freedom from human rights violations in North Korea are being forcibly repatriated to North Korea against their will, putting them at risk of torture, cruel, inhuman or degrading treatment and punishment and other serious human rights violation. All states should abide by the principle of non-refoulement.

The DPRK must grant international humanitarian organizations and human rights monitors immediate and unhindered access. We can and must continue to speak out loudly and clearly regarding the DPRK government's human rights record and call upon the government to take action to protect the human rights of its own people.

For these reasons, we are proud to co-sponsor this resolution.

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On November 16, 2023, Timothy Johnson, U.S. Adviser to the Third Committee, provided the explanation of vote on a Third Committee resolution on the protection of migrants. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-protection-of-migrants/.

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Thank you, Mr. Chair. The United States thanks Mexico for the facilitation of this text.

States have the responsibility to protect the human rights of all persons in their territories and subject to their jurisdiction, regardless of migration status. The United States takes this responsibility very seriously and urges other States to do so as well.

The United States maintains the sovereign right to facilitate or restrict access to its territory, subject to its existing international obligations. The United States is committed to ensuring that migrants, including migrant children, are treated in a safe and secure manner. We do not read this resolution as preventing states from taking appropriate measures, consistent with their obligations under international law, to detain or prosecute persons involved in criminal activity in connection with irregular migration. We also do not read this resolution to imply that states must join international instruments to which they are not a party, or that they must implement such instruments or any obligations under them.

Among other things, this applies to the principle that the best interests of the child should be a "primary consideration" in all actions concerning children, which is derived from the Convention on the Rights of the Child, and the prohibition on collective expulsions, set forth in

Protocol No. 4 to the European Convention on Human Rights. The United States is not a party to the Convention on the Rights of the Child, and while the United States does take into account the best interests of the child in certain immigration actions – it is not always a "primary consideration" in the immigration context.

With respect to preambular paragraph 12, the United States notes that consular notification and access are not rights belonging to individuals. Rather, consular access and assistance rights belong to and are exercised by a detained individual's state of nationality. It is up to representatives of that state whether or not to provide assistance, and the Vienna Convention on Consular Relations does not provide the detained individual any authority or right to demand it from his or her state. Moreover, we believe that referring to a specific bilateral legal matter – such as the case cited in PP 12 – is inappropriate in this resolution.

Finally, we underscore that this resolution does not alter international law. We understand abbreviated references to certain rights in this resolution to be shorthand references for the more accurate and widely accepted terms used in the applicable instruments, and we maintain our long-standing positions on those rights. In particular, the United States interprets language regarding a "prohibition on collective expulsions" to refer to non-refoulement obligations contained in Article 33 of the Convention Relating to the Status of Refugees and in Article 3 of the Convention Against Torture.

I thank you.

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On November 16, 2023, Dylan Lang, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on the implementation of the outcome of the World Summit for Social Development. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-implementation-of-the-outcome-of-the-world-summit-for-social-development/.

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The United States strongly endorses the promotion of respect for all human rights and fundamental freedoms in the context of development. Governments need to respect human rights when promoting all policy goals, including those related to social development, such as food, education, labor, and health. Development should not compromise the respect for individual human rights.

The United States is disappointed that the text of this resolution addresses issues that are not clearly linked to social development or the work of this Committee. We are concerned that portions of this resolution inappropriately call on international financial institutions and other non-UN organizations to take actions, such as providing debt relief, that are beyond the scope of what this body and its resolutions should be properly addressing. After discussions last year, we joined consensus on this resolution and are disappointed that our attempts to engage constructively this year were not considered.

Despite our serious concerns, in the spirit of cooperation and collaboration, we did not block consensus. We must, however, dissociate from operative paragraphs 32, 33, and 66.

We underscore our position that trade language, negotiated or adopted by the General Assembly, has no relevance for U.S. trade policy, for our trade obligations or commitments, or for the agenda at the World Trade Organization. Similarly, this includes calls to adopt approaches that may undermine incentives for innovation, such as technology transfer that is not both voluntary and on mutually agreed terms.

In reference to operative paragraph 33, the United States believes the UN Guiding Principles on Business and Human Rights represent an important global framework. In that regard, we understand the responsibility of business enterprises referenced in this resolution with respect to human rights to be consistent with the UN Guiding Principles. We further emphasize that this responsibility is not limited to "transnational" or "private" corporations but applies to all types of business enterprises regardless of their size, sector, location, ownership, and structure.

It is inappropriate for the UN General Assembly to call on international financial institutions to provide debt relief, as this resolution does in operative paragraph 32.

Further, the demands in operative paragraph 66 that the international community "shall" increase market access are wholly unacceptable in a resolution such as this one. We note that General Assembly resolutions should refrain from using language such as "shall" in reference to action by Member States.

The United States strongly supports the realization of the right to education. When resolutions call on Member States to strengthen or address various aspects of education, including regarding curricula, we understand these texts consistent with our respective federal, state, and local authorities.

Finally, we stand by the commonly agreed norms that have upheld the integrity and effectiveness of the United Nations and multilateral system and we oppose the elevation of any single Member State's ideology, foreign policy platforms, or domestic policies into documents meant to reflect a global perspective.

We hope that in the next iteration of this resolution we can work together to address these issues.

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On November 16, 2023, Timothy Johnson, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on strengthening the United Nations Crime Prevention and Criminal Justice Program. The U.S. statement follows and is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-strengthening-the-united-nations-crime-prevention-and-criminal-justice-program/.

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The United States is pleased to support and cosponsor this resolution and we thank Italy for its thoughtful facilitation. The UN Office on Drugs and Crime plays an important role in addressing law enforcement priorities we all share, from tackling transnational organized crime to fighting corruption and combatting human trafficking.

In supporting this resolution, the United States wishes to clarify our views on certain provisions.

The United States understands references pertaining to firearms within this resolution to be consistent with and subject to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (the Firearms Protocol). In particular: (1) any reference in the resolution to "trafficking" in firearms, their parts and components and ammunition means "illicit trafficking" as defined in the Firearms Protocol at Article 3(e); (2) references to diversion, loss, and theft go to security and preventive measures as provided in Firearms Protocol Article 11; (3) references to data collection, analysis, systems, information, and similar regarding firearms, their parts and components and ammunition are subject to domestic law; and (4) references to firearms support and cooperation are consistent with and scoped to what is authoritatively provided in Firearms Protocol Article 13.

On PP40 and OP30, we are concerned the text "criminal misuse of the Internet and other information and communications technologies" is followed by "as well as such misuse for terrorist purposes." This formulation risks conflating criminal misuse of the Internet and other ICTs with the use of the Internet and other ICTs for terrorist purposes, which are distinct issues. The United States continues to address cyber-enabled crime separately given different non-state actors, motivations, and activities. The United States also does not wish to get ahead of ongoing negotiations in the UN Ad Hoc Committee and will address terminology in that forum.

The United States interprets OP63 to be consistent with the full text of article 14 of the Convention against Transnational Organized Crime wherein article 14(2) only applies when a state has made a request of another state in the context of providing compensation to victims of a crime and article 14(1) specifies action only in accordance with relevant domestic law.

In practice, cultural property is generally returned to a requesting state that has identified such property under its domestic laws, and, as such, invokes relevant obligations of multilateral treaties to which a state may be party, such as the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.

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On November 16, 2023, Timothy Johnson, U.S. Adviser for the Third Committee, provided the explanation of position on a Third Committee Resolution on the universal realization of the right of peoples to self-determination. The U.S. statement is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-universal-realization-of-the-right-of-peoples-to-self-determination-2/ and follows:

> The United States recognizes the importance of the right of peoples to self-determination and therefore joins consensus on this resolution.
>
> We note, however, as frequently stated by the United States and other delegations, that this resolution contains many misstatements of international

law and is inconsistent with current state practice. Furthermore, we are disappointed that the sponsors did not circulate the draft until the week prior to adoption, which did not give Member States sufficient time to review.

We also refer to our Third Committee General Statement, which will be posted on the U.S. Mission's website at the end of the session.

4. Human Rights Council

a. General

On April 7, 2022, Secretary Blinken released a statement on the suspension of Russia from the HRC. The statement follows and is available at https://www.state.gov/russias-suspension-from-the-un-human-rights-council/.

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By suspending Russia from the UN Human Rights Council, countries around the world chose to hold Moscow to account today for gross and systematic violations of human rights in its premeditated, unprovoked, and unjustified war of choice against Ukraine. We have seen growing evidence of Russia's brutal disregard for international law and human rights in Ukraine, most notably in the death and devastation it has caused in communities such as Bucha, Irpin, and Mariupol. The atrocities the world has witnessed appear to be further evidence of war crimes, which serves as another indication that Russia has no place in a body whose primary purpose is to promote respect for human rights. As I said earlier today, today a wrong has been righted.

The world is sending another clear signal that Russia must immediately and unconditionally cease its war of aggression against Ukraine and honor the principles enshrined in the UN Charter. The international community will continue to hold Russia to account, and the United States will continue to stand with the people of Ukraine as they fight for their sovereignty, democracy, and freedom.

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b. 52nd Session

On April 5, 2023, the State Department issued a fact sheet summarizing key outcomes of the 52nd regular session of the HRC. The fact sheet follows and is available at https://www.state.gov/outcomes-of-the-52nd-session-of-the-un-human-rights-council/.

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As we mark the 75th anniversary of the Universal Declaration of Human Rights and the 30th anniversary of the Vienna Declaration and Program of Action this year, the United States will continue to place its commitment to multilateral engagement and human rights at the center of U.S. foreign policy. At the UN Human Rights Council's (HRC) 52nd session (February 27 – April 4), the United States worked with allies and civil society partners to ensure the Council's work and outcomes reflect and reinforce the universal values, aspirations, and norms that have underpinned the UN system for decades. Our engagement focused on ensuring greater emphasis to pressing human rights concerns and building collective action and expanding capacity to address them.

During this session, the United States advanced human rights priorities, particularly those shining a spotlight on human rights situations in Belarus, Burma, and the Democratic People's Republic of Korea (DPRK), as well as on:

Renewing the mandate of the Commission of Inquiry (COI) on Ukraine: The United States worked with Ukraine and cross-regional partners to renew the mandate of the COI that was first created in March 2022 to investigate violations and abuses of human rights and violations of international humanitarian law in the context of Russia's war against Ukraine. The COI has already provided critical, credible reporting, including finding that Russian authorities have committed war crimes such as the unlawful transfer and deportation of children. The United States was proud to co-sponsor the resolution to renew the COI's mandate to help ensure the Commission can continue its work to analyze evidence and inform accountability efforts.

Renewing the mandate of the Commission of Human Rights in South Sudan: The United States is part of the core group for this resolution, and the Commission's contributions to accountability and transitional justice are more important than ever, given ongoing serious human rights violations and the government's two-year extension of its "transitional period" without achieving any concrete progress.

Renewing the mandate of the Special Rapporteur (SR) on the situation of human rights in Iran: The work of the SR is particularly important given the Iranian regime's months of brutal acts of violence against peaceful protesters standing up for the rights of women and girls, as well as freedom of expression for the Iranian people.

Renewing the UN Commission of Inquiry (COI) on the situation of human rights in Syria: The COI continues to accurately document widespread violations and abuses of human rights in Syria perpetrated by the Assad regime and other parties to the conflict. The consistent and credible reporting is critical to countering disinformation and advancing accountability for atrocities committed. The United States is part of the core group and co-sponsored this resolution.

Promotion and Protection of Human Rights in Nicaragua: We supported a two-year mandate renewal of the Group of Experts on Human Rights for Nicaragua and will continue to bolster international community efforts to hold the Ortega-Murillo regime accountable for its human rights abuses and repression of civil society.

The United States also **co-sponsored resolutions** on Technical Assistance for Haiti, cooperation with Georgia, Freedom of religion or belief, Freedom of opinion and expression (including online), Realization in all countries of Economic, Social, and Cultural rights, Promoting Human Rights and Sustainable Development Goals, and Human rights and the 2030 Agenda for Sustainable Development Goals.

In addition, we co-sponsored resolutions that renewed the mandates for the special rapporteurs on human rights defenders, minority issues, human rights of migrants, sexual

exploitation of children, contemporary forms of racism, torture, and the Independent Expert on Adequate Housing.

Agenda Item 7: The United States continues to oppose all action under the HRC's Agenda Item 7, which unfairly singles out Israel. We voted against all resolutions that unjustifiably target Israel, including one under Agenda Item 2 on Accountability and Human Rights and three resolutions under Agenda Item 7.

Defending Civil Society: During this session, the United States stood united with members of civil society and defended their right to speak at the Council, irrespective of the topic. Human rights defenders and NGOs are critical to promoting and protecting human rights and we were dismayed to see multiple transnational repression attempts by certain states to silence their voices.

Joint Statements: In addition to leading a joint statement on behalf of the Freedom Online Coalition reiterating a shared commitment to promoting and protecting Internet freedom, the United States signed onto joint statements regarding International Women's Day, Resonance of Thoughts and Values of Mahatma Gandhi in the Universal Declaration of Human Rights, Indigenous Human Rights Defenders, repression and the use of the death penalty in Iran, support for the UN Voluntary Fund for Victims of Torture, women and girls in Afghanistan, SOGI (Sexual Orientation and Gender Identity) Group of Friends, Child Human Rights Defenders, Responsibility to Protect and the Role of Human Rights Defenders, Academic Freedom, countering disinformation, and Commemorating the International Day Against Racism, as well as the Human Rights situations in Haiti, Nicaragua, and Sri Lanka. The United States also supported multiple joint statements condemning Russia's war against Ukraine, including joint statements focused on accountability, the findings of the COI on Ukraine, the war's impact on children, and Russian authorities arbitrarily detaining Ukraine's civilians, including Ukrainian mayors.

Across resolutions, joint statements, and interactive dialogues, the United States advanced **language to increase equity and inclusion**, including regarding women and girls in all their diversity, internally displaced persons, LGBTQI+ persons, persons with disabilities, indigenous persons, members of ethnic and religious minority groups, and members of other marginalized and vulnerable groups.

Side Events: The United States co-sponsored and participated in side events focused on accountability for international crimes and serious human rights violations in Belarus; political prisoners in Russia; Justice for Daesh Atrocities; several events on combatting antisemitism; Disability Support and Care Systems; Human Rights in the DPRK; Disability, Torture, and Recovery; countering disinformation; Role of Assisted Technology in the Promotion of Education; Gender-Based Violence against Women and LGBTQI+ Persons in Nicaragua; and Education in Afghanistan. The United States also co-sponsored multiple side events focused on Russia's war against Ukraine and related human rights impacts and accountability efforts.

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On April 6, 2023, the United States provided points of clarification on resolutions adopted at the 52nd regular session of the HRC. The statement is available at https://geneva.usmission.gov/2023/04/06/points-of-clarification-on-resolutions-adopted-at-the-52nd-human-rights-council/ and included below.

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During this 52nd regular session of the UN Human Rights Council (HRC), the United States co-sponsored over 20 resolutions, including the resolutions on the Realization in All Countries of Economic, Social, and Cultural Rights; the Promotion and Protection of Human Rights and the Implementation of the 2030 Agenda for Sustainable Development; the Mandate of the Special Rapporteur on the Situation of Human Rights Defenders; and the human rights situations in Ukraine stemming from the Russian aggression, in South Sudan, and in Iran. The United States joined consensus on resolutions on Birth Registration and the right of everyone to recognition everywhere as a person before the law, the Commemoration of the 75th anniversary of the Universal Declaration of Human Rights and the 30th anniversary of the Vienna Declaration and Programme of Action, and on Cooperation with regional human rights organizations, among others.

We take this opportunity to provide important points of clarification with respect to resolutions adopted by the Human Rights Council at its 52nd regular session that the United States co-sponsored or for which the United States otherwise joined consensus.

As a general matter, we underscore that HRC resolutions are non-binding documents that do not create rights or obligations under international law. HRC resolutions do not change the current state of conventional or customary international law and do not change the body of international law applicable to any particular situation discussed or referred to in a resolution. Nor do we read resolutions to imply that States must join or implement obligations under international instruments to which they are not a party; any reaffirmation of prior instruments in these resolutions applies only to those States that affirmed them initially. It is the prerogative of each State to decide which treaties to join. We understand abbreviated references to certain human rights in HRC resolutions to be shorthand references for the more accurate and widely accepted terms used in the applicable treaties or the Universal Declaration of Human Rights, and we maintain our long-standing positions on those rights. We do not read references in resolutions to specific principles, including proportionality and legitimacy, to mean that States have an obligation under international law to apply or act in accordance with those principles. With respect to language referring to global issues affecting or impacting all human rights, we understand such statements in the context of reaffirming that human rights and fundamental freedoms are universal, indivisible, interrelated, interdependent, and mutually reinforcing. We do not understand such language to necessarily imply specific impacts on the enjoyment of individual human rights. We also reiterate our long-standing position that the International Covenant on Civil and Political Rights (ICCPR) applies only to individuals who are both within the territory of a State Party and subject to its jurisdiction.

The United States continues to reject the argument advanced by some delegations that criticism of States' human rights records constitutes impermissible interference in their domestic affairs. Sovereignty does not grant any State license to commit human rights violations within its own territory, and professed concerns about sovereignty cannot be used as a shield to prevent scrutiny from the Council. States have a responsibility to promote respect for human rights.

While the United States strongly supports the use of measures to prevent or protect individuals from acts of violence committed by non-State actors, we note that international human rights law generally does not obligate States to take such measures. Likewise, the United States strongly supports the condemnation of acts that can amount to human rights violations or abuses, but believes it is important for resolutions to accurately characterize these terms, consistent with international law.

We note that co-sponsorship of, or otherwise joining consensus on, HRC resolutions does not imply endorsement of the views of special rapporteurs or other special procedures mandate-holders as to the contents or application of international law or U.S. obligations thereunder.

Finally, the United States understands joint statements are intended to express the common belief of the States issuing the statement and not to create any legal rights or obligations under international law.

Specific Points of Clarification:

2030 Agenda for Sustainable Development (2030 Agenda): The United States recognizes the 2030 Agenda as a voluntary global framework for sustainable development that can help put the world on a more sustainable and resilient path and advance global peace and prosperity. We applaud the call for shared responsibility, including national responsibility in the 2030 Agenda, and emphasize that all countries have a role to play in achieving its vision. The 2030 Agenda recognizes that each country must work toward implementation in accordance with its own national policies and priorities. We support the 2030 Agenda and are committed to working toward the achievement of the Sustainable Development Goals therein. The United States also underscores that paragraph 18 of the 2030 Agenda calls for countries to implement the Agenda in a manner that is consistent with the rights and obligations of States under international law. We also highlight our mutual recognition in paragraph 58 that 2030 Agenda implementation must respect, and be without prejudice to, the independent mandates of other institutions and processes, including negotiations, and does not prejudge or serve as precedent for decisions and actions underway in other fora. The Agenda also does not affect the interpretation of or alter any World Trade Organization agreement or decision, including with respect to the Agreement on Trade-Related Aspects of Intellectual Property Rights. Further, citizen-responsive governance, including respect for human rights, sound economic policy and fiscal management, government transparency, and the rule of law, are essential to the implementation of the 2030 Agenda.

The "Right to Development": We note that the "right to development" is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and, unlike with human rights, is not recognized as a universal right held and enjoyed by individuals and which every individual may demand from his or her own government. Indeed, we continue to be concerned that the "right to development" identified within the text protects States instead of individuals.

UN Declaration on the Rights of Indigenous Peoples: The United States reaffirms its support for the UN Declaration on the Rights of Indigenous Peoples. As explained in our 2010 Statement of Support, the Declaration is an aspirational document of moral and political force and is not legally binding or a statement of current international law. The Declaration expresses the aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.

Economic, Social, and Cultural Rights: As the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides, each State Party undertakes to take the steps set out in Article 2(1) "with a view to achieving progressively the full realization of the rights." We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we believe that these resolutions should not try to define the content of those rights provided under the ICESCR, including by suggesting that specific steps are required of States Parties to achieve progressively the full realization of those rights. The United States is not a party to the ICESCR, and the rights contained therein are not justiciable as such in U.S. courts. Further, to the extent resolutions refer to the right to safe drinking water and sanitation or to the right to food, we understand these rights to be derived from the right to an adequate standard of living. Similarly, we understand references to the right to housing, as recognized in the ICESCR, to refer to the right as a component of the right to an adequate standard of living. We note that obligations on States relating to economic, social, and cultural rights, as recognized in the ICESCR, exist only for State Parties thereto, and that such references do not create obligations for States under other human rights treaties.

Human Rights-Based Approach: There is no internationally agreed upon understanding of the term "human rights-based approach." To the extent the term is referred to in resolutions, the United States reiterates that such references do not create obligations under international human rights law or other international commitments, including with respect to particular actions States may take in fulfilling their obligations.

Justice and Accountability: The United States strongly supports calls for justice and accountability for perpetrators of human rights violations and abuses. We understand language regarding the responsibility of States to prosecute those responsible for violations of international law and human rights abuses to refer only to those actions that constitute criminal violations under applicable law and understand references to State "obligations" to prosecute in light of applicable international obligations. We do not necessarily understand the characterization of certain acts or situations using international criminal law terms of art to mean that, as a matter of law, such terms are applicable to any specific act or situation.

Freedom of Expression and Freedom of Religion or Belief: The United States strongly supports the freedoms of expression and religion or belief. We oppose any attempts to unduly limit the exercise of these fundamental freedoms. We strongly believe that these fundamental freedoms are mutually reinforcing and that the protection of freedom of expression is critical to protecting freedom of religion or belief.

Privacy: Given differences in views as to the meaning and scope of privacy as a human right, the United States does not support use of the term "right to privacy." To the extent this term is used in resolutions that we support, we read it as specifically

referencing the right not to be subjected to arbitrary or unlawful interference with one's privacy as set forth in Article 17 of the ICCPR.

International Humanitarian Law: The United States is deeply committed to promoting respect for international humanitarian law (IHL) and the protection of civilians in armed conflict. We note that IHL and international human rights law are in many respects complementary and mutually reinforcing. However, we understand that, with respect to references in these resolutions to both bodies of law in situations of armed conflict, such references refer to those bodies of law only to the extent that each is applicable. We do not necessarily understand references to "conflict", "IHL", or IHL terms of art in these resolutions to mean that, as a matter of law, an armed conflict exists in a particular country or to supplant States' existing obligations under IHL.

Death Penalty: As Article 6 of the International Covenant on Civil and Political Rights provides, States may only use the death penalty for the most serious crimes. We understand references in these resolutions to concerns about the use of the death penalty to be limited to contexts where the penalty is imposed on individuals solely for exercising their human rights and fundamental freedoms or where the imposition is otherwise in violation of obligations States owe under the ICCPR.

Torture: The United States interprets references to "torture" and "cruel, inhuman, or degrading treatment or punishment" to be consistent with its understanding of international law—including as reflected in its reservations, declarations, and understandings to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—as well as its domestic law.

International Refugee Law: The United States strongly supports and advocates for the protection of refugees and other displaced persons around the world, and we urge all States to respect the principle of non-refoulement. In underscoring our support for this principle, we wish to clarify that U.S. international obligations with respect to non-refoulement are the provisions contained in Article 33 of the 1951 Convention relating to the Status of Refugees (applicable to the United States by its incorporation in the 1967 Protocol relating to the Status of Refugees) and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We note that we understand references to international refugee law in certain resolutions to be referring to the obligations of States under the relevant treaties to which they are party.

Rights of the Child: The United States does not understand references to the rights of the child or principles derived from the Convention on the Rights of the Child, including the principle that the best interests of the child should be a primary consideration in all actions concerning children, as implying that the United States has obligations in that regard.

References to Human Rights "Violations" in Connection with Non-State Actors: The United States notes that generally only States have obligations under international human rights law and, therefore, the capacity to commit violations of human rights. References in HRC resolutions to human rights "obligations" in connection with non-State actors, or "violations" of human rights by such actors should not be understood to imply that such actors bear obligations under international human rights law. Nevertheless, the United States remains committed to promoting accountability for human rights abuses by non-state actors.

Environment and Human Rights: The United States believes environmental protection is a means of supporting the well-being and dignity of people around the world and the enjoyment of all human rights. That said, a right to a clean, healthy, and sustainable environment, including the content of any such right, has not been established in international law, and the adoption of non-binding resolutions in multilateral fora does not change that fact. Moreover, such a right is not justiciable in U.S. courts.

Business and Human Rights: The United States strongly supports the United Nations Guiding Principles on Business and Human Rights. Even though private actors have no obligations regarding human rights under international human rights law, the United States recognizes that businesses have a responsibility to respect human rights, irrespective of whether a business entity has made specific commitments to do so.

Sanctions: The United States does not accept that sanctions are tantamount to violations of human rights. Among other legitimate purposes, targeted sanctions can play a valuable role in deterring human rights violations and abuses, promoting accountability, and addressing threats to international peace and security.

Treatment of Detainees: The United States does not consider the essentially aspirational "Mendez Principles," the "Mandela Rules," or the "Bangkok Rules" to reflect internationally agreed upon policies, protocols, procedures, or standards in the treatment of detainees. They are non-legally binding, and therefore States have no obligations to observe their provisions. For these reasons, the United States does not agree with any language in these resolutions that suggests States must modify treatment of detainees to be consistent with these rules or principles.

Technology Transfer: The United States firmly considers that strong protection and enforcement of intellectual property provides critical incentives needed to drive the innovation that will address the health, environmental, and development challenges of today and tomorrow. The United States understands that references to dissemination of technology and transfer of, or access to, technology are to voluntary technology transfer on mutually agreed terms, and that all references to access to information and/or knowledge are to information or knowledge that is made available with the authorization of the legitimate holder. The United States underscores the importance of regulatory and legal environments that support innovation.

The United States greatly appreciates the close collaboration we enjoyed with numerous allies, partners, and likeminded countries during HRC 52. We look forward to continuing the effort to make lasting progress on promoting respect for human rights around the world; advancing these efforts intersessionally; and preparing for the 53rd Session of the HRC in June.

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On April 4, 2023, Ambassador Michèle Taylor provided an explanation of position on an HRC resolution on drugs and human rights. The statement is included below.

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Thank you, Mr. President.

The importance of respect for human rights is front and center in the UN drug conventions, a foundation of all international drug control policy, as well as in all the declarations and resolutions from the General Assembly and the Commission on Narcotic Drugs (CND). There is no dispute on the role of respect for human rights in drug control efforts. That is why we join consensus on this resolution.

While we welcome identification of Indigenous medicinal practices as aligning with the international drug control framework, reference to the "targets" from the 2009 Political Declaration in PP3 which were identified in the last century in the 1998 UN Special Session on Drugs, do not reflect the latest international consensus, including measures adopted at the most recent UNGA Special Session on drugs in 2016, which this resolution reaffirms in its entirety. The 2009 targets, which were selected to be highlighted by the 1998 UNGA Special Session, were never intended to reflect the full scope of international drug policy. The 2016 policy advocates for a comprehensive and balanced approach that places an equal emphasis on public health and law enforcement aspects of addressing and countering the world drug problem. A policy that appears to focus solely on law enforcement measures to the exclusion of human rights should not be "reaffirmed," especially by this Council.

I thank you.

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On April 4, 2023, Ambassador Michèle Taylor provided an explanation of position on an HRC resolution on birth registration. The statement is included below.

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Thank you, Mr. President.

The United States strongly supports advances in the birth registration text this year on gender equality, as well as its highlighting of gender-based violence and discrimination. Promoting gender equality and preventing and responding to gender-based violence and discrimination are matters of human rights, justice, and fairness. They are strategic imperatives that reduce poverty, promote economic growth, increase access to education, improve health outcomes, advance political stability, and foster democracy. We strongly encourage this council to vote against the amendments and retain inclusive gender language in this resolution, which is necessary to recognize and promote respect for the human rights of all people.

We appreciated the opportunity to engage with the core group on the text however, we regret that, due to differences in views on the meaning and scope of privacy as a human right, States could not agree on how to reference privacy in this resolution. To the extent the term "right to privacy" is used in this resolution, the United States reads it as specifically referencing the right not to be subjected to arbitrary or unlawful interference with one's privacy as set forth in Article 17 of the ICCPR.

I thank you.

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c. 53rd Session

On July 19, 2023, the State Department issued a fact sheet summarizing key outcomes of the 53rd regular session of the HRC. The fact sheet follows and is available at https://www.state.gov/outcomes-of-the-53rd-session-of-the-un-human-rights-council/.

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During the 53rd session of the UN Human Rights Council, the United States worked with partner States and civil society, including human rights defenders, to ensure the Council's work reflects and reinforces the universal values, aspirations, and norms that have underpinned the UN system since its founding over 75 years ago.

In a first since rejoining the Council, the United States spearheaded a thematic resolution tackling statelessness and nationality rights. This marks a significant step forward in our global effort to end statelessness.

The United States supported the Council's important role of shining a spotlight on countries of concern, promoting accountability for governments and actors that violate and abuse human rights, and addressing key thematic human rights challenges. Our statements and positions underscored the U.S. commitment to promoting the universality of human rights by addressing discrimination, inequity, and inequality in all its forms, including based on sexual orientation and gender identity.

Across resolutions, joint statements, and interactive dialogues, the United States advanced equity and inclusion, with an emphasis on protecting the rights of all, particularly marginalized and underserved groups.

Our priorities included:

Leading on Statelessness and Nationality Rights:

Together with our partners, the **United States led a resolution championing nationality rights, which is enshrined in the Universal Declaration of Human Rights**. Together, we encouraged governments and the broader international community to prevent and reduce statelessness and protect stateless persons' rights. This resolution took a firm stance against discrimination against women in nationality laws, elevated key gender inclusivity principles, and underscored the importance of the right to nationality. The resolution garnered a broad, cross-regional group of co-sponsors and was adopted by consensus.

Advancing Gender Equality:

The United States reaffirmed its support for eliminating discriminatory laws and practices against women and girls in all their diversity. The U.S. co-sponsored, joined consensus on, and helped defend resolutions focused on advancing gender equality through prevention and response to gender-based violence, including **accelerating efforts to eliminate all forms of violence against women and girls** and **child, early, and forced marriage**. The United States voted against all amendments seeking to weaken or remove inclusive gender language from these and other resolutions and encouraged other member states to do the same. Additionally, as a member of the Group of Friends on the Responsibility to Protect, we promoted a joint statement promoting accountability for conflict-related sexual and other forms of gender-based violence, which may enable the commission of atrocity crimes. We also signed joint statements

decrying the gender-related killing of women and girls and heralding the critical role women play in diplomacy.

Promoting Civil Society Space:

The United States proudly co-sponsored the resolution on Civil Society Space. It **underscores the importance of creating and maintaining a safe and enabling environment, online and offline, in which civil society can operate freely and carry out its work promoting respect for human rights**. This work is all the more critical in the present age, as governments increasingly use digital technologies, surveillance, online censorship, and other mechanisms to restrict civil society and human rights defenders.

Renewing the Mandate of the Special Rapporteur on Belarus:

The United States co-sponsored the resolution that renewed the Special Rapporteur on the human rights situation in Belarus. This mandate is more important than ever as the Lukashenka regime continues to find new tools to repress the Belarusian people. The regime holds more than 1,500 political prisoners; violently intimidates and harasses all elements of civil society, including NGOs, trade unions and journalists; and passes draconian laws to punish critics both inside and outside of Belarus.

Renewing the Mandate of the Special Rapporteur on Eritrea:

The United States co-sponsored the resolution renewing the Special Rapporteur on Eritrea. The resolution **maintains attention on Eritrea's indefinite national service system and its unlawful recruitment and use of child soldiers**. It also continues to highlight the atrocity crimes committed by members of the Eritrean Defense Forces during the conflict in northern Ethiopia, which include crimes against humanity.

Drawing attention to the Human Rights Situation in Syria:

As a member of the Core Group on Syria, **the United States continued to draw attention to the dire situation in the country**. We welcomed the Commission of Inquiry's reporting calling attention to continued abuses against refugees, as well as the ongoing torture and abuse in regime detention facilities.

Other Resolution Priorities:

The United States also co-sponsored country-specific resolutions to keep reporting on **Ukraine** on the Council's agenda and supporting the successful implementation of **Colombia**'s peace process. We joined consensus on a resolution on **Burma**, making clear the need for conditions to improve before Rohingya can return safely.

The United States also co-sponsored key thematic resolutions, including: the incompatibility between democracy and racism, human rights and extreme poverty, the right to education, the negative impact of corruption, human rights of migrants in transit, and texts renewing the mandates of the Special Rapporteurs on rights of persons with disabilities, trafficking in persons, and judges and lawyers as well as the Business and Human Rights (BHR) Working Group which is critical to the implementation of the UN Guiding Principles on BHR.

United States Counters Anti-Israel Bias: The United States led a joint statement, signed by a cross-regional group of 27 countries, expressing deep concern about the open-ended Commission of Inquiry on Israel created in May 2021. We also voted against a new resolution under Agenda Item 2 to fully fund and implement an annual update of the database of companies operating in Gaza and the West Bank.

Joint Statements:

Overall, the United States signed on to 23 thematic or country-specific joint statements. We led joint statements on cultural preservation, conflict-related sexual violence and

other forms of gender-based violence, and on the Commission of Inquiry targeting Israel, and signed statements on diverse topics, including democracy, femicide and human Rights, Climate Conference of the Parties, engaging with special procedures, International Day of Women in Diplomacy, affirming the importance of the mandate of the Independent Expert on Sexual Orientation and Gender Identity, diverse families, poverty and clean affordable energy, the 75th anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, supporting the UN Office on Genocide Prevention and R2P, AI and disabilities, the rights to freedom of peaceful assembly and of association, and the harm caused by internet shutdowns.

The United States also joined 52 other countries in signing a statement on the alarming use of the death penalty in Iran, as well as other joint statements highlighting the Moura report on Mali, calling for accountability for Russia's human rights abuses and atrocities in Ukraine, noting the human rights situation in Sri Lanka, and raising awareness about ongoing atrocities against civilians in Sudan.

Side Events:

As the Chair of the **Freedom Online Coalition** this year, the United States led a side event focused on the UN Guiding Principles on BHR and the prevention of the misuse of technology and an event encouraging member state contributions to the **UN Voluntary Fund for Victims of Torture**, to which the United States remains the world's largest donor. We also co-sponsored side events on technology and human rights with a focus on Artificial Intelligence, advancing accountability for repression of activists and protesters, the critical role of women in shaping the future of Afghanistan, Ukrainian prisoners of war, education in Ukraine, and the human rights situation in Crimea, as well as two side events on the human rights situation in Belarus and events addressing the Anti-Homosexuality Act in Uganda.

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On July 17, 2023, the United States provided points of clarification on resolutions adopted at the 53rd regular session of the HRC. The statement follows and is available at https://geneva.usmission.gov/2023/07/17/points-of-clarification-on-resolutions-adopted-at-the-53rd-human-rights-council/.

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During this 53rd regular session of the UN Human Rights Council (HRC), the United States led a resolution on the right to a nationality and co-sponsored 17 additional resolutions, including resolutions on the incompatibility between democracy and racism, civil society space, child early and forced marriage, the right to education, accelerating efforts to eliminate all forms of violence against women and girls, human rights of migrants, and the negative impact of corruption, in addition to mandate renewals for the Business and Human Rights Working Group and Special Rapporteurs on disabilities, the independence of judges and lawyers, and trafficking in persons. We also co-sponsored resolutions on human rights in Belarus, Colombia, Eritrea, Syria, and Ukraine.

We take this opportunity to provide important points of clarification with respect to resolutions adopted by the Human Rights Council at its 53rd regular session that the United States co-sponsored or for which the United States otherwise joined consensus.

As a general matter, we underscore that HRC resolutions are non-binding documents that do not create rights or obligations under international law. HRC resolutions do not change the current state of conventional or customary international law and do not change the body of international law applicable to any particular situation discussed or referred to in a resolution. Nor do we read resolutions to imply that States must join or implement obligations under international instruments to which they are not a party; any reaffirmation of prior instruments in these resolutions applies only to those States that affirmed them initially. It is the prerogative of each State to decide which treaties to join. We understand abbreviated references to certain human rights in HRC resolutions to be shorthand references for the more accurate and widely accepted terms used in the applicable treaties or the Universal Declaration of Human Rights, and we maintain our long-standing positions on those rights. With respect to language referring to global issues affecting or impacting all human rights, we understand such statements in the context of reaffirming that human rights and fundamental freedoms are universal, indivisible, interrelated, interdependent, and mutually reinforcing. We do not understand such language to necessarily imply specific impacts on the enjoyment of individual human rights. We also reiterate our long-standing position that the International Covenant on Civil and Political Rights (ICCPR) applies only to individuals who are both within the territory of a State Party and subject to its jurisdiction.

The United States continues to reject the argument advanced by some delegations that criticism of States' human rights records constitutes impermissible interference in their domestic affairs. Sovereignty does not grant any State license to commit human rights violations within its own territory, and professed concerns about sovereignty cannot be used as a shield to prevent scrutiny by the Council. States have a responsibility to promote respect for human rights.

While the United States strongly supports the use of measures to prevent or protect individuals from acts of violence committed by non-State actors, we note that international human rights law generally does not obligate States to take such measures. Likewise, the United States strongly supports the condemnation of acts that can amount to human rights violations or abuses, but believes it is important for resolutions to accurately characterize these terms, consistent with international law.

We note that co-sponsorship of, or otherwise joining consensus on, HRC resolutions does not imply endorsement of the views of special rapporteurs or other special procedures mandate-holders as to the contents or application of international law or U.S. obligations thereunder.

Finally, the United States understands joint statements are intended to express the common belief of the States issuing the statement and do not create any legal rights or obligations under international law.

Specific Points of Clarification

2030 Agenda for Sustainable Development (2030 Agenda): The United States recognizes the 2030 Agenda as a voluntary global framework for sustainable development that can help put the world on a more sustainable and resilient path and advance global peace and prosperity and emphasize that all countries have a role to play in achieving its

vision. The 2030 Agenda recognizes that each country must work toward implementation in accordance with its own national policies and priorities. The United States also underscores that paragraph 18 of the 2030 Agenda calls for countries to implement the Agenda in a manner that is consistent with the rights and obligations of States under international law. We also highlight our mutual recognition in paragraph 58 that 2030 Agenda implementation must respect, and be without prejudice to, the independent mandates of other institutions and processes, including negotiations, and does not prejudge or serve as precedent for decisions and actions underway in other fora. The Agenda also does not affect the interpretation of or alter any World Trade Organization agreement or decision, including with respect to the Agreement on Trade-Related Aspects of Intellectual Property Rights. Further, citizen-responsive governance, including respect for human rights, sound economic policy and fiscal management, government transparency, and the rule of law, are essential to the implementation of the 2030 Agenda.

The "Right to Development": We note that the "right to development" is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and, unlike with human rights, is not recognized as a universal right held and enjoyed by individuals and which every individual may demand from his or her own government. Indeed, we continue to be concerned that the "right to development" identified within certain texts protects States instead of individuals.

Economic, Social, and Cultural Rights: As the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides, each State Party undertakes to take the steps set out in Article 2(1) "with a view to achieving progressively the full realization of the rights." We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we believe that these resolutions should not try to define the content of those rights provided under the ICESCR, including by suggesting that specific steps are required of States Parties to achieve progressively the full realization of those rights. The United States is not a party to the ICESCR, and the rights contained therein are not justiciable as such in U.S. courts. Further, to the extent resolutions refer to the right to safe drinking water and sanitation or to the right to food, we understand these rights to be derived from the right to an adequate standard of living. Similarly, we understand references to the right to housing, as recognized in the ICESCR, to refer to the right as a component of the right to an adequate standard of living. We note that obligations on States relating to economic, social, and cultural rights, as recognized in the ICESCR, exist only for State Parties thereto, and that such references do not create obligations for States under other human rights treaties.

Gender Based Violence (GBV): We support references to GBV as the most accurate and inclusive terminology, rather than the binary and less inclusive "violence against women and girls (VAWG)." We note that VAWG is a form of GBV. We also support the use of GBV over the term "sexual and gender-based violence" (SGBV). The United States demonstrated our commitment to preventing and responding to all forms of GBV, including sexual violence, in the recently released U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally. We also feel that it is important to address the gendered nature of sexual violence and the increased risk of experiencing it that women, girls, and gender-diverse individuals face, and that this is not accurately conveyed when separated from GBV in the term SGBV. We support references to

preventing and responding to female genital mutilation and cutting and child, early, and forced marriage, and note that the United States views them as forms of GBV and human rights abuses. We support references to intimate partner violence as one of the most prevalent forms of GBV worldwide. It is important to recognize that violence often takes place within intimate relationships, families, and situations in which individuals in a relationship live together in close quarters.

Right to Education: The United States strongly supports the realization of the right to education. As educational matters in the United States are primarily determined at the state and local levels, we understand that when resolutions call on States to strengthen or otherwise address various aspects and areas of education, this is done in terms consistent with our respective federal, state, and local authorities. With respect to references to educational matters and private providers, we also understand them consistent with these respective authorities and underscore the importance of education as a public good, but note that private providers can offer students a viable educational option. We support encouraging all providers to deliver education consistent with its importance as a public good and take seriously the responsibility of States to uphold legal standards and monitor and regulate education providers, as appropriate.

Human Rights-Based Approach: There is no internationally agreed upon understanding of the term "human rights-based approach." To the extent the term is referred to in resolutions, the United States reiterates that such references do not create obligations under international human rights law or other international commitments, including with respect to particular actions States may take in fulfilling their obligations.

Justice and Accountability: The United States strongly supports calls for justice and accountability for perpetrators of human rights violations and abuses. We understand language regarding the responsibility of States to investigate or prosecute those responsible for violations of international law and human rights abuses to refer only to those actions that constitute criminal violations under applicable law and understand references to State "obligations" to investigate or prosecute in light of applicable international obligations. We do not necessarily understand the characterization of certain acts or situations using international criminal law terms of art to mean that, as a matter of law, such terms are applicable to any specific act or situation. Further, we understand references to a right to an effective remedy as the right is recognized in Article 2 of the ICCPR, and reiterate that the right exists only as it relates to violations. We therefore do not understand such language as suggesting legal obligations exist regarding remedies related to actions by private, non-state actors or entities.

Freedom of Opinion and Expression: While the United States condemns racism and other hateful ideologies, we do not do so at the expense of our strong support for freedom of opinion and expression. To the extent that a resolution refers to efforts to prevent or eliminate hateful ideas or speech, such efforts must be carried out in a manner that fully respects freedom of opinion and expression and is consistent with the requirements in Article 19 of the ICCPR.

Privacy: Given differences in views as to the meaning and scope of privacy as an international human right, the United States does not support use of the term "right to privacy." To the extent this term is used in resolutions that we support, we read it as specifically referencing the right not to be subjected to arbitrary or unlawful interference with one's privacy as set forth in Article 17 of the ICCPR.

International Humanitarian Law: The United States is deeply committed to promoting respect for international humanitarian law (IHL) and the protection of civilians in armed conflict. We note that IHL and international human rights law are in many respects complementary and mutually reinforcing. However, we understand that, with respect to references in these resolutions to both bodies of law in situations of armed conflict, such references refer to those bodies of law only to the extent that each is applicable. We do not necessarily understand references to "conflict," "IHL," or IHL terms of art in these resolutions to mean that, as a matter of law, an armed conflict exists in a particular country or that such terms are applicable to any specific act or situation. The United States does not understand references in these resolutions condemning certain actions during armed conflict to extend to actions taken lawfully under IHL.

Death Penalty: We understand references in these resolutions to concerns about the use of the death penalty to be limited to contexts where the penalty is imposed on individuals solely for exercising their human rights and fundamental freedoms or where the imposition is otherwise in violation of obligations States owe under the ICCPR.

Fair Trial Guarantees: The United States strongly supports calls to ensure respect for fair trial guarantees and other applicable legal protections. This includes protections related to the right of convicted persons to have their conviction and/or sentence reviewed by a higher tribunal, according to the law. However, we reiterate our belief that it is critical to accurately describe such fair trial guarantees and that language in these resolutions should not be understood as modifying or altering those rights and guarantees as they are recognized in the ICCPR.

Torture: The United States interprets references to "torture" and "cruel, inhuman or degrading treatment or punishment" to be consistent with its understanding of international law—including as reflected in its reservations, declarations, and understandings to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—as well as its domestic law.

International Refugee Law: The United States strongly supports and advocates for the protection of refugees and other displaced persons around the world, and we urge all States to respect the principle of non-refoulement. In underscoring our support for this principle, we wish to clarify that U.S. international obligations with respect to non-refoulement are the provisions contained in Article 33 of the 1951 Convention relating to the Status of Refugees (applicable to the United States by its incorporation in the 1967 Protocol relating to the Status of Refugees) and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We note that we understand references to international refugee law in certain resolutions to be referring to the obligations of States under the relevant treaties to which they are party. We further understand references to "pushbacks" and other actions intended to address irregular migration in a manner consistent with the United States' understanding of international refugee law and international human rights law. Finally, we interpret references to States' purported obligation to readmit their own nationals as consistent with customary international law, which requires that States readmit their own nationals when another State seeks to expel, remove, or deport them.

Human Trafficking: The United States strongly condemns all forms of human trafficking, which is an affront to human dignity and the rule of law. The United States

supports efforts to prevent and combat human trafficking throughout the world, including providing assistance to victims and survivors. We interpret references to States' obligations related to human trafficking in line with the Palermo Protocol to Prevent, Suppress, and Punish Human Trafficking, Especially Women and Children, to the UN Transnational Organized Crime Convention, to which the United States is party.

Rights of the Child: The United States does not understand references to the rights of the child or principles derived from the Convention on the Rights of the Child, including the principle that the best interests of the child should be a primary consideration in all actions concerning children, as implying that the United States has obligations in that regard. We also understand references to recruitment or use of children as referring to the recruitment or use of children in violation of international law, including, where applicable, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

Child Labor: The United States notes that work performed by persons under the age of 18 is legal in the United States, with minimum age requirements and certain restrictions depending on the work the individual is engaging in, as well as in many other countries. The United States strongly supports the elimination of the worst forms of child labor, as that term is defined by Article 3 of the Worst Forms of Child Labour Convention, but notes that not all work done by persons under the age of 18 should be classified as child labor that is to be targeted for elimination.

References to Human Rights "Violations" in Connection with Non-State Actors: The United States notes that generally only States have obligations under international human rights law and, therefore, the capacity to commit violations of human rights. References in HRC resolutions to human rights "obligations" in connection with non-State actors, or "violations" of human rights by such actors, should not be understood to imply that such actors bear obligations under international human rights law. Nevertheless, the United States remains committed to promoting accountability for human rights abuses by non-state actors.

Environment and Human Rights: The United States believes environmental protection is a means of supporting the well-being and dignity of people around the world and the enjoyment of all human rights. That said, a right to a clean, healthy, and sustainable environment, including the content of any such right, has not been established in international law, and the adoption of non-binding resolutions in multilateral fora does not change that fact. Moreover, such a right is not justiciable in U.S. courts.

Business and Human Rights: The United States strongly supports the United Nations Guiding Principles on Business and Human Rights. Even though private actors have no obligations regarding human rights under international human rights law, the United States recognizes that businesses have a responsibility to respect human rights, irrespective of whether a business entity has made specific commitments to do so.

Treatment of Detainees: The United States does not consider the aspirational "Mendez Principles" to reflect internationally agreed upon policies, protocols, procedures, or standards in the treatment of detainees. They are not legally binding, and therefore States have no obligations to observe their provisions. For these reasons, the United States does not agree with any language in resolutions that suggests States must modify treatment of detainees to be consistent with these principles. With respect to the "Mandela Rules" or the "Bangkok Rules," the United States understands that these are

non-binding standards adopted by consensus by the Commission on Crime Prevention and Criminal Justice and are part of the United Nations Standards and Norms on Crime Prevention and Criminal Justice.

Technology Transfer: The United States reaffirms that strong protection of intellectual property and enforcement of intellectual property rights provide critical incentives needed to drive the innovation that will address the health, environmental, and development challenges of today and tomorrow. The United States understands that references to dissemination of technology and transfer of, or access to, technology are to voluntary technology transfer on mutually agreed terms, and that all references to access to information and/or knowledge are to information or knowledge that is made available with the authorization of the legitimate holder. The United States underscores the importance of regulatory and legal environments that support innovation.

Sanctions: The United States does not accept that sanctions are tantamount to violations of human rights and firmly rejects the use of the term "unilateral coercive measures." Economic sanctions are a legitimate, important, appropriate, and effective tool for responding to harmful activity and addressing threats to peace and security. The United States is not alone in that view or in that practice. In cases where the United States has applied sanctions, we have done so consistent with international law and with specific objectives in mind, including as a means to promote a return to rule of law or democratic systems, respect for human rights and fundamental freedoms, or to respond to threats to international peace and security.

The United States greatly appreciates the close collaboration we enjoyed with numerous allies, partners, and likeminded countries during HRC 53. We look forward to continuing the effort to make lasting progress on promoting respect for human rights around the world, advancing these efforts intersessionally, and preparing for the 54th Session of the HRC in September.

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d. 54th Session

On October 17, 2023, the State Department issued a fact sheet summarizing key policy outcomes of the 54th regular session of the HRC, available at https://www.state.gov/outcomes-of-the-54th-session-of-the-un-human-rights-council/ and includes marking the 75th anniversary of the UDHR, establishing am investigative mandate for Sudan, renewing the mandates of the Special Rapporteur on the human rights situations in Russia and Afghanistan as well as the mandate of the Working Group of Experts on People of African Descent, resolutions related to gender equity, racial equity and justice in addition to drawing attention to important human rights situations around the world.

On October 25, 2023, the United States provided points of clarification on resolutions adopted at the 54th regular session of the HRC. The statement is available at https://geneva.usmission.gov/2023/10/25/points-of-clarification-on-resolutions-adopted-at-the-54th-human-rights-council/ and follows.

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During this 54th regular session of the UN Human Rights Council (HRC), the United States co-sponsored 18 resolutions, including the resolutions on sports free from racism; cooperation with the United Nations and its representatives and mechanisms in the field of human rights; education for peace and tolerance for every child; centrality care and support from a human rights perspective; the World Programme for human rights education; the promotion of truth, justice, reparation, and guarantees on non-reoccurrence; preventing maternal mortality and morbidity; human rights and indigenous peoples; human rights of older persons; the International Year of the Family; enforced or involuntary disappearances; technical cooperation and capacity building in the field of human rights; and penitentiary system, security and justice: enhancement of technical cooperation and capacity building to protect human rights in Honduras. We also co-sponsored resolutions on human rights in Sudan, Afghanistan, Russia, Burundi, and Somalia.

We take this opportunity to provide important points of clarification with respect to resolutions adopted by the Human Rights Council at its 54th regular session that the United States co-sponsored or for which the United States otherwise joined consensus.

As a general matter, we underscore that HRC resolutions are non-binding documents that do not create rights or obligations under international law. HRC resolutions do not change the current state of conventional or customary international law and do not change the body of international law applicable to any particular situation discussed or referred to in a resolution. Nor do we read resolutions to imply that States must join or implement obligations under international instruments to which they are not a party; any reaffirmation of prior instruments in these resolutions applies only to those States that affirmed them initially. It is the prerogative of each State to decide which treaties to join. We understand abbreviated references to certain human rights in HRC resolutions to be shorthand references for the more accurate and widely accepted terms used in the applicable treaties or the Universal Declaration of Human Rights, and we maintain our long-standing positions on those rights. With respect to language referring to global issues affecting or impacting all human rights, we understand such statements in the context of reaffirming that human rights and fundamental freedoms are universal, indivisible, interrelated, interdependent, and mutually reinforcing. We do not understand such language to necessarily imply specific impacts on the enjoyment of individual human rights. We also reiterate our long-standing position that the International Covenant on Civil and Political Rights (ICCPR) applies only to individuals who are both within the territory of a State Party and subject to its jurisdiction.

The United States continues to reject the argument advanced by some delegations that criticism of States' human rights records constitutes impermissible interference in their domestic affairs. Sovereignty does not grant any State license to commit human rights violations within its own territory, and professed concerns about sovereignty cannot be used as a shield to prevent scrutiny from the Council. States have a responsibility to promote respect for human rights. While the United States strongly supports the use of measures to prevent or protect individuals from acts of violence committed by non-State actors, we note that international human rights law generally does not obligate States to take such measures. Likewise, the United States strongly supports the condemnation of acts that can amount to human rights violations or abuses, but

believes it is important for resolutions to accurately characterize these terms, consistent with international law.

We note that co-sponsorship of, or otherwise joining consensus on, HRC resolutions does not imply endorsement of the views of special rapporteurs or other special procedures mandate-holders as to the contents or application of international law or U.S. obligations thereunder.

Finally, the United States understands joint statements are intended to express the common belief of the States issuing the statement and not to create any legal rights or obligations under international law.

Specific Points of Clarification

2030 Agenda for Sustainable Development (2030 Agenda): The United States is fully committed to the achievement of the Sustainable Development Goals and implementation of the 2030 Agenda, which represents one of our best vehicles to expand economic opportunity, ensure respect for human rights, care for our planet, promote good governance, and ensure no one is left behind. We reaffirm that commitment to the UN Charter and the Universal Declaration of Human Rights are fundamental to our efforts to achieve sustainable development. Societies that that respect human rights, uphold the rule of law and access to justice, promote gender equality, tackle corruption, and support inclusive, accountable governance for all citizens are best equipped to deliver lasting development gains and a more peaceful, prosperous, and inclusive future for their citizens.

The United States also underscores that paragraph 18 of the 2030 Agenda calls for countries to implement the Agenda in a manner that is consistent with the rights and obligations of States under international law. We also highlight our mutual recognition in paragraph 58 that 2030 Agenda implementation must respect, and be without prejudice to, the independent mandates of other institutions and processes, including negotiations, and does not prejudge or serve as precedent for decisions and actions underway in other fora. Further, citizen-responsive governance, including respect for human rights, sound economic policy and fiscal management, government transparency, and the rule of law, are essential to the implementation of the 2030 Agenda.

The "Right to Development": We note that the "right to development" is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and, unlike with human rights, is not recognized as a universal right held and enjoyed by individuals and which every individual may demand from his or her own government. Indeed, we continue to be concerned that the "right to development" identified within the text protects States instead of individuals.

The Rights of Indigenous Peoples and Persons: The United States reaffirms its support for the UN Declaration on the Rights of Indigenous Peoples. As explained in our 2010 Statement of Support, the Declaration is an aspirational document of moral and political force and is not legally binding or a statement of current international law. The Declaration expresses the aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies. As also detailed in our 2010 Statement of Support, the United States reaffirms that human rights belong to individuals, including indigenous persons, and that Indigenous Peoples have certain additional collective rights. The United States reads the provisions of the Declaration in light of this understanding of human rights and collective rights.

Economic, Social, and Cultural Rights: As the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides, each State Party undertakes to take the steps set

out in Article 2(1) "with a view to achieving progressively the full realization of the rights." We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we believe that these resolutions should not try to define the content of those rights provided under the ICESCR, including by suggesting that specific steps are required of States Parties to achieve progressively the full realization of those rights. The United States is not a party to the ICESCR, and the rights contained therein are not justiciable as such in U.S. courts. Further, to the extent resolutions refer to the right to safe drinking water and sanitation or to the right to food, we understand these rights to be derived from the right to an adequate standard of living. Similarly, we understand references to the right to housing, as recognized in the ICESCR, to refer to the right as a component of the right to an adequate standard of living. We note that obligations on States relating to economic, social, and cultural rights, as recognized in the ICESCR, exist only for State Parties thereto, and that such references do not create obligations for States under other human rights treaties.

Right to Education: The United States strongly supports the realization of the right to education. As educational matters in the United States are primarily determined at the state and local levels, we understand that when resolutions call on States to strengthen various aspects of education, including with respect to access to inclusive, equitable, or quality education; curricula and textbooks; teacher training, materials, and methods; educational policies or processes; and other areas and aspects of education, this is done in terms consistent with our respective federal, state, and local authorities. With respect to references to educational matters and private providers, we also understand them consistent with these respective authorities and underscore the importance of education as a public good but note that private providers can offer students a viable educational option. We support encouraging all providers to deliver education consistent with its importance as a public good and take seriously the responsibility of States to uphold legal standards and monitor and regulate education providers as appropriate.

Human Rights-Based Approach: There is no internationally agreed upon understanding of the term "human rights-based approach." To the extent the term is referred to in resolutions, the United States reiterates that such references do not create obligations under international human rights law or other international commitments, including with respect to particular actions States may take in fulfilling their obligations.

Justice and Accountability: The United States strongly supports calls for justice and accountability for perpetrators of human rights violations and abuses. We understand language regarding the responsibility of States to investigate or prosecute those responsible for violations of international law and human rights abuses to refer only to those actions that constitute criminal violations under applicable law and understand references to State "obligations" to investigate or prosecute in light of applicable international obligations. We do not necessarily understand the characterization of certain acts or situations using international criminal law terms of art to mean that, as a matter of law, such terms are applicable to any specific act or situation. Further, we understand references to a right to an effective remedy as the right is recognized in Article 2 of the ICCPR and reiterate that the right exists only as it relates to violations. We therefore do not understand such language as suggesting legal obligations exist regarding remedies related to actions by private, non-state actors or entities.

Freedom of Opinion and Expression: While the United States condemns the advocacy of national, racial or religious hatred and other hateful ideologies, we do not do so at the expense of our strong support for freedom of opinion and expression. To the extent that a resolution

refers to efforts to prevent, prohibit or eliminate hateful ideas or speech, such efforts must be carried out in a manner that fully respects freedom of opinion and expression and is consistent with the requirements in Article 19 of the ICCPR.

Privacy: Given differences in views as to the meaning and scope of privacy as an international human right, the United States does not support use of the term "right to privacy." To the extent this term is used in resolutions that we support, we read it as specifically referencing the right not to be subjected to arbitrary or unlawful interference with one's privacy as set forth in Article 17 of the ICCPR.

International Humanitarian Law: The United States is deeply committed to promoting respect for international humanitarian law (IHL) and the protection of civilians in armed conflict. We note that IHL and international human rights law are in many respects complementary and mutually reinforcing. However, we understand that, with respect to references in these resolutions to both bodies of law in situations of armed conflict, such references refer to those bodies of law only to the extent that each is applicable. We do not necessarily understand references to "conflict", "IHL", "violations," or IHL terms of art in these resolutions to mean that, as a matter of law, an armed conflict exists in a particular country, that such terms are applicable to any specific act or situation, or that a particular legal determination has been made. The United States does not understand references in these resolutions condemning actions that may be violations of IHL to extend to actions taken lawfully.

Death Penalty: We understand references in these resolutions to concerns about the use of the death penalty to be limited to contexts where the penalty is imposed on individuals solely for exercising their human rights and fundamental freedoms or where the imposition is otherwise in violation of obligations States owe under the ICCPR.

Fair Trial Guarantees: The United States strongly supports calls to ensure respect for fair trial guarantees and other applicable legal protections. This includes protections related to the right of convicted persons to have their conviction and/or sentence reviewed by a higher tribunal, according to the law. However, we reiterate our belief that it is critical to accurately describe such fair trial guarantees and that language in these resolutions should not be understood as modifying or altering those rights and guarantees as they are recognized in the ICCPR.

Torture: The United States interprets references to "torture" and "cruel, inhuman or degrading treatment or punishment" to be consistent with its understanding of international law—including as reflected in its reservations, declarations, and understandings to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—as well as its domestic law.

International Refugee Law: The United States strongly supports and advocates for the protection of refugees and other displaced persons around the world, and we urge all States to respect the principle of non-refoulement. In underscoring our support for this principle, we wish to clarify that U.S. international obligations with respect to non-refoulement are the provisions contained in Article 33 of the 1951 Convention relating to the Status of Refugees (applicable to the United States by its incorporation in the 1967 Protocol relating to the Status of Refugees) and in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We note that we understand references to international refugee law in certain resolutions to be referring to the obligations of States under the relevant treaties to which they are party.

Rights of the Child: The United States does not understand references to the rights of the child or principles derived from the Convention on the Rights of the Child, including the principle that the best interests of the child should be a primary consideration in all actions concerning children, as implying that the United States has obligations in that regard. We also understand references to recruitment or use of children as referring to the recruitment or use of children in violation of international law, including, where applicable, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

References to Human Rights "Violations" in Connection with Non-State Actors: The United States notes that generally only States have obligations under international human rights law and, therefore, the capacity to commit violations of human rights. References in HRC resolutions to human rights "obligations" or "responsibilities" in connection with non-State actors, or "violations" of human rights by such actors, should not be understood to imply that such actors bear obligations under international human rights law. Nevertheless, the United States remains committed to promoting accountability for human rights abuses by non-state actors.

Environment and Human Rights: The United States believes environmental protection is a means of supporting the well-being and dignity of people around the world and the enjoyment of all human rights. That said, a right to a clean, healthy, and sustainable environment, including the content of any such right, has not been established in international law, and the adoption of non-binding resolutions in multilateral fora does not change that fact. Moreover, such a right is not justiciable in U.S. courts.

Equal Pay: The United States strongly supports the right to equal pay for equal work, as that right is articulated in Article 23 of the Universal Declaration of Human Rights, as a means to eradicate discrimination in employment and occupation and to realize women's right to work. The United States' understanding of that right is that it requires equal pay (including salary and other pecuniary and non-pecuniary benefits) for work that requires substantially equal skill, effort, and responsibility under similar working conditions within the same establishment. The United States does not interpret such right, however, to require equal pay for work of equal value.

Treatment of Detainees: The United States does not consider the essentially aspirational "Mendez Principles," to reflect internationally agreed upon policies, protocols, procedures, or standards in the treatment of detainees. They are non-legally binding, and therefore States have no obligations to observe their provisions. For these reasons, the United States does not agree with any language in these resolutions that suggests States must modify treatment of detainees to be consistent with these principles, With respect to the "Mandela Rules" or the "Bangkok Rules," the United States understands that these are non-binding standards adopted by consensus by the Commission on Crime Prevention and Criminal Justice and are part of the United Nations Standards and Norms on Crime Prevention and Criminal Justice.

Sanctions: Economic sanctions are a legitimate, important, appropriate, and effective tool for responding to harmful activity and addressing threats to peace and security. The United States is not alone in that view or in that practice. In cases where the United States has applied sanctions, we have done so consistent with international law and with specific objectives in mind, including as a means to promote a return to rule of law or democratic systems, to promote respect for human rights and fundamental freedoms, or to respond to threats to international security.

Technology Transfer: The United States firmly considers that strong protection of intellectual property and enforcement of intellectual property rights provide critical incentives needed to drive the innovation that will address the health, environmental, and development challenges of today and tomorrow. The United States understands that references to dissemination of technology and transfer of, or access to, technology are to voluntary technology transfer on mutually agreed terms, and that all references to access to information and/or knowledge are to information or knowledge that is made available with the authorization of the legitimate holder. The United States underscores the importance of regulatory and legal environments that support innovation.

The United States greatly appreciates the close collaboration we enjoyed with numerous allies, partners, and likeminded countries during HRC 54. We look forward to continuing the effort to make lasting progress on promoting respect for human rights around the world; advancing these efforts intersessionally; and preparing for the 55th Session of the HRC next year.

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5. Country-specific Issues

a. Russia

On February 22, 2023, Ambassador Linda Thomas -Greenfield, U.S. Representative to the United Nations, delivered remarks at a high-level side event on gross human rights violations due to Russia's aggression against Ukraine. The remarks follow and available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-high-level-side-event-on-gross-human-rights-violations-due-to-russias-aggression-against-ukraine/.

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I want to thank Ukraine and the other co-sponsors for bringing us together for this sobering but vitally important side event.

One year ago, Russia launched its unprovoked, illegal, full-scale invasion of Ukraine. That same day, President Putin delivered an outlandish speech in an attempt to justify his war of aggression. Putin told the world he was invading Ukraine to protect Ukrainians from "bloody crimes."

Of course, this was a total distortion of reality. It is his own forces that have carried out atrocities against the Ukrainian people. And we've just heard about the tragic circumstances of POWs and their families.

As we made clear this week, the U.S. believes Russian forces have committed crimes against humanity in Ukraine. Crimes against humanity. This is not a determination we make lightly. But in this case, the evidence is overwhelming.

The Independent International Commission of Inquiry on Ukraine – established by the Human Rights Council in March of last year – and the UN Human Rights Monitoring Mission in Ukraine, have documented a wide range of atrocities and other abuses committed by Russian forces.

Summary executions. Arbitrary detentions. Torture, rape, and other forms of gender-based violence and sexual violence. And we know women, children, older persons, persons with disabilities, and other marginalized groups are most vulnerable to these attacks.

Last November, I traveled to Ukraine and met with victims of Russia's war crimes. Women who had been tortured by Russian forces. Elderly people who had been kicked out of their homes. Children who wanted nothing more than to go back to school and see their friends. It was gut-wrenching.

As a mother and a grandmother, I am deeply disturbed by the horrors being perpetrated against Ukrainian children. Credible reports indicate Russian officials have orchestrated the transfer, relocation, re-education, adoption, or fostering of thousands of children. Some of these children have been orphaned during this war. And some were already living in institutions for serious health needs.

In many cases, parents sent children to what they thought were "summer camps" for their child's safety but were then denied contact and reunification with their children. In other cases, parents refused to send their children to Russia's "camps," and Russia's occupation authorities enrolled them anyway.

And let's be clear: this is not some offshoot operation. We have evidence that President Putin and the Kremlin are actively engaged in this effort to deny and suppress Ukraine's identity, their history, and their culture.

We must call on Russia to end this inhuman campaign; return children to their parents and guardians; provide registration lists of the children it has removed; and allow independent observers to access facilities within Russian-controlled or Russian-occupied areas of Ukraine and inside Russia itself.

The United States also condemns credible reports of abuses against persons with disabilities. Russia's war of aggression has compounded the significant attitudinal, physical, and environmental barriers faced by persons with disabilities. It is that much harder for these Ukrainians to access services – including accessible shelters, safe evacuation options, and health services. And persons with disabilities face disproportionate risks of neglect and abandonment, including by their own families in some cases.

So, we must ensure that when the international community rebuilds from this terrible war, persons with disabilities are at the forefront of decision-making and policymaking at all levels.

Colleagues, I want to highlight the need to renew the mandate of the Independent International Commission of Inquiry on Ukraine at the upcoming HRC session in Geneva. Since last March, when Secretary Blinken first determined that Russian forces have carried out war crimes in Ukraine – and since the Commission found reasonable grounds to conclude the same – the evidence of atrocities and other abuses has continued to mount. The Commission must be able to continue its critical work, and I urge the HRC to renew the mandate. There must be accountability for Russia's atrocities.

And mark my words: There will be accountability for Russia's atrocities. But right now, what the Ukrainian people need most desperately is peace. As President Biden said during his

visit to Kyiv this week, "President Putin chose this war. Every day the war continues is his choice."

Our message to President Putin is this: End this war. End your campaign of brutality. End the suffering your forces have wrought on Ukraine and on the world.

But until that day comes, we must all stand with Ukraine. We must all stand behind the UN Charter. And we must all stand for accountability in the face of unconscionable human rights violations.

Thank you very much.

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On March 30, 2023, the United States and 44 other countries invoked the Organization for Security and Cooperation in Europe (OSCE) Moscow Mechanism to investigate reports of Russia's forcible transfer and deportation of Ukrainian children. The State Department press statement follows and is available at https://www.state.gov/invocation-of-the-osce-moscow-mechanism-to-examine-reports-of-the-russian-federations-forcible-transfer-and-deportation-of-ukraines-children/.

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The United States and 44 other countries, with the support of Ukraine, invoked the Organization of Security and Cooperation in Europe's (OSCE) Moscow Mechanism requesting that the OSCE's Office of Democratic Institutions and Human Rights (ODIHR) establish an expert mission to examine allegations of the forced transfer of children in those parts of Ukraine's territory temporarily controlled or occupied by Russia, as well as allegations that Ukraine's children have been deported to the Russian Federation. This expert mission will look into whether such actions and any abuses associated with or resulting from them violate international law, constitute war crimes or crimes against humanity, and/or contravene relevant OSCE commitments. This mission will also be tasked with collecting, consolidating, and analyzing any evidence that could be shared with relevant accountability mechanisms as well as national, regional, or international courts or tribunals that may have jurisdiction.

This invocation follows OSCE's April and July 2022 Moscow Mechanism Mission Reports, which were requested by the United States and 44 other countries. Those investigations documented widespread human rights abuses and violations of international humanitarian law by Russian Federation forces in Ukraine. Those reports catalogued extensive evidence of direct targeting of civilians, attacks on medical facilities, rape, torture, summary executions, looting, and forced deportation of civilians to Russia, including children, constituting "clear patterns of serious violations of international humanitarian law attributable mostly to Russia's armed forces…in the territories under the effective control of the Russian Federation."

In times of war, children are among the most vulnerable and require special attention and protection. Forcibly transferring or deporting children who have been separated from their families or legal guardians risks exposing them to further abuses. We urge relevant authorities to cooperate fully with the expert mission and facilitate its work. The United States and our

partners remain steadfastly committed to supporting Ukraine and holding the Russian Federation to account for its unconscionable abuses.

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b. Belarus

On March 23, 2023, the State Department issued a press statement on the invocation of the OSCE Moscow Mechanism to examine reports of human rights abuses committed by the Lukashenka regime. See also Digest 2020 at 354-55 for discussion of the 2020 Moscow Mechanism report detailing widespread violations of human rights in Belarus. The press statement is available at https://www.state.gov/invocation-of-the-osce-moscow-mechanism-to-examine-reports-of-human-rights-abuses-committed-by-lukashenka-regime/, and includes the following:

> The United States and 37 other countries have invoked the OSCE Moscow Mechanism requesting that the Organization for Security and Cooperation in Europe's (OSCE) Office of Democratic Institutions and Human Rights (ODIHR) establish an expert mission to examine the dire and continuous deterioration of the human rights situation in Belarus.
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> This invocation follows OSCE's November 2020 Moscow Mechanism Mission Report, which documented the Lukashenka regime's systematic human rights violations and abuses before, during, and following the fraudulent August 9, 2020 presidential election. That report called on the Lukashenka regime to organize new genuine presidential elections based on international standards, release those unjustly detained, engage with the political opposition and civil society, and ensure accountability for victims of abuses.
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> This new invocation will establish an expert mission to look into the human rights situation in Belarus and mounting evidence of the Lukashenka regime's brutal crackdown on all elements of Belarusian society since 2020, as well as allegations of serious abuses linked to the Lukashenka regime's complicity in Russia's war of aggression against Ukraine. The expert mission will have a mandate to assess Belarus's adherence to its OSCE commitments and how the Lukashenka regime's actions may have adversely affected Belarus's civil society, press freedoms, the rule of law, and the ability of democratic processes and institutions to function.

On May 20, 2023, the Secretary of State issued a press statement condemning the Lukashenka regime for unjustly holding over 1,500 political prisoners. The statement is available at https://www.state.gov/over-1500-political-prisoners-in-belarus/, and includes the following:

> The United States stands with the people of Belarus as they seek a future based on the rule of law, respect for human rights, and an accountable, democratically elected government. We reiterate our strong desire to see the immediate and unconditional release of all political prisoners held by the Lukashenka regime, and we call on Belarus to meet its international legal obligations, as well as its commitments as a participating State of the Organization for Security and Cooperation in Europe to respect human rights and fundamental freedoms.

On September 7, 2023, the Department issued a statement on the Lukashenka Regime's prohibition on renewing passports for Belarusians abroad. The statement is available at https://www.state.gov/condemnation-of-the-lukashenka-regimes-prohibition-on-renewing-passports-for-belarusians-abroad/, and includes the following:

> The Lukashenka regime's decision to stop providing overseas passport services harms thousands of Belarusians living abroad and is the latest in a long line of cynical rejections by the regime of its basic obligations to its people. The decree's sole aim is to make the lives of ordinary Belarusians living abroad more difficult and represents yet another form of oppression and retaliation against the thousands of Belarusians who were forced to flee their homes to escape a regime that imprisons those who dare to stand up for their rights. The rule has repercussions for all Belarusians. It will prevent families from obtaining citizenship and travel documents for their children, while also making it nearly impossible for Belarusians abroad to maintain control over their homes and property in Belarus.

c. China's policies in Xinjiang

On September 19, 2023, Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice, delivered opening remarks on human rights at a Uyghur Side Event during the UN General Assembly High Level Week. The remarks are available at https://www.state.gov/opening-remarks-for-uyghur-side-event/, and excerpted below.

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A little over a year ago, the former High Commissioner for Human Rights, Michelle Bachelet, released a thorough assessment documenting numerous serious human rights concerns in Xinjiang—an assessment that current High Commissioner Volker Türk stands by. Many of the conclusions and recommendations from that assessment remain true and pressing today, as the High Commissioner noted in his opening remarks at the 54th session of the Human Rights Council on September 11th, when he stated that "the concerns in Xinjiang UAR require strong remedial action by the authorities, as per our recommendations."

In its report, OHCHR concluded that "the extent of arbitrary and discriminatory detention of members of the Uyghur and predominantly Muslim groups … may constitute international crimes, in particular crimes against humanity." It further noted that "serious human rights violations have been committed" in Xinjiang.

The assessment highlighted the "inherently arbitrary" detention system that is "marked by patterns of torture." It offered witness allegations of sexual and gender-based violence. It included information on the significant decline in birth rates among Uyghurs as a result of the PRC's coercive reproductive policies. The High Commissioner's assessment offers a strong indictment of the PRC's human rights violations and abuses and its misuse of counterterrorism policies to justify harshly discriminatory policies and practices.

In this assessment, the High Commissioner calls for further investigation and makes some important recommendations moving forward. This is why we must view this assessment as the beginning—not the end—of the High Commissioner's attention to this ongoing situation.

Documentation is ongoing and it is credible. NGOs, academics, and journalists are scrutinizing PRC government and CCP policy directives and websites. Witnesses are sharing their personal experiences. Rights advocates are collecting, analyzing, and preserving satellite images of detention centers imprisoning civilians and of Muslim cemeteries and mosques that have been leveled or desecrated in what appears to be an ongoing campaign of cultural destruction.

In addition, supply chains tainted with forced labor are being tracked and analyzed. In 2021, the United States enacted the Uyghur Forced Labor Prevention Act, underscoring our commitment to combatting forced labor, including in Xinjiang. From June 2022 through July of this year, commodities shipments worth nearly $385 million have been denied entry for violating this law.

Last year, two Uyghur advocacy organizations submitted a criminal complaint in Buenos Aires, Argentina, under the universal jurisdiction provisions of the Argentinian Constitution, and Uyghurs in Türkiye filed a criminal complaint with the Istanbul Chief Prosecutor's office accusing PRC officials of committing genocide, crimes against humanity, torture, and rape in Xinjiang.

But more can and must be done internationally to shed light on and respond to these grave concerns. In this respect, the UN plays a particularly important role as the custodian and embodiment of a series of important post-war understandings agreed to by the nations of the world—nations that committed not to remain silent when atrocities are committed.

With this in mind, we encourage the High Commissioner's Office to continue its investigation into this situation, even as the PRC's patterns of oppression evolve. We are particularly concerned about the dramatic increase in prosecutions with long-term sentences in Xinjiang, including the reported transfer of some detainees from so-called "reeducation" or "vocational training" centers to formal prisons.

PRC law enforcement statistics indicate that incarcerations in Xinjiang remain at elevated levels compared to the period before 2014 when the so-called "strike hard" campaign targeting Muslims began. Data from human rights groups indicate that, of the more than 15 thousand Xinjiang residents whose sentences are known, more than 95% of those convicted—often on vague charges like "separatism" or "endangering state security"—have received sentences of 5 to 20 years and, in some cases, life. Outside of these forms of detention, many in Xinjiang have reportedly had their documents confiscated and movement restricted, with considerable numbers assigned to forced labor. Many more are simply missing or disappeared. Children with detained

parents have reportedly been placed in difficult circumstances, with some taken away to boarding schools or orphanages.

Xinjiang law enforcement officials announced earlier this year that new prosecutions under the "strike hard" campaign continued at least through the end of 2022, the last date for which official data are available. These data suggest that these new prosecutions may well have numbered over 10 or 15 thousand. Xi Jinping also reiterated the policies most recently when he was in Urumqi on August 27. He urged officials there to conserve "hard-won social stability" and to "more deeply promote the Sinicization of Islam and effectively control so-called 'illegal' religious activities."

Given these continued abuses, we strongly endorse the recommendations in the previous High Commissioner's report. These include the demand that the PRC release all individuals arbitrarily detained within its borders. It must end its intimidation and coercion around the world, through its ongoing transnational repression. For the business community, OHCHR recommends enhanced due diligence, transparent reporting, and strengthening human rights risk assessments. And for the international community, OHCHR recommends countries refrain from refouling to the PRC Uyghurs and members of other religious and ethnic minority groups who have fled Xinjiang.

In response to the human rights situation in Xinjiang, the United States has independently, and in coordination with others, taken concrete actions to help deprive bad actors of resources and hinder their ability to carry on with business as usual. Since 2020, we have designated 12 persons connected with serious human rights abuses in Xinjiang under the Global Magnitsky sanctions program and imposed visa restrictions on seven PRC and CCP officials for their involvement in gross violations of human rights in Xinjiang. In March 2021, we coordinated with the EU, the UK, and Canada to impose sanctions on several additional individuals and entities.

In addition, we have imposed export controls and import restrictions on entities associated with abuses in Xinjiang and issued withhold release orders on products from Xinjiang that are produced with forced labor. We've issued a Xinjiang Supply Chain Business Advisory to highlight the heightened risk to businesses with supply chains and investments in Xinjiang given the number of entities complicit in forced labor and other human rights abuses there and throughout China.

While it remains challenging to create pathways to justice for the PRC's atrocities in Xinjiang, the High Commissioner's assessment offers a solid foundation for further actions. We should not stand idly by or be silent or bow to PRC pressure to look away. The United States has chosen to call these atrocities by their name: crimes against humanity and genocide. As these atrocities continue, the world must stand firm against them both in word and in deed.

The United States reaffirms its support for those who bravely speak out despite the threat of retaliation. We will continue to work with the international community to promote accountability for those responsible for atrocities and human rights violations and abuses wherever they occur, including within the PRC.

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d. Burkina Faso

On December 12, 2023, the United States expressed concern about human rights in Burkina Faso. The State Department released a press statement, available at https://www.state.gov/u-s-concerns-about-human-rights-in-burkina-faso/, and excerpted below.

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In this moment of insecurity and transition in the Sahel, the United States condemns the increasing and unacceptable violence committed by terrorist groups against civilians, military, and police in Burkina Faso. Violent extremism has taken a significant toll on the people of Burkina Faso, and our condolences go out to the victims, their families, and their communities. The United States remains a committed partner in the fight against terrorism.

The United States is concerned about the actions by Burkina Faso's Transition Authorities, such as the growing use of targeted forced conscriptions, shrinking civic space, and restrictions on political parties. These actions have the cumulative effect of silencing individuals who are working on behalf of their country to promote democratic governance and ensure that the people of Burkina Faso's rights are protected. The protection of human rights and fundamental freedoms, coupled with the timely investigation into allegations of human rights violations and abuses and holding accountable those found to be responsible, are necessary to build peace and security.

When Burkina Faso joined the United Nations in 1960, it embraced the values of the Universal Declaration of Human Rights. Since then, Burkina Faso has also ratified a series of international instruments, taking on obligations to respect and protect a wide number of human rights and fundamental freedoms.

The United States will continue to engage with the Transition Authorities and others to promote the protection of human rights and fundamental freedoms. We also commit to supporting the people of Burkina Faso and their aspirations of a more democratic, prosperous, and peaceful nation.

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B. DISCRIMINATION

1. Race

a. International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade

On March 27, 2023, Ambassador Linda Thomas-Greenfield, delivered remarks at the UN General Assembly commemoration on the International Day of Remembrance of the Victims of Slavery and the Transatlantic Slave Trade. The statement is available at

https://usun.usmission.gov/remarks-at-the-un-general-assembly-commemoration-of-the-international-day-of-remembrance-of-the-victims-of-slavery-and-the-transatlantic-slave-trade-2/ and excerpted below.

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I stand before you as the U.S. Ambassador to the United Nation; as a diplomat who proudly represents my country on the world stage. But I also stand before you as the descendant of a slave; as someone whose ancestors were subject to the horrors of a system where human beings were bought, trafficked, imprisoned, sold, owned as property into perpetuity.

My great-grandmother, Mary Thomas, born in 1865, was the child of a slave. This is just three generations back from me. And I feel a profound responsibility to continue to tell her story – and stories from one of the darkest chapters in human history. Stories of immense pain and cruelty, of struggle, of perseverance. And stories of the unsung heroes who don't always show up in history books, but whose lives are nonetheless remarkable.

People like Maria Stewart, one of the first American women of any race to speak in public about political issues. Maria was orphaned at an early age and received no formal education. But with courage and conviction, she became a powerful force in the abolitionist movement and the fight for women's rights.

Her words still ring true today, especially speeches that rallied against the educational opportunities denied to Black women. She told an audience in Boston in 1832, "There are no chains so galling as the chains of ignorance."

We can honor women like Maria Stewart by continuing to teach young people the full, honest history of slavery. And that's what makes the theme of this year's commemoration, "Fighting Slavery's Legacy of Racism through Transformative Education," so important. For when we understand our history, we can start to untangle the lasting, shameful legacy of slavery and anti-Black racism.

It is undeniable that this legacy is systemic and violent. And it is undeniable that this legacy continues to prevent people of African descent from reaching their full potential – even today.

Colleagues, we know that structural racism weakens societies. That it makes countries less prosperous, less stable, and less equitable. That it undermines peace, democracy, and the rule of law. That it harms everyone. And we must not rest until we root out the entrenched systems of racial injustice that exist around the world.

The Biden Administration is deeply committed to this urgent work; to expanding economic opportunity for Black families; to supporting Historically Black Colleges and Universities; to improving health outcomes for Black communities; and to taking important steps to protect voting rights, advance police reform, and enhance access to justice.

This work also extends to our foreign policy, because racial discrimination and the legacy of slavery is a global problem.

And that's why the United States continues to call for all countries to ratify and implement the International Convention on the Elimination of All Forms of Racial Discrimination. And that's why we are proud champions of the Permanent Forum on People of African Descent. We were the only country that made a voluntary contribution to support the

historic launch of the Permanent Forum last year and we look forward to the next session of the Forum.
Because here at the United Nations, we must do our part to dismantle structural racism; to end discrimination and fight back against all forms of hate; to continue to elevate the stories of unsung heroes like Maria Stewart – and all those who persevered, like my great-grandmother, in the face of persecution.
Only by looking to our history – and that goes for all of us – and understanding that history, can we shape a future that is more free, more tolerant, and more just for our children and our grandchildren.

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b. UN General Assembly Third Committee

On November 16, 2023, Timothy Johnson, U.S. Adviser for the UN Third Committee, provided the U.S. explanation of vote on a Third Committee resolution on the follow-up to the Durban Declaration and Program of Action ("DDPA"). The U.S. statement is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-the-follow-up-to-the-durban-declaration-and-program-of-action/, and excerpted below.

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We thank our colleagues from the Republic of South Africa for their efforts on this and similar texts. The United States is profoundly committed to eliminating racial discrimination and combatting racism, xenophobia, and all other forms of intolerance at home and abroad.

Part of that commitment has been an effort to openly and honestly confront the legacies of slavery and associated injustices that continue to reverberate to the present day in forms of entrenched and institutionalized racism in the United States and around the world.

Last year, the United States presented its most recent periodic report to the Committee on the Elimination of Racial Discrimination (CERD), which detailed our actions to address racial and ethnic discrimination domestically. Within the past two years, we have invited three separate independent UN mechanisms to the United States to review conditions and make recommendations to further our efforts to address racial inequities: the Special Rapporteur on Minorities, the Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement, and, just this month, the Special Rapporteur on Contemporary Forms of Racism.

We deeply regret, however, that we could not support this resolution. As in past years, we remain concerned by its unreserved endorsement of the Durban Declaration and Program of Action, which endorses overly broad restrictions on freedom of expression that are incompatible with our Constitution and contains elements that we consider to be antisemitic in applying double standards that single out the State of Israel. Particularly in view of the dangerous tensions precipitated by the conflict in Gaza, we believe it is more important than ever to be assiduously careful to avoid stoking any appearance of antisemitism or Islamophobia.

For these reasons, we voted against this year's resolution. Despite our longstanding concerns about the DDPA, however, we are fully supportive of other elements of this resolution, including its endorsement of the important work of the Permanent Forum on People of African Descent. We also fully support its call for a second Decade for People of African Descent, and we are eager to work with our colleagues from all regions on this and other important efforts to address racism and racial injustice throughout the world.

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2. Gender

a. Statements on Afghanistan

On March 8, 2023, the State Department published as a media note the joint statement on the situation for women and girls in Afghanistan on International Women's Day, co-signed by the Governments of Australia, Bahrain, Belgium, Bulgaria, Canada, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Kingdom of Saudi Arabia, the Netherlands, New Zealand, Norway, Portugal, Qatar, the Republic of Korea, Spain, Sweden, Switzerland, Türkiye, the United Arab Emirates, the United Kingdom, and the United States and the High Representative of the European Union. The joint statement follows and is available at https://www.state.gov/joint-statement-from-foreign-ministers-on-the-situation-for-women-and-girls-in-afghanistan-on-international-womens-day/.

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On the occasion of International Women's Day, March 8, 2023, we are united in calling attention to the situation in Afghanistan, which, over the past year and a half, has seen one of the steepest declines globally in the respect for the human rights of women and girls. Afghan women and girls have been denied access to secondary education, to higher education, to public and political spaces, and to employment opportunities. Services for supporting victims of gender-based violence have been largely dismantled. Unless reversed, the harmful effects of these reprehensible measures will be devastating and irreparable for Afghanistan's economy and society – effects that will be felt by every Afghan. The full respect for the human rights and fundamental freedoms of women and girls and their equal and meaningful participation in society are not only goals in themselves but also are prerequisites for sustainable economic and political development, social cohesion, stability, and peace in Afghanistan.

We unite in acknowledging the extraordinary courage of women and girls in Afghanistan. Despite mounting restrictions and intimidation by the Taliban, they continue to support and contribute to their families and communities. We applaud the many Afghan communities and individuals who have strongly and bravely stood up in support of Afghan women and girls.

We support the calls by the people of Afghanistan for women and girls' full access to quality education at schools and universities and women's unrestricted ability to work in all sectors, including humanitarian assistance and basic services delivery, equitable and comprehensive delivery of which is impossible without full participation of women.

We note the December 2022 statement from the Organization of Islamic Cooperation (OIC) that the decision to prevent women and girls from accessing education runs contrary to Islamic law. We are deeply concerned that Afghanistan is experiencing one of the world's largest humanitarian crises, with millions on the threshold of starvation. The Taliban's edict barring women from working for national and international nongovernmental organizations, and the effects of the edict on some governmental organizations, is already jeopardizing the efforts of humanitarian organizations to reach the more than 28 million Afghans who depend on humanitarian aid to survive.

We acknowledge the key role of the UN in the delivery of humanitarian assistance. Barring women and girls from receiving an education and excluding women from working in crucial sectors will also severely inhibit the much-needed economic recovery of Afghanistan.

This support for the Afghan people is particularly relevant, as we fear that the Taliban will implement further measures restricting women and girls' exercise of civil, political, economic, cultural, and social rights, with a dire impact on the future of Afghanistan and its people.

Together we urge the Taliban to respect all people of Afghanistan, deliver on their commitments to the Afghan people and the international community, and reverse all decisions and practices restricting women's and girls' exercise of their human rights and fundamental freedoms.

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On April 27, 2023, Ambassador Robert Wood, Alternate Representative for Special Political Affairs, delivered the U.S. explanation of vote following the adoption of a UN Security Council resolution condemning the Taliban's repression of women and girls. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-condemning-the-talibans-repression-of-women-and-girls/, and excerpted below.

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Today, the Security Council has sent a clear, unanimous message to the Taliban and to the world: We will not stand for the Taliban's repression of women and girls.

The Taliban has chosen to ban women from universities; to keep secondary schools closed to girls; and to prevent Afghan women from working with NGOs, the UN, and in nearly every sector of the economy.

These decisions are indefensible. They are not seen anywhere else in the world.

Muslim-majority countries have spoken out against the Taliban's rationale for these decisions. In January, the Organization of Islamic Cooperation emphasized that Islamic law calls for women's education, work, and participation in public life.

And now the Security Council has condemned the Taliban.

The UN and its Member States will not remain on the sidelines when women and girls are deprived from exercising their human rights. The Taliban's edicts are causing irreparable damage to Afghanistan – they erase women and girls from society. They also move the Taliban further from its desire to normalize relations with the international community.

The United States continues to urge an inclusive political process among Afghans that leads to a representative government – a government that is accountable to its people and fully reflects Afghanistan's rich diversity, including the meaningful participation of women and members of minority communities.

In closing, the United States would like to acknowledge the extraordinary courage of women and girls in Afghanistan. Despite the Taliban's mounting restrictions and intimidation, they continue to support their families and contribute to their communities.

We applaud the many Afghan communities and individuals who have strongly and bravely stood up in support of Afghan women and girls.

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b. Commission on the Status of Women

At the 67th session of the UN Commission on the Status of Women (CSW), which took place March 6-17, 2023, the United States negotiated with other participants that year's Agreed Conclusions on the theme of "Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls." On March 17, 2023, the CSW adopted the Agreed Conclusions, U.N. Doc. E/CN.6/2023/L.3, available at https://www.undocs.org/E/CN.6/2023/L.3.

On March 18, 2023, the U.S. Mission to the UN submitted for the record its explanation of position on the adoption of the CSW 2023 Agreed Conclusions. The U.S. statement follows, and is available at https://usun.usmission.gov/long-form-explanation-of-position-on-the-agreed-conclusions-of-the-2023-commission-on-the-status-of-women/.

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The United States commends Argentina and UN Women's CSW Bureau on their commitment to multilateral diplomacy and congratulates them and my Member State colleagues on the successful adoption of the Agreed Conclusions aimed at advancing rights and opportunities for women and girls in all their diversity in innovation, technology, and education in the digital age. Promoting gender equality is a matter of human rights, justice, and fairness. It is also a strategic imperative that reduces poverty, promotes economic growth, increases access to education, improves health outcomes, advances political stability, and fosters democracy.

The United States is particularly pleased to have secured strong language related to this year's important priority theme, the first time this esteemed body has specifically focused on addressing the gender digital divide, prevention of and response to technology-facilitated gender-based violence (TFGBV), the acknowledgment of the unique challenges in the digital space faced by women and girls, including indigenous women and girls, migrant women and girls, and women and girls in remote, rural and island areas, and the additional accessibility and barriers women and girls with disabilities face.

We are disappointed that the Agreed Conclusions did not include new language on the importance of or commitment to comprehensive sexuality education, or references to sexual and reproductive health and rights, which are under threat around the world. We also believe the text should have included a direct reference on sexual orientation and gender identity, as we acknowledge the importance of added references to diverse conditions and situations of women and girls.

Digital technologies hold immense potential to amplify the voices of all women and girls. At the same time, the misuse of social media platforms and other digital technologies has given rise to new, pervasive, and widespread forms and manifestations of gender-based violence (GBV). We regret that some Member States were unable to support the use of the term technology-facilitated gender-based violence, which is the most accurate and encompassing terminology for this form of GBV. However, we were pleased to include language on the continuum of violence, as survivors experience multiple, recurring, and interrelated forms of GBV that take place both online and offline, and often simultaneously. We also note with appreciation the strong references to the need for regulatory frameworks, transparency, and accountability for the technology sector, regarding their role in promoting human rights and freedom from violence for women and girls online, noting that these mechanisms must be consistent with respect for human rights.

We welcome the call for meaningful, cross-sectoral action to establish protection, prevention, and accountability to prevent and respond to GBV, but regret that the text does not include more language on access to justice and in particular a focus on accountability for survivors of gender-based violence, given the many barriers that survivors face. The United States is committed to preventing and responding to all forms of GBV, and we will continue to work with other member countries through the Global Partnership for Action on Gender-Based Online Harassment and Abuse to prevent and respond to TFGBV.

We welcome the text's emphasis that women leaders, politicians, activists, human rights defenders, and journalists are disproportionately affected by TFGBV. Increasingly, this violence is wielded deliberately by illiberal actors around the world, including state-sponsored and extremist groups, who seek to halt democratic movements and shore up their own political power.

Around the world, women and girls, including adolescent girls, disproportionately lack digital resources, physical tools, and access to skills training, including accessible digital resources for women and girls with disabilities. We are pleased to see language recognizing these challenges and our collective call to identify and eliminate all prejudice, discrimination, and obstacles that limit the access of women and girls with disabilities to information and communications technologies.

We are also pleased to see specific references to indigenous women and girls and the multiple and intersecting forms of discrimination they face, women and girls in rural settings, and women and girls with disabilities, and the unique challenges they face in getting access to

technology, quality education, and lifelong learning opportunities, including digital literacy, vocational and entrepreneurial training, and decent work and quality jobs.

The United States supports language reaffirming the need to ensure equal access to inclusive and equitable quality education, including digital literacy, to allow all women and girls to adapt and thrive. We are pleased to see the recognition of the critical role women and girls in all their diversity, as well as members of other often marginalized groups, play in leading and implementing innovation and technology transformation. We strongly support language calling for the inclusion of women and girls in all levels of decision-making related to information and communication technologies, including policies and programs to promote women's and girls' ability to securely use digital technologies and to address any potential negative impacts of the misuse of technologies, as well as language recognizing the importance of women's full, equal, and meaningful participation in decision-making processes and in leadership positions at all levels.

The United States welcomes language on the importance of birth registration for the realization of human rights and the need to increase birth registration for members of marginalized communities, to include Indigenous women and girls; women and girls with disabilities; migrant women and girls; women and girls in remote, rural, and island areas; and women and girls belonging to national or ethnic, religious, and linguistic minorities.

The document acknowledges the need for and the benefit of women's ability to access markets, including financial markets, credit, accessible digital technologies, and networks which remain central to increasing women's entrepreneurship and job creation. We reiterate the need for appropriate policy and regulatory frameworks to ensure that all women can securely and safely access and use technologies.

Once again, we thank our Argentine colleagues for leading the negotiation process for the Agreed Conclusions this year. We welcome the adoption of a comprehensive and actionable text aimed at achieving gender equality and the empowerment of women and girls in all their diversity.

We note that these Agreed Conclusions do not change the current state of conventional or customary international law and do not create new legal obligations. For further points of clarification with respect to U.S. policy and legal positions on these Agreed Conclusions, please see below.

Gender-Based Violence (GBV)

We support references to GBV as the most accurate and inclusive terminology, rather than the binary and less inclusive "violence against women and girls (VAWG)." We note that VAWG is a form of GBV. We also support the use of GBV over the term "sexual and gender-based violence" (SGBV). The United States demonstrated our commitment to preventing and responding to all forms of GBV, including sexual violence, in the recently released U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally. We also believe it is important to address the gendered nature of sexual violence, and that this is not accurately conveyed when separated from GBV in the term SGBV.

We support references to intimate partner violence. It is important to recognize that violence often takes place within families and also in situations in which individuals in a relationship live together in close quarters.

Women's and Girls' Participation

We disagree with the delegations who suggested that girls should not have full, equal, and meaningful participation and leadership in decision making processes. We also note that

some member states appoint youth advisers to UN sessions, including our own youth delegate, Luna Abadia, who joined the U.S. delegation to this year's session of the CSW. The United States strongly supports the leadership and agency of girls in all their diversity.

Access to Sexual and Reproductive Health and Rights (SRHR)

Women and girls are being held back without the ability to make decisions about their bodies and futures. We must do better to enable them to exercise their bodily autonomy, access sexual and reproductive health services, including comprehensive sexuality education, and be given the opportunity to pursue decent work with social and labor protections. We must acknowledge that respecting the sexual and reproductive health and rights of all people and achieving progress towards Sustainable Development Goals 3 and 5, including targets 3.7 and 5.6, are foundational to achieving sustained and inclusive economic growth.

Comprehensive Sexuality Education (CSE)

Comprehensive sexuality education is essential to ensure that every young person understands what happens to their bodies during puberty, can better protect themselves from violence and coercion, develops communication and interpersonal skills that promote gender equality, and can make informed decisions that affect their futures. The investments we make in all adolescents now will determine the opportunities they have in the coming years to contribute to and lead their communities.

International Conventions and Conferences

These Agreed Conclusions do not change the current state of conventional or customary international law or imply that states must join or implement obligations under international instruments to which they are not a party. We understand abbreviated or imprecise references to certain human rights to be shorthand references for the more accurate and widely accepted terms used in the applicable treaties, and we maintain our longstanding position on those rights. This text does not create or elaborate any new rights under international law. Moreover, we do not read references to specific principles, including proportionality, to mean that States have an obligation under international law to apply or act in accordance with those principles.

References to Human Rights "Violations" in Connection with Non-State Actors

The United States notes that generally only States have obligations under international human rights law and, therefore, the capacity to commit violations of human rights. References to human rights "obligations" in connection with non-State actors, or "violations" of human rights by such actors, should not be understood to imply that such actors bear obligations under international human rights law. Nevertheless, the United States remains committed to promoting accountability for human rights abuses by non-State actors.

Privacy

We understand this text to be consistent with long-standing U.S. views regarding the International Covenant on Civil and Political Rights (ICCPR) and interpret it accordingly. In this regard, we reiterate the appropriate standard under Article 17 of the ICCPR as to whether a State's interference with privacy is impermissible is whether it is unlawful or arbitrary; we welcome the text's reference to this standard.

Freedom of Opinion and Expression

The United States strongly supports the condemnation of harassment, intimidation, gender-based violence, and other acts that can amount to human rights violations or abuses, but believes it is important for the Agreed Conclusions to accurately characterize these terms, consistent with U.S. law and our international obligations. In U.S. law, the term "violence" refers to physical force or the threat of physical force. The United States also strongly supports the

condemnation of gender stereotypes and hate speech. However, ideas and words alone, even when offensive and hateful, are generally protected by freedom of opinion and expression. The United States robustly protects freedom of opinion and expression, both online and offline, because the cost of stripping away individual rights is far too great.

"Right to Development"

We note that the "right to development" is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and, unlike with human rights, is not recognized as a universal right held and enjoyed by individuals and which every individual may demand from his or her own government. Indeed, we continue to be concerned that the "right to development" identified within the text protects States instead of individuals.

Economic, Social, and Cultural Rights

As the International Covenant on Economic, Social, and Cultural Rights (ICESCR) provides, each State Party undertakes to take the steps set out in Article 2(1) "with a view to achieving progressively the full realization of the rights." We interpret references to the obligations of States as

applicable only to the extent they have assumed such obligations, and with respect to States Parties to the Covenant, in light of Article 2(1). The United States is not a party to the ICESCR and the rights contained therein are not justiciable as such in U.S. courts. We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. We therefore believe that this text should not try to define the content of those rights, or related rights, including those derived from other instruments.

While we respect the importance of promoting access to sanitation and water and that efforts to do so can involve distinctive approaches, we understand this text's references to human rights to water and sanitation to refer to the right derived from economic, social, and cultural rights contained in the ICESCR. We disagree with any assertion that the right to safe drinking water and sanitation is inextricably related to or otherwise essential to enjoyment of other human rights, such as the right to life as properly understood under the ICCPR. To the extent that access to safe drinking water and sanitation is derived from the right to an adequate standard of living, it is addressed under the ICESCR, which imposes a different standard of implementation than that contained in the ICCPR. We do not believe that a State's duty to protect the right to life by law would extend to addressing general conditions in society or nature that may eventually threaten life or prevent individuals from enjoying an adequate standard of living.

Education

The United States supports the goal of equal access to education, including women's and girls' access to inclusive and equitable quality education, particularly at the secondary level where girls' access drops precipitously. In strongly supporting these Agreed Conclusions, we are also mindful that educational matters in the United States are primarily determined at the state and local levels and understand that, where the text calls on States to strengthen various aspects of education, including access to inclusive and equitable quality education, curriculum, teacher training, and learning environments, this is done in terms consistent with our respective federal, state, tribal, and local authorities.

Equal Pay for Equal Work or Work of Equal Value

The United States understands the intention of the inclusion of "equal pay for work of equal value" to promote pay equity and nondiscriminatory compensation. The United States implements it by observing the principle of "equal pay for equal work."

"Human Rights-Based Approach"

There is no internationally agreed upon understanding of the term "human rights-based approach." To the extent the term is used, the United States reiterates that such uses do not create obligations under international human rights law or other international commitments, including with respect to particular actions States may take in fulfilling their obligations.

COVID-19

We regret that edits were not permitted on a paragraph addressing the impacts of COVID-19 on women. We note that, three years into the pandemic, vaccine access has improved greatly and while we continue to address COVID-19, we are also focused on preventing, detecting, and responding to future health threats. Recognizing that women make up 70 percent of the health workforce, and less than a quarter of leadership positions in this sector, we are focused on strengthening health systems, advancing women as decision-makers, and supporting health workers.

Economic and Trade Issues

The term "illicit financial flows" has no agreed-upon international meaning. We prefer to focus on the underlying illegal activities that produce these financial streams. Technical experts with the appropriate expertise and mandate should lead on how best to identify and combat revenue streams from illegal activities. It is not appropriate to consider illicit financial flows generically in the CSW.

All sources of finance should be used effectively to accelerate the achievement of equality between women and men and the empowerment of women and girls, so Official Development Assistance (ODA) should not be singled out. The United States recognizes as precedent the language on commitments and targets in ODA in the Addis Ababa Action Agenda, paragraph 51, and reiterated in the 2022 Second Committee Financing for Development resolution. We understand the language in this text to refer to commitments made by each country. The United States has not committed to a particular target with regard to ODA to gross national income.

The United States believes that each Member State has the sovereign right to determine how it conducts trade with other countries, and that this includes restricting trade in certain circumstances. Economic sanctions are a legitimate means of achieving foreign policy, national security, and other objectives. The United States uses sanctions in a manner consistent with international law, including the UN Charter, with specific objectives in mind. These include using sanctions as a means to promote a return to rule of law or democratic systems, to promote human rights and fundamental freedoms, or to prevent threats to international peace and security. We again register our concern that language in this document in effect seeks to call into question the ability of members of the international community to respond effectively and by non-violent means against threats to democracy, human rights, or international peace and security. In sum, we believe that economic sanctions can be an appropriate, effective, legitimate, and peaceful tool to respond to threats.

Technology Transfer

The United States firmly considers that strong protection and enforcement of intellectual property provides critical incentives needed to drive the innovation that will address the health, environmental, and development challenges of today and tomorrow. The United States understands that references to dissemination of technology and transfer of, or access to, technology are to voluntary technology transfer on mutually agreed terms, and that all references to access to information and/or knowledge are to information or knowledge that is made

available with the authorization of the legitimate holder. The United States underscores the importance of regulatory and legal environments that support innovation.

Quotas, Affirmative Action, and Temporary Special Measures

With respect to quotas, affirmative action measures, temporary special measures, and other measures intended to achieve parity for women and girls, the U.S. position is that each country must determine for itself whether such measures are appropriate. We do not believe it is a useful exercise to urge the use of quotas and rigid numerical targets, particularly in the context of political representation and government employment, without consideration for domestic anti-discrimination legal frameworks and obligations under international law to ensure every citizen has an equal right and opportunities, without discrimination, to take part in the conduct of public affairs. The best way to improve the situation of women and girls is through legal and policy reforms that end discrimination and promote and provide equal access to opportunities.

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c. Gender-based Violence

On June 19, 2023, Secretary Blinken issued a press statement on International Day for the Elimination of Sexual Violence in Conflict. The statement is available at https://www.state.gov/the-imperative-of-eliminating-sexual-violence-in-conflict/, and excerpted below.

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Every year since its inception, the United States has joined the global community in recognizing June 19 as the International Day for the Elimination of Sexual Violence in Conflict.

Despite global and national commitments to prevent and respond to gender-based violence, we recognize we must do more to bolster the rights and empowerment of survivors; promote survivors' access to services and justice; and hold perpetrators accountable for their heinous crimes.

The United States does not accept conflict-related sexual violence (CRSV) as an inevitable cost of armed conflict. We remain committed to supporting survivor-centered and trauma-informed approaches to helping survivors access the services needed to help them recover and secure the justice they deserve.

On this International Day for the Elimination of Sexual Violence in Conflict, we send the following message to perpetrators of sexual violence: the world is watching, we stand unequivocally with survivors, and the international community will take real action to prevent and respond to CRSV, and all forms of gender-based violence, across the globe.

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On June 19, 2023, Ambassador Linda Thomas-Greenfield issued a statement on the International Day for the Elimination of Sexual Violence in Conflict. The statement is excerpted below and available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-the-international-day-for-the-elimination-of-sexual-violence-in-conflict/.

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Today, we pay homage to the victims and survivors of conflict-related sexual violence by re-committing ourselves to holding the perpetrators of sexual violence accountable and by backing on countries to deliver the long overdue justice that the victims and survivors deserve.

Sexual violence is too often used as a weapon of war. Survivors, their families, and their communities endure life-long trauma as a result of these horrific acts. We must provide the support services that survivors need for rehabilitation. Survivors need medical care, mental health and psychosocial support services; and they need economic and livelihood support to rebuild their lives.

Conflict-related sexual violence is prevalent around the world. Russian soldiers in Ukraine, gang members in Haiti, armed groups in Sudan, South Sudan and the Democratic Republic of the Congo are using gender-based violence, including sexual violence, to terrorize and control populations with impunity. The rapidly deteriorating situation in areas of conflict underscore the critical need for our urgent attention and action on this issue.

Daughters, sons, friends, neighbors – sexual violence harms all people, especially women and girls. For every case that is reported, we know there are countless more that are not. We have a collective responsibility to better prevent and respond to the egregious act of sexual violence in conflict. We owe it to the courageous survivors who have come forward – and those that have been silenced by fear – to act now.

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d. Women, Peace and Security

On October 31, 2023, the Biden-Harris Administration released the 2023 Women, Peace and Security Strategy (WPS) and National Action Plan. The 2023 WPS Strategy and National Action Plan, an update to the 2019 WPS strategy, is available at https://www.whitehouse.gov/wp-content/uploads/2023/11/U.S.-Strategy-and-National-Action-Plan-on-Women-Peace-and-Security.pdf. See also *Digest 2019* at 170-72. The White House published a fact sheet on the 2023 WPS strategy, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/31/fact-sheet-release-of-the-2023-women-peace-and-security-strategy-and-national-action-plan/. Secretary Blinken delivered remarks at the launch of the 2023 WPS strategy, available at https://www.state.gov/secretary-antony-j-blinken-at-the-launch-of-the-2023-u-s-strategy-and-national-action-plan-on-women-peace-and-security-wps/, and excerpted below.

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Since day one, this administration has been working toward equality for women and girls in all of their diversity. Making sure that women across the globe are meaningfully included in efforts to build peace and maintain security is a critical part of that. And as we've heard, it was 23 years ago today that the United Nations Security Council passed Resolution 1325, recognizing the critical role that women can play in forging peace and security and in preventing and resolving conflict and crises.

Today, women's equity, participation, and leadership are no less crucial for international peace and security. In fact, I would argue they're even more crucial. When women's rights are respected, we know societies are safer. They're more stable. They're more prosperous. Peacekeeping and security forces that include women can better build trust with the communities that they're protecting. And the research shows this clearly: When women participate in negotiating peace agreements, those deals are 35 percent more likely to endure. So I really do have to say I think women may just be better at this. (Laughter.)

With President Biden's leadership, we've invested in concrete efforts around the world to make real the commitment in Resolution 1325. Over the last year, the State Department has increased our own budget to provide more than $120 million to these initiatives. We're supporting civil society and government leaders as they collaborate on women, peace, and security initiatives in countries from Kosovo to Colombia to Indonesia.

In Southeast Asia, we're helping improve access to justice for women environmental defenders who've received violent threats because of the work that they're doing. We've provided robust support to assist survivors of conflict-related sexual violence perpetrated in Russia's brutal war of aggression against Ukraine. And as always, we're honored by the presence of Ukraine's remarkable ambassador to the United States. Oksana, it's great to have you here today. Thank you…

All of this work has been guided by the 2019 U.S. Strategy on Women, Peace, and Security. And today, as you've heard, we're releasing an updated strategy that will drive our work forward for years to come. We developed this framework together with our colleagues at the White House, the Departments of Defense and Homeland Security, at the U.S. Agency for International Development. And their leaders are here with us today, reflecting that this is an all-of-government effort, it's an all-of-government commitment.

The roadmap that we have also draws on quite literally decades of research and extensive input from more than 300 civil society experts from the United States but also from around the world, including a number of you who are here today. And I thank you, thank you, thank you for the incredible effort and for the incredible input.

At a time, as we all know, of ongoing conflicts, from Europe to the Levant to the Sahel, the heart of the Middle East, this strategy reaffirms the importance of increasing women's meaningful participation in future peace processes and negotiations to effectively reduce violence, to effectively rebuild societies. Let me just quickly mention the five lines of effort that are at the heart of this strategy.

First, we will boost women's leadership and participation in peace and security initiatives within the U.S. Government and also across the globe.

Second, we'll defend and promote the human rights of women and girls and help prevent and address gender-based violence during conflicts and during other crises.

Third, we will do more to incorporate women's views and voices as we provide relief after conflicts and after natural disasters, and we'll make sure that our humanitarian assistance initiatives are more equitable and also more accessible.

Fourth, we will make U.S. foreign affairs and national security policies more inclusive by further integrating the perspective of women and girls into the decision-making process. We'll also increase gender equality in our diplomacy, in our defense, and in our development workforces, something that we've been working on from day one of this administration.

Finally, we will deepen our collaboration with partners around the world, not just in government but also in academia and civil society, in multilateral organizations, the private sector, to strengthen gender equality in matters of peace and security.

And it's important that we'll pursue all of these goals by elevating local leaders, by combating historic and systemic inequities, by addressing the unique and overlapping forms of discrimination that are faced by women of color, women with disabilities, members of the LGBTQI+ community, and other underserved and under-represented groups.

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e. UN General Assembly Third Committee

On November 10, 2023, Sofija Korac, U.S. Adviser for the Third Committee, delivered the statement on a UN Third Committee resolution on improvement of the situation of women and girls in rural areas. The statement is available at https://usun.usmission.gov/statement-on-a-third-committee-resolution-on-improvement-of-the-situation-of-women-and-girls-in-rural-areas/, and excerpted below.

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The United States thanks Mongolia for introducing this resolution that emphasizes the importance of reaching women and girls in rural areas. The United States is a strong proponent and supporter of advancing gender equality and the empowerment of all women and girls.

We particularly appreciate additional references to the impacts of gender stereotypes, the unequal share of unpaid care work, precarious work conditions, malnutrition, and food insecurity on rural women and girls. These factors, which compound the multiple and intersecting forms of discrimination and the sexual- and gender-based violence experienced by women and girls in rural areas, remain deeply concerning.

Despite these positive elements, the United States regrets the negotiations process resulted in a loss of critical language that had broad support in the room on a number of fronts. This included critical references to access to sexual and reproductive health for women and girls in rural areas, and our preferred formulation of sexual and reproductive health and rights. This is especially regrettable in a biannual text where we are still very much feeling the impacts of the shadow

pandemic, where women and girls in rural areas have been disproportionately impacted, especially those facing multiple and intersecting forms of discrimination such as women and girls with disabilities.

Similarly, we were also initially pleased to see the proposed reference to the newly adopted Committee on World Food Security Voluntary Guidelines on Gender Equality and Women's and Girls' Empowerment in the Context of Food Security and Nutrition and wish it had been retained in the final text. Its inclusion could have helped focus global attention on the critical importance of women's and girls' economic and social empowerment for food security and nutrition.

We also deeply regret that we could not have references to Security Council Resolution 1325 and the women, peace, and security agenda, which had broad support in the room during negotiations.

For additional explanation of our positions, including on human rights; the right to development; the right to a clean, healthy, and sustainable environment; affirmative action measures; and educational matters, the United States refers you to our general statement that will be posted in full on the U.S. Mission's website and included in the Digest of U.S. Practice in International Law.

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3. Sexual Orientation and Gender Identity

On March 20, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN Security Council Arria-Formula meeting on integrating the human rights of Lesbian, Gay, Bisexual, Transgender, and Intersex ("LGBTI") persons into the Security Council's work. The remarks are available at https://usun.usmission.gov/remarks-at-a-un-security-council-arria-formula-meeting-on-integrating-the-human-rights-of-lgbti-persons-into-the-security-councils-work/, and excerpted below.

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Good afternoon, everyone, and welcome again to the second ever Arria meeting on LGBTQI issues held by the UN Security Council. We are proud to be co-hosting this Arria, building on the last one in 2015 that the U.S. co-convened on this topic with Chile, and to expand the scope of our discussion.

Today's meeting is historic, representing the first time that the UN Independent Expert on Sexual Orientation and Gender Identity has ever briefed the Council and only the second time in its history that there has been an LGBTI-specific Arria. And while this body has discussed the crisis since the Taliban took control of Afghanistan, many times, this is the first time we are hearing about how LGBT people have been specifically targeted, impacted, and harmed.

Finally, this is the first time we are hearing about a precedential new model – Colombia's pioneering work to ensure that its peace process includes LGBT persons so that justice truly leaves no one behind. The simple fact is, the threats LGBTQI+ people face around the world are

threats to international peace and security. Let me repeat that: The threats that LGBTQI+ people face around the world are threats to international peace and security. That's especially true for those at the intersection of multiple, underrepresented identities.

Everyone deserves to live free from fear, from violence, from persecution. But for too many people, their sexual orientation or gender identity puts them at risk – they are put at risk just for being themselves.

I've seen this firsthand in my diplomacy abroad. During my many years serving on the continent of Africa, I often encountered this issue. And I was told, by more than one person, more than one leader, that "this is not our culture."

I always responded the same way. "Is it your culture to commit violence against people you disagree with? To persecute people just for the way they were born?" And I ask that question to any country around the world. No one ever said yes to that question.

And fortunately, much of Africa, just like much of the world, has made tremendous progress. And our hearts have grown, our policies have changed. That's true around the world. But so much more needs to be done or we would not be here today.

In Colombia, LGBTQI+ people have been incorporated into the peacebuilding and democratic process. That is progress. Colombia's Special Jurisdiction for Peace, known by its Spanish acronym as the JEP, set a new precedent when it confirmed charges of gender persecution as a crime against humanity when committed against five LGBTQI+ persons in the armed conflict.

This represents the first time that any transitional justice has recognized the specific targeting of LGBTQI+ persons in armed conflict. This is a model of incorporating LGBTQI+ people into peacebuilding, and I hope it's replicated in conflict and post-conflict settings around the world.

I am also proud of the progress we have made here in America. I think back to 1969, when being gay, lesbian, bisexual, or transgender could get you arrested in America. It was then, right here in this city, in New York, when the police raided the Stonewall Inn, and its patrons decided enough was enough. The success of that movement is now preserved as a memorial down in the West Village.

But we are far from finished. Right now, across my own country, we are seeing hateful, shameful attacks on the LGBTQI+ community, and especially the trans community. These attacks, to me, fly in the face of our universal basic human rights.

Around the world, we are continuing to see the same kinds of challenges. In some places, the situation is dire.

In Afghanistan, for example, the Taliban has brought back its medieval policies – the same policies I saw in place when I was there decades ago, and what we just heard from Artemis. Individual Taliban members have made public statements confirming that their interpretation of Sharia allows for the death penalty for homosexuality.

Members of the LGBTQI+ community reported being physically and sexually assaulted, and many reported living in physically and economically precarious conditions in hiding. There are also reports from members of civil society that LGBTQI+ people were outed purposely by their families and subjected to violence to gain favor with the Taliban. There are reports of LGBTQI+ persons who had gone missing and were believed to have been killed, and again, we heard the story that Artemis shared with us today.

To put it bluntly, this is horrific. These actions foment hate, they support violence, and are an affront to the principles of freedom and human rights. They also destabilize whole

societies. Which is why we need to do our part, as individual Member States and collectively as the United Nations Security Council.

For our part, on behalf of the United States, I am proud to announce four Commitments for Action. In recent decades, the Security Council has made great progress taking into account the needs and perspectives of women and children and youth in situations armed conflict and fragile societies.

Today we commit to specific steps to also better integrate LGBTQI concerns into the Security Council's daily work.

First, we commit to regularly review the situation of LGBTQI+ individuals in conflicts on the Council's agenda. That includes regularly soliciting information from LGBTQI+ human rights defenders.

Second, we commit to encouraging the UN Secretariat and other UN officials to integrate LGBTQI+ concerns and perspectives in their regular reports to the Council.

Third, we commit to raising abuses and violations of the human rights of LGBTQI people in our national statements in the Security Council.

And fourth, we commit to proposing, when appropriate, language in Security Council products responding to the situation of LGBTQI+ individuals. This includes language in the Council's work on implementing United Nations Security Council Resolution 1325 and 2475.

We are proud of these four commitments. They are just the beginning. And we call on every Security Council member to join us.

We also call on UN Special Political Missions and UN Peacekeeping Missions to increase engagement with members of the LGBTQI+ community, to stop attacks against individuals, and to continue to integrate gender identity and sexual orientation into all of their work, but particularly in protection.

And we call on the UN community as a whole to step up to defend the universal human rights of all LGBTQI+ people, to let love be love, to let us provide the moral and legal support to ensure all people are able to live their lives freely.

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On May 17, 2023, the State Department issued a fact sheet entitled, "Summary of Interagency Action Plan to Combat So-Called 'Conversion Therapy' Practices Globally in accordance with E.O. 14075." See *Digest 2022* at 218-19 for discussion of Executive Order ("E.O.") 14075. The fact sheet is available at https://www.state.gov/summary-of-interagency-action-plan-to-combat-so-called-conversion-therapy-practices-globally-in-accordance-with-e-o-14075/, and excerpted below.

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Human rights, including the human rights of LGBTQI+ persons, are central to the Biden-Harris Administration's foreign policy. As President Biden made clear in his February 2021 Presidential Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World, "[a]ll human beings should be treated with respect and dignity and should be able to live without fear no matter who they are or

whom they love." Further, on June 15, 2022, the President issued E.O. 14075 "Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals" which, among other things, instructs Executive Branch departments and agencies to "address so-called conversion therapy around the world…the Secretary of State, in collaboration with the Secretary of the Treasury, the Secretary of Health and Human Services, and the Administrator of the United States Agency for International Development, shall develop an action plan to promote an end to its use around the world." Experts from those four agencies worked together to develop a comprehensive and cross-cutting plan to respond to these directives and have begun implementing the action plan.

First, we fully acknowledge the significant harm caused to LGBTQI+ individuals and their families by falsely pathologizing sexual orientation, gender identity or expression, or sex characteristics. We also fully acknowledge the significant harm of the use of so-called "conversion therapy" practices (or "CTPs") that attempt to change, alter, or suppress LGBTQI+ identities. Just as a heterosexual person could not be "made" gay, no LGBTQI+ person can be forced to be something they are not. Therefore, we cannot condone harming people because of their sexual orientation, gender identity or expression, or sex characteristics (SOGIESC). We further note that CTPs have been disavowed by the American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, the American Psychological Association, and the U.N. Independent Expert on Sexual Orientation and Gender Identity, among many others.

In response, we will elevate understanding among staff at our missions around the world and with partner countries regarding CTPs and work to prevent the support for or use of CTP globally. We will engage with partner governments to encourage them to stop sponsoring, funding, and/or otherwise supporting CTP and, with like-minded governments, encourage support for programs that educate on the harms of CTP and work to stop their use. In consultation with LGBTQI+ community groups, we will share information with medical professionals and public officials, including police, judges, and government staff, on SOGIESC issues and the harm of CTP. We will work with partner governments, including ministries of health and ministries of justice, in tandem with other countries, to discuss the dangers of CTP. In addition, we will engage with civil society networks, including faith groups, to encourage dialogue.

We will use our voice at multilateral institutions, including international financial institutions, UN agencies, and other multilateral fora to which the United States is a member, to advance the prevention of direct or indirect support for CTP through their programming or financial assistance. We will work to educate the institutions' staff, recipient governments, and project participants about CTP. We will promote sound technical guidance and norms in the prevention of CTP, including in bilateral and multilateral settings, and will pose specific questions challenging CTP and eligibility requirements when reviewing relevant health guidance and programs across bilateral engagements and international health institutions. Using existing resources, we will emphasize the importance of ensuring broad access to evidence-based SOGIESC affirming care and highlight evidence-based resources for families on expanding supportive and affirming behaviors with LGBTQI+ youth.

We will elevate understanding and strengthen efforts with programming partners to prevent CTP. For instance, we will develop and deploy guidance and tools to systematically embed education and prevention messages to combat CTP and standardize expectations regarding oversight of implementing partners. We will explicitly address CTP during community

engagement to increase dialogue about CTP. We will work to ensure that our grants and contracts do not permit or enable CTP and will reaffirm that CTP is inconsistent with our nondiscrimination policies. We will socialize this information with staff, contractors, grant recipients, and their beneficiaries and participants. We will solicit proposals under the Global Equality Fund and the Rainbow Fund for programming to respond to and prevent CTP globally by empowering civil society, improving acceptance of LGBTQI+ persons, and advancing policies with the aim of responding to and preventing CTP.

Finally, to support U.S. citizens abroad, we will review and revise country specific information and the LGBTQI+ pages on travel.state.gov to include safety and security information on CTP overseas. We will also provide resource materials for the U.S. public and provide outreach to U.S. citizen victims.

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On October 26, 2023, the State Department released a press statement on Intersex Awareness Day affirming the United States' commitment to promoting and protecting the human rights of Intersex persons globally. The press statement is available at https://www.state.gov/on-intersex-awareness-day-2/, and follows.

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Today in celebration and recognition of Intersex Awareness Day, we affirm the United States' commitment to promoting and protecting the human rights of Intersex persons globally. As President Biden stated in his 2021 Memorandum on Advancing the Human Rights of LGBTQI+ Persons Around the World, it is the policy of the United States to pursue an end to violence and discrimination on the bases of sexual orientation, gender identity or expression, and sex characteristics.

Intersex persons often face stigma and discrimination in accessing education, healthcare, and legal recognition, and are subjected to medically unnecessary surgeries. These harmful practices, which can cause lifelong negative physical and emotional consequences, are a medical form of so-called conversion therapy practices in that they seek to physically "convert" Intersex children into non-Intersex children. We applaud all activists, organizations and governments working to raise visibility and protect Intersex persons' rights to bodily integrity and to ensure equal protection and recognition before the law.

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C. CHILDREN

1. Children in Armed Conflict

On February 13, 2023, Ambassador Richard Mills, Deputy Representative to the United Nations, delivered remarks at a UN Security Council open debate on children and armed conflict. The remarks are available at https://usun.usmission.gov/remarks-at-a-un-

security-council-open-debate-on-children-and-armed-conflict-3/, and excerpted below.

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The latest report of the Secretary-General on Children and Armed Conflict provided a sobering snapshot of how conflict continues to impact children. It, I'm sure for all of us, was heartbreaking to read of the nearly 24,000 verified violations in the report. The United States remains firmly committed to the CAAC agenda item and is keen to see it integrated into all the work of the UN Security Council.

When we take preventative steps to protect children, we are protecting and safeguarding our collective future. To prevent future violations and abuses against children, we must make clear to those who commit these acts that they will be held accountable.

Madam President, the Russian delegation attempted to spin its war in Ukraine as somehow a positive for the children of Ukraine. Let me be clear: In Ukraine, Russia's brutal full-scale invasion is having a devastating impact on children. We commend the Secretary-General for including Ukraine as a "country of concern" in his recent report, which highlights the ongoing, unconscionable violations and abuses by Russia against Ukrainian children.

During his recent visit to Ukraine, the High Commissioner for Refugees Mr. Grandi highlighted a tragic aspect of Russia's war – the impact on children, and namely the issuance of Russian Federation passports to unaccompanied children from Ukraine during wartime.

It has been widely reported that Russia is engaged in extensive relocation of Ukraine's children within Russia-controlled and Russia-occupied territories of Ukraine, as well as the transfer of children to Russia itself, and, in some cases, the deportation of children from Ukraine for the purpose of Russification and adoption by or placement with families in Russia.

Another indispensable tool in preventing violations is the expertise provided by the UN Country Task Forces' on Monitoring and Reporting and other UN missions' Child Protection Specialists around the world. Without their tireless efforts and vital work, countless more children would suffer. And it is our responsibility as Member States to help ensure adequate resources and dedicated Child Protection Personnel are deployed where needed in UN Peace Operations, Special Political missions, and Country Teams to deliver on their mandates. When we leave these positions vacant or understaffed, we leave children at risk.

Children, especially girls, have been subjected to alarming rates of gender-based violence. We are especially distressed by the 41 percent increase worldwide in the abduction of girls, who are then commonly subjected to gender-based violence such as forced marriages, rape, and other forms of sexual violence.

We are encouraged by the positive outcome of engagement with parties to conflict, which did result in the release of 12,214 children from armed groups and armed forces. Still, more should be done to promote justice and accountability for these child survivors and to urgently address the long-term impacts to their mental and physical health.

Children in conflict zones face acute protection challenges. In Ethiopia, thousands of children have been forced from their homes, separated from their families, and subjected to sexual violence.

We are encouraged by the cessation of hostilities agreement in northern Ethiopia and hope the government and the Tigrayan authorities build on this momentum. We also underscore

any lasting solution to the conflict must involve comprehensive solutions, including transitional justice for victims and survivors, and accountability for those responsible for atrocities.

In Afghanistan, patterns of child, early, and forced marriage and recruitment have been crippling to the physical and emotional well-being of children and youth. Girls have been particularly impacted as there have been instances amounting to early and unsafe pregnancies. Survivors of gender-based violence and demobilized child soldiers, including those who are trafficking- survivors, need access to shelter and long-term care.

The United States condemns and calls on the Taliban to eliminate the harmful practice of bacha bazi and expand protection and rehabilitative services for affected children. The United States also condemns the December 24 edict barring women from working for NGOs, which will disproportionately harm women and children as recipients of humanitarian assistance, to include medical services.

In conclusion, Madam President, it is important, as I think we all agree, that the Council speak in one voice for increased compliance with international humanitarian law, respect for human rights, and strengthened accountability for all violations and abuses against children. This Council can – and should – do more to protect children worldwide, and we can start by strengthening existing accountability mechanisms and dedicating more resources to UN child protection specialists.

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Consistent with the Child Soldiers Prevention Act of 2008 ("CSPA"), Title IV of Public Law 110-457, as amended, the State Department's 2023 Trafficking in Persons ("TIP") report lists the foreign governments that have violated the standards under the CSPA, *i.e.* governments of countries that have been "clearly identified" during the previous year as "having governmental armed forces, police, or other security forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit or use child soldiers," as defined in the CSPA. Those so identified in the 2023 report are the governments of Afghanistan, Burma, Central African Republic, the Democratic Republic of the Congo, Egypt, Eritrea, Iran, Libya, Mali, Russia, Rwanda, Somalia, South Sudan, Syria, Türkiye, Venezuela, and Yemen.

The CSPA list is included in the TIP report, available at https://www.state.gov/reports/2023-trafficking-in-persons-report/. For additional discussion of the TIP report and related issues, see Chapter 3.B.2. Absent further action by the President, the foreign governments included on the CSPA list are subject to restrictions applicable to certain security assistance and licenses for direct commercial sales of military equipment for the subsequent fiscal year. In a memorandum for the Secretary of State dated September 15, 2023, 88 Fed. Reg. 66,671 (Sept. 27, 2023), the President determined that:

> [I]t is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Egypt; to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to Turkey to allow for the provision of International Military Education and Training (IMET) and Peacekeeping Operations (PKO) assistance, the issuance of direct

commercial sales (DCS) licenses, and support provided pursuant to 10 U.S.C. 331 and 10 U.S.C. 333, to the extent that the CSPA would restrict such assistance or support; to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to Libya and Somalia to allow for the provision of IMET and PKO assistance and support provided pursuant to 10 U.S.C. 331 and 10 U.S.C. 333, to the extent that the CSPA would restrict such assistance or support; to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo to allow for the provision of IMET and PKO assistance and the issuance of DCS licenses in connection with the reexport of transport aircraft, to the extent that the CSPA would restrict such assistance; to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to the Central African Republic and Yemen to allow for the provision of IMET and PKO assistance, to the extent that the CSPA would restrict such assistance; and to waive the application of the prohibition in section 404(a) of the CSPA to allow for the issuance of DCS licenses related to other United States Government assistance for the above countries and, with respect to the Russian Federation, solely for the issuance of DCS licenses in connection with the International Space Station…

2. Rights of the Child

On November 16, 2023, Dylan Lang, U.S. Adviser for the U.N. Third Committee, delivered the U.S. explanation of position for the rights of the child resolution. The U.S. explanation of position is excerpted below and available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-rights-of-the-child/.

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…We join consensus on this resolution to underscore our commitment to respecting the human rights of children and supporting their safety in the digital environment and across the globe. The United States works both domestically and internationally to protect and promote the well-being of children who far too often experience violence and hate.

In joining consensus today, we express our appreciation for the retention of language on sexual and reproductive health, disabilities, and other topics important to the rights of children. We also wish to clarify our views and note our concerns with certain elements of this resolution, including, but not limited to, the following issues:

The United States recognizes that the Convention on the Rights of the Child provides the relevant framework for States Parties to the CRC. However, the United States does not understand references in this resolution to obligations or principles derived from the CRC, including references to the principle of the best interests of the child, as suggesting that the United States has obligations in that regard. We also note the resolution inaccurately

characterizes certain provisions of the CRC and the obligations of States under international human rights law more generally.

The United States also supports the realization of the right to education. Where the resolution calls on Member States to strengthen or address various aspects of education, including regarding quality education, efforts to promote digital literacy skills, and measures to address violence and harassment in schools, in preambular paragraph 19 and operative paragraphs 17, 19, 24, and 28, we understand the text to be consistent with our respective federal, state, and local authorities.

The United States reads preambular paragraph 52 to refer to punishment that rises to the level of child abuse, in line with domestic law.

We understand the obligations referenced in operative paragraph 15 to be those set forth in Article 24 of the ICCPR.

We were also concerned about the attempt of certain Member States to turn this text away from, as the title suggests, the rights of the child, and transform it into a text about the rights of parents and families.

With regard to other issues relevant to this resolution, including, but not limited to, the 2030 Agenda; economic, social and cultural rights; privacy; interference in enjoyment of human rights; treaty reservations; references to violence; so-called human rights "violations" in connection with non-state actors, including businesses; and recruitment of children, we refer you to our general statement.

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3. Girl Child

On November 16, 2023, Dylan Lang, U.S. Adviser for the U. N. Third Committee, delivered the U.S. explanation of position for the girl child resolution. The U.S. explanation of position is excerpted below and available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-girl-child/.

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The United States would like to thank South Africa and the members of the South African Development Community who facilitated this text. The resolution remains a critical fixture in the constellation of longstanding consensus resolutions advancing gender equality and the empowerment of all women and girls.

While we traditionally co-sponsor this resolution, we regret that the core group chose to open the text in a very narrow way – it was a missed opportunity to not re-open the full text after so many years of technical rollovers. We hope that in two years' time, the full text will be open and will cover a wide range of issues – this will allow us to go back to co-sponsoring, if we end up with a strong text.

We thank Member States who raised invaluable questions on the inclusion of language for the first time in this resolution that has been controversial in some other contexts. We thank South Africa for its efforts to address these concerns, and we sincerely hope the spirit of cooperation will continue on this and other resolutions advancing gender equality.

With regard to this resolution's references to international human rights law, including the Convention on the Rights of the Child and economic, social and cultural rights, including the right to education, we refer you to the U.S. general statement which will be posted on the U.S. Mission's website.

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D. SELF-DETERMINATION

On October 11, 2023, Adviser Miguel A. Boluda, delivered the U.S. explanation of vote during the United Nations General Assembly Fourth Committee action on proposals submitted under Decolonization Items. The explanation of vote is excerpted below and available at https://usun.usmission.gov/explanation-of-vote-during-unga-fourth-committee-action-on-proposals-submitted-under-decolonization-items/.

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The United States has called for a recorded vote on five of the resolutions in this cluster – as we have in previous years. We plan to vote "NO" and encourage other countries to join us to vote against these five specific resolutions, as follows:

- Resolution I: Information from Non-Self-Governing Territories transmitted under Article 73e of the Charter of the United Nations;
- Resolution II: Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories;
- Resolution III: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations;
- Resolution XVIII: Dissemination of information on decolonization; and,
- Resolution XIX: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The United States is proud to support the right of peoples to self-determination and will continue to uphold the full application of Article 73 of the UN Charter. However, we must also reiterate our well-known concerns that these resolutions continue to place too much weight on independence as a one-size-fits-all status option for a territory's people in pursuit of their right of self-determination. As correctly stated by the Declaration on Principles of International Law Concerning Friendly Relations of 1970, the people of a Non-Self-Governing Territory may, as an alternative to independence, validly opt for Free Association or any other political status—including integration with the Administering State—provided the people freely determine such

status. In other words, the territories can speak for themselves, and it is not for this Assembly to press for any particular outcome.

Leaving the decision — whatever it might be — to the free will of the people is the essence of the right of self-determination. Moreover, we are dismayed—in the resolution entitled Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples—at the retention in operative paragraph 14 of an outdated call to terminate all military activities and bases in Non-Self-Governing Territories. The United States Government has a sovereign right to carry out its military activities in accordance with its national security interests and believes it simplistic to assume military presence is necessarily harmful to the rights and interests of the people of the territory, or incompatible with their wishes.

With respect to the resolution titled Information from Non-Self-Governing Territories transmitted under Article 73 (e) of the Charter of the United Nations, we underscore that it is for Administering States to determine whether a territory has achieved self-governance under the terms of the Charter, and whether to transmit information under Article 73(e) of the Charter. We continue to reiterate these concerns with these five resolutions, yet the C-24 chooses to ignore our valid policy and legal concerns each year, and thus we will be voting NO.

While the United States will plan to join consensus on the other resolutions, regarding the resolution entitled The Question of Guam, we again express disagreement with the criticism of a U.S. Federal court ruling which enjoined Guam's planned plebiscite on self-determination. According to the U.S. court's ruling, which was affirmed on appeal in 2019, the Guamanian law establishing the plebiscite violates U.S. constitutional guarantees against race-based restrictions on the exercise of voting rights. The United States has long supported the right of self-determination for the people of Guam and continues to do so.

In light of this language, we also find it necessary to reiterate the longstanding U.S. view that the right of self-determination of the people of a Non-Self-Governing Territory is to be exercised by the whole people, not just one portion of the population. In this regard, we welcome the Assembly's acknowledgment in operative paragraph 5 of the Guam resolution that self-determination decisions should be conducted consistently with applicable human rights obligations and commitments, including the commitments set forth in the Universal Declaration of Human Rights. As we are all aware, among these are important commitments relating to non-discrimination and universal and equal suffrage.

Finally, we reiterate and incorporate by reference the other concerns we have expressed in years past about these resolutions. We stress that the statements in these resolutions, as well as those in prior resolutions of the General Assembly — including Resolution 1514 of 1960 — are nonbinding and do not necessarily state or reflect international law. And any reaffirmation of prior documents in these resolutions applies only to those States which affirmed them initially.

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E. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

On November 10, 2023, U.S. Adviser for the UN Third Committee Timothy Johnson delivered the U.S. explanation of position on a Third Committee resolution on the human right to safe drinking water and sanitation. The statement is available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-human-rights-to-water-and-sanitation/, and excerpted below.

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In the spirit of the United States' commitment to make safe drinking water and sanitation services available for all people, with particular attention to marginalized or underserved communities and vulnerable groups, regardless of race, color, national origin, or income, we are pleased to join consensus on this resolution. As we have seen over and over again, water, sanitation, and hygiene are vital to preventing the spread of a wide variety of diseases, delivering all types of health care, and supporting the delivery of education, nutrition, and development. Supporting access to drinking water and sanitation is interconnected with promoting the health and sustainability of ecosystems, including aquatic ecosystems, and to combatting adverse effects of anthropogenic climate change, especially for people living in small island States, Indigenous Peoples and local communities.

In joining consensus today, we wish to clarify our views on several provisions in this resolution.

We reiterate the understandings in our statements and explanations of position on this matter at the UN General Assembly and Human Rights Council, most recently in 2021 and 2022.

While the United States is not a party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the rights contained therein are not justiciable in U.S. courts, the United States is a signatory and recognizes its commitments as such. The United States joins consensus with the understanding that this resolution, including its references to human rights to safe drinking water and sanitation, does not alter the current state of conventional or customary international law, nor does it imply that states must implement obligations under human rights instruments to which they are not a party. While we respect the importance of promoting access to sanitation and water and that efforts to do so can involve distinctive approaches, we understand this resolution's references to human rights to water and sanitation to refer to the right derived from economic, social, and cultural rights contained in the ICESCR.

We disagree with any assertion that the right to safe drinking water and sanitation is inextricably related to or otherwise essential to enjoyment of other human rights, such as the right to life as properly understood under the International Covenant on Civil and Political Rights (ICCPR). To the extent that access to safe drinking water and sanitation is derived from the right to an adequate standard of living, it is addressed under the ICESCR, which imposes a different standard of implementation than that contained in the ICCPR. We do not believe that a state's duty to protect the right to life by law would extend to addressing general conditions in society or nature that may eventually threaten life or prevent individuals from enjoying an adequate standard of living. In addition, while the United States agrees that safe water and sanitation are critically important, we do not accept all the analyses and conclusions in the Special Rapporteur's reports mentioned in this resolution.

For additional explanation of our positions, including on economic, social, and cultural rights; the 2030 Agenda for Sustainable Development; a right to a clean, healthy, and sustainable environment; a human rights-based approach; and technology transfer, the United States refers you to our general statement that will be posted in full on the U.S. Mission's website, and included in the Digest of U.S. Practice in International Law.

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F. LABOR

On November 16, 2023, President Biden issued a "Memorandum on Advancing Worker Empowerment, Rights, and High Labor Standards Globally." The Presidential Memorandum is available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/11/16/memorandum-on-advancing-worker-empowerment-rights-and-high-labor-standards-globally/. Secretary Blinken issued a statement on the release of the Presidential Memorandum, which is available at https://www.state.gov/release-of-the-presidential-memorandum-on-advancing-worker-empowerment-rights-and-high-labor-standards-globally/, and includes the following:

> Labor rights are integral to building democracy, achieving economic growth, strengthening supply chain resilience, and leveling the playing field for American workers and companies.
>
> This new whole-of-government approach will advance worker empowerment and unions, in line with President Biden's policies here at home. The Presidential Memorandum for the first time directs Chiefs of Mission and Department officials to directly engage in labor diplomacy and enhancing programming and public messaging on workers and labor rights. The Department's efforts to advance internationally recognized workers' rights will be carried out alongside interagency partners, including U.S. Department of Labor. This Memorandum is intended to raise global labor standards, building on the full range of existing authorities and tools in diplomacy, foreign assistance and programming, law enforcement, and global trade and economic cooperation, consistent with relevant international obligations and commitments.

For discussion of the Xinjiang-related visa restrictions, see Chapter 16.

G. TORTURE

On June 26, 2023, Secretary Blinken issued a statement on International Day in Support of Victims of Torture. The statement is available at https://www.state.gov/international-day-in-support-of-victims-of-torture-3/ and follows:

> On this International Day in Support of Victims of Torture, the United States reaffirms our condemnation of torture wherever and whenever it occurs and stands in solidarity with victims and survivors of torture around the world. The absolute prohibition of torture is a human right enshrined in U.S. and

international law. We recognize the bravery, humanity, and dignity of torture survivors around the world.
Despite near universal condemnation, we continue to see governments using torture and inhumane treatment as tools of repression against political opponents, members of marginalized populations, prisoners of war and other detainees, human rights defenders, and those who voice opinions with which these governments disagree. Our pursuit of accountability, as well as our support for survivors continues so long as victims of torture exist. As the largest contributor to the UN Voluntary Fund for Victims of Torture, we support rehabilitation and justice programs to help victims around the world in their healing, and we urge other countries to support them as well.

H. BUSINESS AND HUMAN RIGHTS

In 2023, the United States submitted its 2022 Annual Report as a member of the Voluntary Principles Initiatives. The report is available at https://www.voluntaryprinciples.org/wp-content/uploads/2023/06/USG_2022-VPI-Annual-Report_Public.pdf, and excerpted below.

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B. Domestic Policies, Laws, and Regulations

The U.S. government is party to relevant human rights conventions, such as the International Covenant on Civil and Political Rights. The United States also endorses the protect, respect, and remedy framework outlined in the UN Guiding Principles on Business and Human Rights (UNGPs), providing that States have a duty to protect human rights; corporations have a responsibility to respect human rights; and that those affected by business-related human rights abuse should have access to remedy. The VPI is the preeminent mechanism for implementing aspects of the UNGPs around human rights-respecting security practice in industries of extracting, harvesting, or developing natural resources or energy.

The U.S. government announced in June 2021 our intention to revitalize the 2016 U.S. National Action Plan (NAP) on Responsible Business Conduct to better promote responsible and transparent business conduct overseas. The revitalized NAP will address ways in which the U.S. government can promote and encourage responsible business conduct with respect to human rights, labor rights, anticorruption, transparency, and more. Throughout 2022, the U.S. government has gathered stakeholder input on updating the NAP through written comments and informal consultations.

The United States strongly supports accountability for human rights abuses, as evidenced by its domestic legal and regulatory regime as well as its deep and ongoing engagement with governments, businesses, and NGOs. Civil liability is an important element of legal accountability, and domestic tort law provides a powerful tool for accountability. U.S. law provides clear remedies for torts committed domestically, and mechanisms such as legal aid and class certification enhance accessibility of such remedies. As an additional example in the area of

private security contractors (PSCs), contract law provides a useful vehicle for the enforcement of contractual terms against PSCs. Contracts between the USG and PSCs are enforceable in U.S. courts.

Certain relevant federal laws may reach non-government activity. As one example, protections against discrimination in federal laws reach significant areas of non-government activity, including civil rights laws that prohibit racial or ethnic (national origin) discrimination in the sale or rental of private property, employment at private businesses with 15 or more employees, admission to private schools that receive federal funding, and access to public facilities like hotels and restaurants. In addition, many state and local anti-discrimination laws cover discriminatory practices by private employers, landlords, creditors, and educational institutions.

The U.S. government views multi-stakeholder initiatives, like the VPI, as important tools for engaging with businesses at home and abroad. The United States also supports several initiatives that complement the VPI. The United States is an active board member on the International Code of Conduct for Private Security Providers' Association (ICOCA) (see also "Private Security" section). We also support and actively participate in the Kimberley Process (KP). The KP is a multi-stakeholder initiative launched in 2003 by governments, the diamond industry, and NGOs to prevent the flow of "conflict diamonds" from entering the global diamond supply chain. Determined to break the link between armed groups and mineral mining in Africa's Great Lakes Region, the U.S. Congress enacted Section 1502 of the Wall Street Reform and Consumer Protection Act of 2010 (known as "Dodd-Frank"). The law requires companies listed on U.S. exchanges to report annually to the Securities and Exchange Commission (SEC) whether any "conflict minerals" (tin, tantalum, tungsten, and gold) necessary to the functionality or production of a product are from the Democratic Republic of the Congo (DRC) or the nine adjacent countries. Key to the U.S. government's efforts to foster a responsible minerals supply chain is its Public-Private Alliance for Responsible Minerals Trade from the DRC and the Great Lakes Region (the PPA), a formal partnership with industry, civil society, and the U.S. government. The PPA was established in 2011 and now includes over 40 members.

In addition, the U.S. government supports efforts to address labor rights violations and abuses, including the worst forms of child labor, forced labor, and labor trafficking, as well as violations of freedom of association, collective bargaining, occupational safety and health, and employment discrimination in mining in numerous countries. In 2022, the U.S. Department of Labor (DOL) continued to fund projects to address labor rights violations and abuses in mining sectors across Colombia, the DRC, Ghana, Nigeria, and Peru.

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The United States participated in the ninth session of the open-ended intergovernmental working group ("OEIGWG") on transnational corporations and other business enterprises with respect to human rights, which took place from October 23-27, 2023 in Geneva. For the text of the updated draft legally binding instrument with the textual proposals submitted by States, including the United States, see U.N. Doc. A/HRC/55/59/Add.1, available at https://undocs.org/A/HRC/55/59/Add.1.

On October 23, 2023, the United States issued a general statement, which was posted to the U.S. Mission Geneva website at https://geneva.usmission.gov/2023/10/23/open-ended-intergovernmental-working-

group-on-transnational-corporations-and-other-business-enterprises-with-respect-to-human-rights/ and excerpted below.

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We share the interest of all here today in finding ways to advance business and human rights. Much work remains to foster a world in which businesses, government, and civil society collaborate to ensure that economic development and growth includes respect for human rights.

For our part, we continue to promote the UN Guiding Principles on Business and Human Rights, or the UNGPs, and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, which we view as critical international frameworks on business and human rights. Some of the ways in which we are seeking to advance these important tools include our efforts to update and revitalize our National Action Plan on Responsible Business Conduct; developing forthcoming guidance on how online platforms can improve the safety of human rights defenders; and by chairing the Voluntary Principles Initiative.

As we implement the three pillars of the UNGPs, we note that pillar three is the least implemented thus far. We understand that one factor motivating the treaty process is the need for greater access to effective remedy. We agree that more needs to be done on this issue.

We have often said that the UNGPs are a floor, not a ceiling. We would like to work with this group to find a way to further business and human rights, including strengthening access to remedy, that is consensus based, is multi-stakeholder, and builds on the UNGPs.

We thank Ecuador for its work on this year's text. In particular, for its transparency in showing where proposals originated, and for circulating the text well in advance of the meeting. We also appreciated that the Friends of the Chair process allowed for additional State voices to be heard.

As we turn to this year's text, we note that many of the Chair's proposals from last year and some suggestions raised by states with different views during the 8th negotiating session were incorporated. We welcome the continued inclusion of all business activities, including business activities of a transnational character, in the scope of the 4th draft as consistent with the UNGPs.

We observed last year that the Chair's proposals appeared to reflect an effort to find a constructive path forward in light of diverse views. With the incorporation of many of the Chair's proposals, the new draft appears to provide increased flexibility for implementation. Yet, we are concerned that, in a number of places where the Chair's proposals have been incorporated, language has been removed that would have allowed implementation to be consistent with domestic legal and administrative systems.

We still have serious substantive concerns throughout the text. Provisions remain both unclear and overly prescriptive. The text retains overly broad jurisdictional provisions, unclear liability provisions, inconsistencies with international law, and potential criminalization of an ill-defined range of activity. These issues will make it difficult for many States to sign on to or implement the Treaty. A treaty implemented by only a few states would fail to improve access to remedy.

We recognize that some governments are adopting or considering mandatory approaches to business and human rights under domestic law, at different speeds and through different

methods. To receive broad state support, a treaty must allow states flexibility to achieve their goals, rather than dictate only one way. The United States has not been alone in our concerns regarding the draft treaty. Many stakeholders, including a considerable percentage of States that are home to the world's largest transnational corporations, have pursued only limited participation in these negotiations.

Going forward we would like to see the process invite fresh thinking about how to develop an instrument that could garner the necessary multi-stakeholder consensus.

The U.S. government is open to exploring alternative approaches that align with the UNGPs and are developed in collaboration with, and that ultimately reflect a broad consensus of business, civil society, and other relevant stakeholders. It could include some mechanism to offer states the option to opt into additional elements that do not have consensus, so that such a treaty would provide a baseline for what member states can all support.

Though our approaches may differ, we share your interest in protecting vulnerable communities and individuals from the adverse impacts of business activity, including with respect to human rights.

In closing, we want to work with the Group to identify a collaborative path forward to advance business and human rights that is consensus-based, builds on the UNGPs, and has multi-stakeholder support.

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I. INDIGENOUS ISSUES

On October 13, 2023, at the 54th Session of the HRC ("HRC 54"), the United States co-sponsored the resolution entitled "Human Rights and Indigenous Peoples." The resolution, U.N. Doc. A/HRC/RES/54/12, is available at https://undocs.org/A/HRC/RES/54/12. See also section A.4.d, *supra*, for discussion of the outcomes of HRC 54. The resolution helped to lay the foundation for enhancing the participation of Indigenous Peoples in the work of the Council, which would bring new perspectives to United States work to promote respect for human rights. To that end, the resolution called for the organization of a two multi-day intersessional meetings prior to the 58th session of the HRC on "concrete ways to enhance the participation of Indigenous Peoples in the work of the HRC." The United States continued these efforts in other forums, such as the UN General Assembly, where it co-sponsored a resolution calling for enhanced participation of Indigenous Peoples in processes and negotiations that affect them.

J. FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

1. General

On June 28, 2023, Timothy Johnson, U.S. Adviser for the Third Committee, delivered the U.S. statement at the interactive dialogue with Clément Nyaletsossi Voule, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. The

statement is available at https://geneva.usmission.gov/2023/06/28/rights-to-freedom-of-peaceful-assembly-and-of-association-hrc53/, and excerpted below.

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These freedoms not only serve as an indispensable foundation for an active civil society and political pluralism, they are essential to upholding other human rights.

Sadly, the freedoms of peaceful assembly and association are under serious threat in many parts of the world today. We are particularly concerned, for example, by restrictions imposed by Cambodia's government on political parties' and opposition political leaders' participation in national elections in July. We call on Cambodia to ensure a free and fair electoral process that respects freedoms of peaceful assembly and association for members of all political parties, media, civil society, and voters.

In Peru, we are concerned by violence associated with the security forces' response to the December 2022 to February 2023 protests and call on the Government of Peru to continue to investigate all deaths and claims of excessive use of force.

In Hong Kong, we are concerned by the prosecution of peaceful protestors under the National Security Law, including Jimmy Lai.

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On October 12, 2023, U.S. Adviser for the Third Committee, Jessica Brzeski, delivered the U.S. statement at the interactive dialogue with Clément Voule, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. The statement is available at https://usun.usmission.gov/remarks-at-a-third-committee-interactive-dialogue-with-the-special-rapporteur-on-freedom-of-peaceful-assembly-and-of-association-mr-clement-voule/, and excerpted below.

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We are deeply concerned by the unlawful restrictions on this fundamental freedom in many countries around the globe.

In Belarus, the Lukashenka regime continues politically motivated prosecutions of those who participated in the country-wide, peaceful protests that erupted following the fraudulent 2020 presidential election. Reports detail that in 2023 alone, authorities convicted some 470 peaceful protesters.

In addition, reports estimate Russian authorities have detained more than 19,000 peaceful anti-war protestors since Russia launched its full-scale war against Ukraine last year, and that hundreds have faced criminal charges for anti-war expression or peaceful assembly. The Kremlin continues to use repressive laws, such as those on so-called "foreign agents," "undesirable organizations," and "LGBT propaganda" to harass or effectively outlaw peaceful civil society groups and independent media.

We must call out violations of peaceful assembly and association and uplift the voices of those who are silenced.

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2. Hong Kong

On March 31, 2023, Secretary Blinken issued a press statement on the declining rule of law in Hong Kong. The statement, available at https://www.state.gov/hong-kongs-declining-rule-of-law/, and follows.

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The People's Republic of China (PRC) continues to erode Hong Kong's judicial independence and the rule of law. This past year, PRC and Hong Kong authorities have further criminalized dissent, undermining the human rights and fundamental freedoms of people in Hong Kong and dismantling the city's promised autonomy. The **Hong Kong Policy Act report**, released today, catalogs the facts of PRC and Hong Kong authorities' ongoing crackdown on civil society, media, and dissenting voices.

The Hong Kong government has persisted in its enforcement of the National Security Law and wielded a sedition law to silence perceived critics – with more than 1,200 people reportedly detained for their political beliefs, many of whom remain in pre-trial detention.

We urge PRC authorities to restore Hong Kongers their protected rights and freedoms, release those unjustly detained or imprisoned, and respect the rule of law and human rights in Hong Kong.

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3. Iran

On November 15, 2023, Ambassador Christopher Henzel, U.S. Area Adviser for Near Eastern Affairs, delivered the U.S. explanation of vote on a U.N. Third Committee resolution on the situation of human rights in Iran. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-the-situation-of-human-rights-in-the-islamic-republic-of-iran/, and excerpted below.

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More than a year after the protests sparked by the death in custody of Jina Mahsa Amini, we see the human rights situation in Iran continuing to deteriorate dramatically.

We remain deeply concerned that the Iranian regime responded to peaceful protests by killing hundreds of protesters, including children, torturing and threatening detained protesters and activists, and carrying out death sentences against people merely for exercising their rights. Reports of abuses involving extrajudicial killings, disproportionate use of force, arbitrary arrests and detention, gender-based violence, unfair trials, internet shutdowns, and targeted harassment demonstrate the cruelty of the regime and its hostility to universal human rights.

Sadly, Iranian authorities refuse to grant access to the country for the UN Special Rapporteur on the situation of human rights in Iran. We urge the government to allow the Rapporteur to visit Iran immediately.

We firmly support civil society activists, human rights defenders, and other Iranians who continue to protest their government's human rights abuses, including gender-based violence against women, and restrictions on Iranians' exercise of their human rights and fundamental freedoms. We join Iranians and millions of others around the world in calling for those responsible to be held accountable.

This resolution helps to promote this essential accountability. And we are pleased that this resolution provides updates on the situation over the past year, including support for the Fact-Finding Mission created during the Special Session of the Human Rights Council last November.

We are proud to vote "yes" on this resolution.\

Today's result strongly condemns the Iranian regime's continued human rights violations and abuses. And, just as importantly, it sends a strong signal of support to the brave Iranians, including women and children, demanding respect for human rights and fundamental freedoms.

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K. FREEDOM OF EXPRESSION

1. Joint Statements

On September 15, 2023, the Media Freedom Coalition issued a joint statement on transnational repression of journalists and media workers. The United States joined 47 other states in signing the statement, which is available at https://mediafreedomcoalition.org/joint-statement/2023/transnational-repression/, and follows.

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The undersigned members of the Media Freedom Coalition express their concern about the increasing acts of transnational repression directed at journalists and media workers.

Journalists and media workers play an indispensable role in fostering the free flow of information in open and informed societies, hold governments to account and expose malpractices. Worryingly, they are increasingly targeted by governments who wish to stifle critical voices and the reporting of facts, and silence freedom of expression even beyond their borders. Journalists are deterred from reporting inconvenient truths even if they are not taking a specific stance. This trend poses a significant threat not only to journalists, media workers and

their families, but also to the fundamental principles of democracy, good governance and human rights.

Tactics of transnational repression include assassinations, detentions, forcible return, defamation, physical and digital harassment and threats, the misuse of surveillance technology including commercial intrusion software (sometimes referred to as spyware), and coercion by proxy, among others. Often, traditional methods of transnational repression are used together with newer digital forms of transnational repression.

Developments in digital technologies have given governments new tools to be misused to control, silence and punish journalists for critical reporting from abroad. These tactics include digital attacks via malware, online harassment, smear campaigns, misuse of surveillance, and disinformation. Journalists in vulnerable situations may face particularly abusive and dehumanising forms of harassment. Women journalists and media workers are disproportionately targeted by degrading, misogynistic and sexually violent intimidation and harassment.

Transnational repression raises the cost of reporting, pushing journalists and media workers towards self-censorship. The effect created by these repressive measures may deter journalists from investigating and reporting on crucial issues and hinders the free flow of information. Transnational repression not only silences critical voices, but also undermines the fundamental role of a free and independent media as a check and balance for informed decision making and as a critical tool to hold powerful actors accountable by laying bare corruption, injustice and other wrongdoing.

The Media Freedom Coalition calls upon governments to meet their obligations under international human rights law, to cease and counter transnational repression, and protect journalists and media workers against human rights violations and abuses.

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On December 29, 2023, the State Department issued, as a media note available at https://www.state.gov/media-freedom-coalition-statement-on-the-second-anniversary-of-the-closure-of-stand-news-and-media-freedom-in-hong-kong/, the Media Freedom Coalition's statement on the second anniversary of the closure of Stand News and media freedom in Hong Kong. The governments of *Australia, Austria, Canada, Czechia, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, New Zealand, Norway, Slovenia, Spain, Sweden, Switzerland, the Netherlands, the United Kingdom, and the United States* signed the statement. The statement follows.

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The undersigned members of the Media Freedom Coalition (MFC) remain deeply concerned at the Hong Kong and mainland Chinese authorities' continued attacks on freedom of the press and their suppression of independent local media in Hong Kong.

Local media have intensified self-censorship since the imposition of the National Security Law in June 2020. Prosecutions of media workers in connection with sedition legislation have increased. Use of these laws to suppress journalism undermines Hong Kong's autonomy and the rights and freedoms of the people in Hong Kong as promised in the Sino-British Joint Declaration and guaranteed in the Basic Law.

The Hong Kong authorities' prolonged prosecutions of journalists like the Stand News team and publishers such as Apple Daily founder Jimmy Lai creates a chilling effect on others in the press and media. They come against the backdrop of loss of editorial independence, the barring of journalists seeking to cover government press briefings and the removal of material from public broadcasting archives.

Freedom of the press has been central to Hong Kong's success for many years. Curtailing the space for free expression of alternative views weakens vital checks and balances on executive power. The free flow and exchange of opinions and information is vital to Hong Kong's people, business and international reputation.

We urge the Hong Kong and Chinese authorities to abide by their international human rights commitments and legal obligations and to preserve Hong Kong's high degree of autonomy and respect for universal rights and freedoms.

The member countries of the MFC will always defend media freedom and freedom of expression. The member countries of the MFC will continue to stand up for those who are targeted simply for exercising their human rights.

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2. U.S. Statements

On May 3, 2023, Secretary Blinken issued a press statement on World Press Freedom Day. The remarks are excerpted below and available at https://www.state.gov/world-press-freedom-day-2/.

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On the 30th annual World Press Freedom Day, the United States extends our deep gratitude to the remarkable journalists and media professionals around the world whose work ensures the flow of information and ideas that form the lifeblood of free and open societies. Today we also reflect on the tremendous sacrifice paid by so many journalists in performing this noble vocation.

Far too many governments use repression to silence free expression, including through reprisals against journalists for simply doing their jobs. We again call on Russian authorities to immediately release Wall Street Journal reporter Evan Gershkovich and all other journalists held for exercising freedom of expression.

Imprisonment is not the only threat reporters face. Journalists covering violent conflict and corruption are subjected to intimidation and abduction, often perpetrated with impunity. Elsewhere, journalists face discrimination, censorship, and weaponized justice systems. Governments around the world have used various tools of repression to force media outlets to close.

On this World Press Freedom Day, we rededicate ourselves to protecting press freedom at home and promoting it across the globe.

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On June 14, 2023, Jeffrey DeLaurentis, Acting Deputy Representative to the United Nations, delivered the U.S. explanation of vote following the adoption of a UN Security Council resolution on tolerance and international peace and security. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-on-tolerance-and-international-peace-and-security/, and follows.

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Standing for freedom of expression and religion or belief, it is U.S. policy to support the protection of human rights as a central tenet of international peace and security, and we view efforts toward that end as foundational to the mission of the United Nations and to our work together here in the Security Council. Human Fraternity – in the words of President Biden – can build "a better world that upholds universal human rights, lifts every human being, and advances peace and security for all."

We appreciate that this meeting today and the vote on this resolution is occurring in a broader global context in which fundamental rights and freedoms are under assault as never before, including by governments seeking to infringe on those rights under the cover of "combatting extremism." It is an utmost U.S. priority with this resolution that the Council not appear to be granting license to states to repress dissenting views under the pretext of "countering extremism" or maintaining peace or societal harmony.

For years, the UN has appropriately focused on addressing violent extremism, including in the Secretary-General's Plan of Action to Prevent Violent Extremism and existing commitments Member States have made to prevent and counter violent extremism.

In the context of such efforts, the Security Council has also been clear opinions and beliefs must be protected – even if characterized as "extreme" – and states should seek to address violent acts of extremism that threaten peace and security. The United States does not view this resolution as altering that emphasis. Rather, the text of the resolution, in repeatedly discussing "extremism" in the context of armed conflict and violence, continues to distinguish between "extremism" and "violent extremism."

It was important to us that this resolution reaffirm the vital role of women's leadership in prevention and resolution of conflict and their contribution to prevent the spread of intolerance and incitement to hatred.

We also ensured this resolution emphasized combatting extremism must be done, "in a manner consistent with applicable international law." States must respect and vigorously protect international law and human rights, including the freedoms of expression and religion, even as they promote tolerance and address ideologies that are indeed abhorrent.

Stifling human rights is counterproductive to the vision of peace and security that we, as members of the Security Council, seek to advance. To unduly limit the exercise of human rights

and fundamental freedoms under a pretext of combatting extremism undermines these universal rights and freedoms.

The United States stands with likeminded members of this Council in committing to ensure this resolution will not be misused to justify repression of human rights defenders, women and girls, LGBTQI+ persons, or any violations or abuses of human rights – and we welcome the attention of civil society to ensure, as this Council has upheld previously, that "extremism," when not linked to violence, must never be accepted as a justification to curtail human rights or fundamental freedoms. Indeed, nothing in this resolution is intended to construe peaceful opposition to government policy, advocacy for addressing climate change, or the exposure of corruption as "extremism."

As always, the United States expects the Security Council will work assiduously to ensure acts threatening peace and security are addressed in a manner that upholds human rights and fundamental freedoms. Only through respecting fundamental human rights can we truly promote tolerance – the shared objective of this resolution.

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L. FREEDOM OF RELIGION OR BELIEF

1. U.S. Annual Report

On May 15, 2023, Secretary Blinken and Ambassador at Large for International Religious Freedom Rashad Hussain addressed the press on the release of the 2022 International Religious Freedom Report, mandated by the International Religious Freedom Act of 1998, as amended, Pub. L. No. 105-292, 112 Stat. 2787 (1998) ("IRF Act"). Secretary Blinken's remarks are excerpted below and available at https://www.state.gov/secretary-antony-j-blinken-on-the-2022-report-on-international-religious-freedom/. The report is available at https://www.state.gov/reports/2022-report-on-international-religious-freedom/.

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Today the State Department is releasing the 2022 International Religious Freedom Report, which provides a fact-based, comprehensive view of the state of religious freedom in nearly 200 countries and territories around the world. This report wouldn't be possible without the contributions of our civil society partners around the globe who help to shine a spotlight on abuses and advocate for victims of religious persecution. We are grateful for their vital work.

This report assesses the actions of countries that are our partners and those with whom we have disagreements, evaluating all by the same standards. Its aim is to highlight areas where freedom of religion or belief is being repressed, to promote accountability, and ultimately drive progress toward a world where freedom of religion or belief is a reality for everyone everywhere.

Over the past year we've seen real progress in some parts of the world on expanding religious freedom as people demanded their rights. Civil society groups pushed for change and governments listened.

Belgium formally recognized its Buddhist minority, which entitles Buddhist religious organizations to teach their faith in state schools and eventually to apply for federal funding to do so.

Lawmakers in Brazil codified religious freedom guarantees for Afro-Brazilian indigenous communities at the municipal and state levels across the country. They also passed legislation making it a crime carry out discriminatory acts against any religious practices.

Canada and the European Union both created new offices to combat Islamophobia, while Croatia appointed its first special advisor for combatting anti-Semitism.

In the Central African Republic, the country's special criminal court continue to prosecute cases of religious-based violence and other human rights violations against civilians since the military coup in 2003.

And more broadly, civil society and other concerned governments around the world have successfully secured the release of many who've been detained, even imprisoned, for exercising their freedom of religion or belief.

Now, that's the positive news. Unfortunately, the report also documents the continuation and, in some instances, the rise of very troubling trends. Governments in many parts of the world continue to target religious minorities using a host of methods, including torture, beatings, unlawful surveillance, and so-called re-education camps. They also continued to engage in other forms of discrimination on the basis of faith or lack of faith, like excluding religious minorities from certain professions or forcing them to work during times of religious observance.

Governments use anti-conversion, blasphemy, apostasy laws, which ban the act of leaving a faith, to justify harassment against those who don't follow their particular interpretation of a theology, often weaponizing those laws against humanists, atheists, and LGBTQI+ individuals.

Around the world, citizens and civil society organizations stepped up to counter these acts, often at great personal risk. NGOs like Campaign for Uyghurs and Uyghur Human Rights Project are documenting the genocide and crimes against humanity against predominately Muslim Uyghurs in Xinjiang, China.

Human rights defenders are sounding the alarm on attacks on the Catholic Church by the Ortega-Murillo regime in Nicaragua. Lawyer Martha Patricia Molina Montenegro's reporting exposed more than 160 attacks against the church and its members since – in 2022, from desecrations to arbitrary arrests. One of those unjustly detained was Rolando Alvarez, a bishop who criticized the regime's crackdown on civil and religious liberties and was promptly labeled a "traitor to the homeland" and sentenced to 26 years in jail.

People across Iran, led by young women, continue peaceful protests demanding their human rights, including freedom of religion, galvanized by the killing of Masa Amini, who was arrested by the so-called morality police because her hijab did not fully cover her hair.

Amidst the Burma military regime's ongoing repression of religious minorities, thousands of teachers from Muslim, Buddhist, Christian, and other religious backgrounds continue to teach the importance of human rights, including religious freedom and respect between religions.

The United States will continue to stand with and support these brave advocates for religious freedom. We'll keep advocating for religious freedom in countries where the rights are under attack, both publicly and directly in our engagement with government officials. We'll keep working to defend and promote religious freedom here at home, including through the

interagency group that President Biden created in December to combat religious bias and discrimination.

We defend the right to believe or to not believe, not only because it's the right thing to do, but also because of the extraordinary good that people of faith can do in our societies and around the world to promote peace, to care for the sick, to protect our planet, to expand opportunity for underserved communities, and so much more.

So this is an enduring commitment of this administration. This report released today reflects the picture that we see – saw emerge in 2022, but we are acting on the findings and observations of the report every single day in our efforts around the world to advance freedom of religion and belief.

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2. Countering Religious Hatred

On July 19, 2023, Ambassador Michèle Taylor delivered the U.S. explanation of vote on a resolution on countering religious hatred during the Urgent Debate on Quran Burning at the 53rd session of the HRC. See U.N. Doc. A/HRC/53/L.23 available at https://undocs.org/A/HRC/RES/53/1. The explanation of vote is available at https://uploads.mwp.mprod.getusinfo.com/uploads/sites/25/2023/07/Human-Rights-Council-53rd-Session.pdf, and follows.

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I want to start by acknowledging the pain and fear that I know members of the Muslim community feel when faced with images of their holiest text being burned in a public display of intolerance. I know this from my own visceral response to similar acts of desecrating the Torah, and the horror that evokes in me as the child of a Holocaust survivor. No sacred book should be disrespected or abused in this way.

The United States is deeply concerned by, and strongly condemns, the acts that have precipitated today's discussion, including desecration of the Holy Quran on June 28. We find the act of desecrating the holy text of any religion abhorrent, and stand in solidarity with our OIC partners, and with all people wishing to live their lives in accordance with their religious identity or beliefs, including the millions of Muslims in my own country.

The United States categorically calls out Muslim hatred wherever it occurs. As President Biden stated in May, "…Standing up against anti-Muslim hate is essential to who we are as a country founded on freedom and justice for all."

We are proud of our leadership role in promoting the values established in Resolution 16/18 which carefully navigates the relationship between freedom of religion or belief, and freedom of expression, and was negotiated at senior levels with members of the OIC and adopted by consensus in 2011. Prior to that watershed moment, some perceived these two rights to be in conflict. 16/18 made clear that they are, in fact, complimentary. This has been and remains our approach on this issue.

We also recognize that the acts that predicated today's action have not only continued but have increased. We have much work to do collectively to combat religious intolerance and hatred, and as such, we welcome today's urgent debate.

Given our important shared history of 16/18 and shared goal to seriously address this rising concern, we are disappointed that negotiations failed to compromise on key edits that sought to protect the delicate balance we worked so hard to achieve in 16/18. I had so hoped, as I believe we all had, that we would speak with one consensus voice today on our commitment to stopping the promulgation of religious hatred. We believe that we were very close.

While we abhor expressions of religious hatred, we do not believe freedom of expression can or should be abridged to outlaw them. Accordingly, we regret that we must vote against this unbalanced text as it conflicts with deep and long-standing positions on freedom of expression. The United States supports freedom of expression and the right of peaceful assembly as essential elements of any democracy. At the same time, we recognize that acts which incite violence go beyond common understanding of free speech protections. We hope to continue to discuss this important issue with member states with the aim of coming to a collective agreement as to how we will tackle the pressing challenge of religious hatred.

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3. Designations under the International Religious Freedom Act

On December 29, 2023, the Department of State published the designations of Burma, People's Republic of China, Cuba, Eritrea, Iran, the Democratic People's Republic of Korea, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan as Countries of Particular Concern ("CPCs") under the International Religious Freedom Act. 89 Fed. Reg. 3980 (Jan. 22, 2024). The "Countries of Particular Concern" were so designated for having engaged in or tolerated "particularly severe violations of religious freedom," *id*., which the Act defines as "systematic, ongoing, egregious violations of religious freedom." 22 U.S.C. § 6402(13). The Department designated Algeria, Azerbaijan, the Central African Republic, Comoros, and Vietnam as Special Watch List ("SWL") countries for having governments that have engaged in or tolerated "severe violations of religious freedom." 89 Fed. Reg. 3980 (Jan. 22, 2024). The "Presidential Actions" or waivers designated for each of the countries designated as CPCs are listed in the Federal Register notice. *Id.* The Department also designated Al-Shabaab, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS, ISIS-Sahel (formerly known as ISIS in the Greater Sahara), ISIS-West Africa, Jamaat Nasr al-Islam wal Muslimin, and the Taliban as "Entities of Particular Concern," under section 301 of the Frank R. Wolf International Religious Freedom Act of 2016 (Pub. L. 114–281, 130 Stat. 1426 (2016)). *Id.*

Secretary Blinken issued a press statement on the 2023 religious freedom designations on January 4, 2024. The statement is excerpted below and available at https://www.state.gov/religious-freedom-designations/.

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Advancing the freedom of religion or belief has been a core objective of U.S. foreign policy ever since Congress passed and enacted the International Religious Freedom Act in 1998. As part of that enduring commitment, I have designated Burma, the People's Republic of China, Cuba, the DPRK, Eritrea, Iran, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan as Countries of Particular Concern for having engaged in or tolerated particularly severe violations of religious freedom. In addition, I have designated Algeria, Azerbaijan, the Central African Republic, Comoros, and Vietnam as Special Watch List countries for engaging in or tolerating severe violations of religious freedom. Finally, I have designated al-Shabab, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS-Sahel, ISIS-West Africa, al-Qa'ida affiliate Jamaat Nasr al-Islam wal-Muslimin, and the Taliban as Entities of Particular Concern.

Significant violations of religious freedom also occur in countries that are not designated. Governments must end abuses such as attacks on members of religious minority communities and their places of worship, communal violence and lengthy imprisonment for peaceful expression, transnational repression, and calls to violence against religious communities, among other violations that occur in too many places around the world. The challenges to religious freedom across the globe are structural, systemic, and deeply entrenched. But with thoughtful, sustained commitment from those who are unwilling to accept hatred, intolerance, and persecution as the status quo we will one day see a world where all people live with dignity and equality.

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M. JUDICIAL PROCEDURE AND RELATED ISSUES

1. Enforced Disappearance

On August 30, 2023, Secretary Blinken issued a press statement on the International Day of the Victims of Enforced Disappearances. The statement follows and is available at https://www.state.gov/international-day-of-the-victims-of-enforced-disappearances-3/.

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On this International Day of the Victims of Enforced Disappearances, we stand in solidarity with those who have been subjected to the anguish of separation from their families and friends. We also extend our support to the family members, legal representatives, and human rights defenders who tirelessly champion the cause of the victims. Regrettably, these advocates often encounter severe harassment and reprisals themselves.

The issue of enforced disappearances and missing persons is a global concern. The United States calls on all governments to confront the issue of disappeared or missing individuals. We urge those responsible for enforced disappearances to immediately cease this practice, disclose information about the victims to their loved ones, and either release the victims unconditionally

or return the remains of those who have tragically lost their lives. Furthermore, we call upon governments to halt any harassment and retaliatory actions against individuals advocating for the rights of victims of enforced disappearances.

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2. Arbitrary Detention in State-to-State Relations

On September 20, 2023, of the State Department issued, as a media note available at https://www.state.gov/joint-statement-on-the-principles-of-the-declaration-against-arbitrary-detention-in-state-to-state-relations/, a joint statement on the principles of the Declaration Against the Use of Arbitrary Detention in State-to-State Relations. The governments of Canada, Costa Rica, Malawi, and the United States signed the statement. The statement follows.

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Today, endorsers of the Declaration Against Arbitrary Detention in State-to-State Relations gathered during High-Level Week of the United Nations General Assembly's 78th session to reaffirm our pledge to enhance international cooperation and end the practice of arbitrary arrest, detention or sentencing aimed at exercising leverage over foreign governments.

This High-Level Dialogue, co-hosted by Canada, Costa Rica, Malawi and the United States, reaffirms the international community's commitment to addressing the urgent issue of arbitrary detention in state-to-state relations.

Recognizing that this issue transcends geographic boundaries, we stand in solidarity with the victims, survivors and families who have endured this disturbing practice, which flagrantly violates the human rights of all those affected.

This practice also undermines international peace, security and trade. Threatening any citizen of any country who travels and works abroad is harmful to travel, trade and the principles that underpin friendly relations and cooperation between peoples and countries.

This is also a matter of the rule of law. Arbitrary detention for diplomatic leverage subverts international human rights and the independence of judicial processes while undermining our shared values. As a global community, we must stand against it.

As we approach the declaration's third anniversary in February 2024, let us all be reminded to uphold our commitments and strengthen our partnership through multilateral and bilateral channels.

Let us also remain committed to taking concerted and collective action to deter and prevent this unacceptable practice, to protect every citizen and to reinforce the rules-based international order.

Support for the declaration and the global movement condemning the practice continues to grow. We invite countries who have not yet endorsed the declaration to join us in demonstrating a global commitment to strengthening the rule of law and the respect for human rights that form the basis of this important initiative.

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Secretary Blinken delivered remarks at the High-Level Dialogue on the Declaration Against Arbitrary Detention in State-to-State Relations on September 20, 2023. The excerpt below includes Secretary Blinken's remarks related to arbitrary detention. The full remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-the-high-level-dialogue-on-the-declaration-against-arbitrary-detention-in-state-to-state-relations/. See also Chapter 2 of this *Digest* for Secretary Blinken's remarks at the high-level dialogue related to wrongful detention.

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[The U.S. government has] a profound responsibility to do everything possible to deter – to deter future instances of arbitrary detention…

The most effective way, though, to make these regimes think twice is by acting together – amplifying the cost of arbitrary detention in ways that no country can achieve if it's acting simply on its own. That would make all of our citizens safer.

That's the spirit behind the Declaration Against Arbitrary Detention, which the United States endorsed during President Biden's first month in office. With Canada leading the charge, 73 nations have now committed to this initiative – plus several more who joined it today.

At this first ministerial since the declaration launched, we have a chance to continue this momentum and I hope, really, to build on it.

We can share best practices by enhancing our own countries' efforts to free those arbitrarily detained.

We can align on what constitutes arbitrary detention, and do that for greater diplomatic leverage, so that it's clear what merits a response from the international community.

We can grow this coalition to include more countries from every region.

More importantly, we can send a message. We can send a message that our people are not pawns. And that if a country holds any of our citizens, all of us will hold them accountable – whether that's sanctioning perpetrators and their families, freezing their assets, or forbidding entry into any one of our countries.

Now, the bottom line is not many people want to travel somewhere where they could be imprisoned on a whim. Not a lot of companies want to do business in a place like that. Which means that countries engaging in arbitrary detention will succeed only in further isolating themselves – in becoming pariahs. By working together, we can maintain and strengthen global pressure, and continue to reinforce norms against these practices, and keep our people safe.

These norms are important. And I know that oftentimes when we come to a place like New York for the UN General Assembly, and you've got all these diplomats sitting around rooms and talking about norms and standards, it can seem kind of meaningless in the real world that we are also living in. But I have to tell you that over time, the more countries you can get behind a norm, a rule, a standard, a basic understanding, the more powerful it becomes, the more effective it becomes, the more aberrational the practices of countries that ignore these norms. So there's real value in this work.

Nations like Iran and Russia may see our care for each other as a weakness to be exploited. But we know that our common humanity is actually – actually our most powerful

source of enduring strength. And as we further our cooperation to counter arbitrary detention, we take inspiration from the humanity of those behind prison walls and the humanity of anyone agitating for their freedom.

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3. Equal Access to Justice

On November 3, 2023, Kara Eyrich, U.S. Adviser for the Third Committee, delivered the general statement on a UN Third Committee resolution on equal access to justice for all. The statement is available at https://usun.usmission.gov/general-statement-on-a-third-committee-resolution-on-equal-access-to-justice-for-all/, and excerpted below.

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Today, the United States is pleased to welcome the adoption by the United Nations of the first-ever resolution on equal access to justice for all.

We offer our thanks to Canada for introducing this resolution and leading a successful negotiation resulting in its adoption. The United States is proud to stand with the other cosponsors of this resolution, which include 39 UN Member States from Europe, Asia, and Latin and North America.

As we celebrate the 75th anniversary of the Universal Declaration on Human Rights, this resolution affirms forward progress and will set the stage for new actions to advance support for unalienable rights included in the Declaration, such as the right to an effective remedy, and the right to a fair trial.

The resolution recognizes that when access to justice is limited or restricted in criminal justice systems, the rule of law is undermined. The resolution further calls on all United Nations Member States to take all necessary steps to promote efforts that reduce inequities in justice systems and support multisector partnerships. And the resolution requests that the United Nations Office on Drugs and Crime hold a first-ever convening of experts on enhancing equal access to justice for all.

Colleagues, we offer support to this resolution with humility and mutual respect, given the grave challenges to securing equal access to justice in the United States and beyond. We must continue to advance progress with shared resolve, informed by promising practices and lessons learned from around the world. The United States stands ready to support implementation of this resolution, and we encourage all UN Members to do the same.

The United States offers our continued partnership and commitment in support of advancing equal access to justice for all.

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N. OTHER ISSUES

1. Privacy

On March 30, 2023, the United States joined more than 45 Freedom Online Coalition member states in endorsing the Guiding Principles on Government Use of Surveillance Technologies. The U.S.-led Guiding Principles are available at https://www.state.gov/wp-content/uploads/2024/02/Guiding-Principles-on-Government-Use-of-Surveillance-Technologies.pdf. A State Department media note is available at https://www.state.gov/guiding-principles-on-government-use-of-surveillance-technologies/, and excerpted below.

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Surveillance technologies can be important tools for protecting national security and public safety when used responsibly and in a manner consistent with applicable international law. At the same time, a growing number of governments misuse surveillance technologies to restrict access to information and the exercise of human rights and fundamental freedoms. In some cases, governments use these tools in ways that violate or abuse the right to be free from arbitrary or unlawful interference with one's privacy. In the worst cases, governments employ such products or services as part of a broad state apparatus of oppression.

Today, the United States is proud to join over 45 Summit for Democracy participating states in endorsing new ***Guiding Principles on Government Use of Surveillance Technologies.*** **[275 KB]** These *Guiding Principles* illustrate how governments can maintain their commitment to respect democratic values and protect human rights in the responsible use of surveillance technology. They were developed by consensus in the Freedom Online Coalition, a group of 36 governments dedicated to protecting the same human rights online as offline, currently chaired by the United States.

The *Guiding Principles* are intended to prevent the misuse of surveillance technologies by governments to enable human rights abuses in three main areas:

- The use of Internet controls;
- Pairing video surveillance with artificial intelligence-driven tools; and
- The use of big data analytic tools.

Responsible policies and practices in the use of these technologies protect human rights and foster transparency, accountability, and civic participation, while effectively and appropriately pursuing legitimate law enforcement, public safety, and national security objectives.

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On March 30, 2023, the United States announced a joint statement on efforts to counter proliferation and misuse of commercial spyware at the second Summit for Democracy. The U.S.-led statement, joined by Australia, Canada, Costa Rica, Denmark,

France, New Zealand, Norway, Sweden, Switzerland, the United Kingdom, and the United States, is available at https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/18/joint-statement-on-efforts-to-counter-the-proliferation-and-misuse-of-commercial-spyware/, and excerpted below.

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Commercial spyware has been misused across the world by authoritarian regimes and in democracies. Too often, such powerful and invasive tools have been used to target and intimidate perceived opponents and facilitate efforts to curb dissent; limit freedoms of expression, peaceful assembly, or association; enable human rights violations and abuses or suppression of civil liberties; or track or target individuals without proper legal authorization, safeguards, or oversight. The misuse of these tools presents significant and growing risks to our national security, including to the safety and security of our government personnel, information, and information systems.

We therefore share a fundamental national security and foreign policy interest in countering and preventing the proliferation of commercial spyware that has been or risks being misused for such purposes, in light of our core interests in protecting individuals and organizations at risk around the world; defending activists, dissidents, and journalists against threats to their freedom and dignity; promoting respect for human rights; and upholding democratic principles and the rule of law. We are committed, where applicable and subject to national legal frameworks, to implementing the Guiding Principles on Government Use of Surveillance Technologies and the Code of Conduct developed within the Export Controls and Human Rights Initiative.

To advance these interests, we are partnering to counter the misuse of commercial spyware and commit to:

- working within our respective systems to establish robust guardrails and procedures to ensure that any commercial spyware use by our governments is consistent with respect for universal human rights, the rule of law, and civil rights and civil liberties;
- preventing the export of software, technology, and equipment to end-users who are likely to use them for malicious cyber activity, including unauthorized intrusion into information systems, in accordance with our respective legal, regulatory, and policy approaches and appropriate existing export control regimes;
- robust information sharing on commercial spyware proliferation and misuse, including to better identify and track these tools;
- working closely with industry partners and civil society groups to inform our approach, help raise awareness, and set appropriate standards, while also continuing to support innovation; and
- engaging additional partner governments around the world, as well as other appropriate stakeholders, to better align our policies and export control authorities to mitigate collectively the misuse of commercial spyware and drive reform in this industry, including by encouraging industry and investment firms to follow the United Nations Guiding Principles on Business and Human Rights.

Our efforts will allow us to work collectively for the first time as we develop and implement policies to discourage the misuse of commercial spyware and encourage the development and implementation of responsible use principles that are consistent with respect for universal human rights, the rule of law, and civil rights and civil liberties.

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On October 4, 2023, Ambassador Michèle Taylor delivered a joint statement at the 54th session of the Human Rights Council ("HRC 54") on heightened risks associated with surveillance technologies and the importance of safeguards in the use of these tools. The joint statement, signed by 59 countries, is available at https://geneva.usmission.gov/2023/10/04/joint-statement-on-surveillance-technologies-hrc54/ and excerpted below.

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We deliver this statement on behalf of 58 countries, including the Freedom Online Coalition.

Responsible government use of surveillance technologies should aim to improve safety and security while respecting human rights and the rule of law, including international human rights obligations and commitments. Responsible users should also work to prevent and mitigate adverse human rights impacts.

The use of technologies associated with surveillance, such as Internet controls, big data analytic tools, AI-driven persistent video surveillance, and intrusive surveillance software, including commercial spyware, should not enhance the capacity to violate or abuse human rights and target human rights defenders, journalists, activists, workers, union leaders, political opposition members, and other perceived critics. Such tools should not be used in an arbitrary or unlawful manner to infringe privacy, curb dissent, restrict access to information, or limit the freedoms of expression, peaceful assembly, and association.

We call on governments to take steps to ensure the use of these technologies is lawful and responsible, in accordance with states' domestic law and international obligations and commitments. Governments should also establish safeguards that apply to the collection, handling, and disclosure of personal information obtained using these technologies to uphold universal human rights and the rule of law. Governments may incorporate principles such as lawfulness, necessity, proportionality, or reasonableness. Governments should foster transparency, oversight, and accountability and mitigate unlawful or unintended bias in their use of these tools.

We encourage governments to work closely with industry, civil society, and other stakeholders to inform approaches, set appropriate standards, and encourage responsible practices in this sector.

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On October 19, 2023, the United States delivered an explanation of position on the right to privacy in the digital age resolution at HRC 54. The explanation of position is

available at https://geneva.usmission.gov/2023/10/19/us-voting-statement-compilation/, and follows.

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The United States appreciates the efforts of the core group on this resolution, and, despite concerns with some aspects of the text, we join consensus today because it reaffirms privacy rights, as well as their importance for the exercise of the rights to freedoms of opinion, expression, peaceful assembly, and association. These rights, as set forth in the International Covenant on Civil and Political Rights (ICCPR) and protected under the U.S. Constitution and U.S. laws, are pillars of democracy in the United States and globally.

The United States is committed to protecting human rights, both online and offline. We will continue to engage allies and partners to counter the growing misuse of surveillance technologies such as commercial spyware to target human rights defenders, journalists, and perceived critics. We welcome those countries that commit to taking meaningful action to protect the right to be free from arbitrary and unlawful interference with privacy to join us in these efforts. These threats are multifaceted and complex, often taking place online and offline, and often disproportionately affect women and girls in all their diversity and members of other marginalized or vulnerable communities.

We encourage responsible-use guardrails consistent with international human rights law and other international law when these technologies are used. Although we recognize the heightened risks that accompany some surveillance technologies, it is often the misuse, or use of these tools without appropriate safeguards and data management practices, that may result in discrimination or the abuse of human rights.

We interpret this resolution consistently with longstanding U.S. views regarding the ICCPR, particularly Articles 17, 19 and 20, including with respect to the resolution's reference to data protection. In this regard, we reiterate that the appropriate standard under Article 17 of the ICCPR as to whether a State's interference with privacy is impermissible is whether it is unlawful or arbitrary and welcome the resolution's reference to this standard. We also note that there is no obligation for States to promote specific privacy enhancing technologies under Article 17, and we are concerned that language in this resolution could be read to suggest these steps are binding as a matter of international law. While the resolution references the principles of necessity and proportionality, we note that Article 17 does not impose such a standard and Parties to the Covenant are not obligated to take such principles into account in implementing their obligations under Article 17.

We hope that further work on this topic can touch on other areas relating to privacy rights, including in the context of emerging technologies and their effects on human rights and fundamental freedoms.

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2. Export Controls and Human Rights Initiative

On March 30, 2023, the State Department announced in a media note the launch of the Export Controls and Human Rights Initiative, a voluntary, nonbinding written code of conduct to apply export controls to prevent human rights abuses. The media note is available at https://www.state.gov/export-controls-and-human-rights-initiative-code-of-conduct-released-at-the-summit-for-democracy/, and follows.

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The United States continues to put human rights at the center of our foreign policy. The **Export Controls and Human Rights Initiative** – launched at the first Summit for Democracy as part of the Presidential Initiative for Democratic Renewal – is a multilateral effort intended to counter state and non-state actors' misuse of goods and technology that violate human rights. During the Year of Action following the first Summit, the United States led an effort to establish a voluntary, nonbinding written code of conduct outlining political commitments by Subscribing States to apply export control tools to prevent the proliferation of goods, software, and technologies that enable serious human rights abuses. Written with the input of partner countries, the Code of Conduct complements existing multilateral commitments and will contribute to regional and international security and stability.

In addition to the United States, the governments that have endorsed the voluntary Code of Conduct are: Albania, Australia, Bulgaria, Canada, Costa Rica, Croatia, Czechia, Denmark, Ecuador, Estonia, Finland, France, Germany, Japan, Kosovo, Latvia, The Netherlands, New Zealand, North Macedonia, Norway, Republic of Korea, Slovakia, Spain, and the United Kingdom. The Code of Conduct is open for all Summit for Democracy participants to join.

The Code of Conduct calls for Subscribing States to:

- Take human rights into account when reviewing potential exports of dual-use goods, software, or technologies that could be misused for the purposes of serious violations or abuses of human rights.
- Consult with the private sector, academia, and civil society representatives on human rights concerns and effective implementation of export control measures.
- Share information with each other on emerging threats and risks associated with the trade of goods, software, and technologies that pose human rights concerns.
- Share best practices in developing and implementing export controls of dual-use goods and technologies that could be misused, reexported, or transferred in a manner that could result in serious violations or abuses of human rights.
- Encourage their respective private sectors to conduct due diligence in line with national law and the UN Guiding Principles on Business and Human Rights or other complementing international instruments, while enabling non-subscribing states to do the same.
- Aim to improve the capacity of States that have not subscribed to the Code of Conduct to do the same in accordance with national programs and procedures.

We will build on the initial endorsements of the ECHRI Code of Conduct by States at the Summit for Democracy and seek additional endorsements from other States. We will convene a meeting later this year with Subscribing States to begin discussions on implementing the

commitments in the Code of Conduct. We will also continue discussions with relevant stakeholders including in the private sector, civil society, academia, and the technical community.

Find the text of the full code of conduct [91 KB].

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3. Purported Right to Clean, Healthy, and Sustainable Environment

On April 4, 2023, Ambassador Michèle Taylor delivered a statement before the adoption of the resolution on a clean, healthy, and sustainable environment at the 52nd session of the HRC. The statement is available at https://geneva.usmission.gov/2023/04/04/statement-by-ambassador-taylor-before-the-adoption-of-the-resolution-on-a-clean-healthy-and-sustainable-environment-hrc52/, and excerpted below.

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The United States has long recognized the important relationship between human rights and environmental protection, including advancing environmental justice and protecting environmental defenders. The United States continues to prioritize globally, regionally, and bilaterally an enhanced focus on national policies and actions by all countries that support global ambitions to address climate change, pollution, and biodiversity loss, and protect environmental defenders. A healthy environment supports the well-being and dignity of people around the world and the enjoyment of human rights. We recognize that these issues are existential for us all and that the likely consequences of climate change are devastating.

The United States continues to support development of a right to a clean, healthy, and sustainable environment in a manner that is consistent with international law. However, we will disassociate from consensus today because we have significant concerns that this resolution, in purporting to characterize aspects of a right or obligations of states, gets ahead of the proper development of such a right. Unless and until there is a transparent process through which governments have consented to be bound by such a right, a right to a clean, healthy, and sustainable environment has not yet been established as a matter of customary international law; treaty law does not yet provide for such a right; and there is no legal relationship between such a right and existing international law. To that end, the United States would support the creation of an intergovernmental working group to discuss next steps, with the goal of reaching a common understanding of the definition and nature of such a right such that a right to a clean, healthy, and sustainable environment that could be universally considered a right under international human rights law.

In addition, we read the "right to effective remedy/remedies" as only relevant in the context of or in relation to states' respective obligations under international law. References to compliance with "obligations and commitments" are read to mean only to refer to compliance with respective binding legal obligations.

The United States refers you to our full statementto be posted on the Mission's website and to be published in the U.S. Digest of International Law.

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On April 6, 2023, a longform of the U.S. explanation of position on the HRC 52 right to environment resolution was posted to the U.S. Mission Geneva website at https://geneva.usmission.gov/2023/04/06/hrc-52-right-to-environment-resolution/. The statement follows.

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The United States has long recognized the important relationship between human rights and environmental protection, including advancing environmental justice and protecting environmental defenders. The United States continues to prioritize globally, regionally, and bilaterally an enhanced focus on national policies and actions by all countries that support global ambitions to address climate change, pollution, and biodiversity loss, as well as protect environmental defenders. A healthy environment supports the well-being and dignity of people around the world and the enjoyment of human rights. We recognize that these issues are existential for us all and that the likely consequences of climate change are devastating.

We also have demonstrated that commitment through domestic actions. Through the Inflation Reduction Act, Bipartisan Infrastructure Law, and Justice 40, we are making unprecedented investments to address pollution and support a cleaner environment in U.S. communities.

As the United States indicated in our Explanation of Vote on UNGA resolution 76/300, we supported the political and moral aspirations reflected in that resolution. That continues to be the case today. That said, the development of a right to a clean, healthy, and sustainable environment needs to be carried out in a manner that is consistent with international law. To that end, the United States would support the creation of an intergovernmental working group to discuss next steps, with the goal of reaching a common understanding of the definition and nature of such a right that could be universally considered a right under international law. We dissociated from consensus today because we have significant concerns that this resolution, in purporting to characterize certain aspects of a right or obligations of states, gets ahead of the proper development of such a right.

Unless and until there is a transparent process through which governments have consented to be bound by such a right, the United States notes that a right to a clean, healthy, and sustainable environment has not yet been established as a matter of customary international law; treaty law does not yet provide for such a right; and there is no legal relationship between such a right and existing international law. The adoption of this resolution does not change the current state of conventional or customary international law.

This resolution also raises significant concerns about the proper formation of international law that go beyond those related to either HRC 48/13 or UNGA 76/300. Of particular concern, the resolution suggests characteristics of the right to a clean, healthy, and sustainable environment that draw from reports based primarily on the views of special mandate

holders. But information notes, reports, framework principles, and other work product of special mandate holders do not reflect the shared understanding of states. The process for defining this right must be pursued in a manner that is consistent with international law through a transparent process in which all governments have had an opportunity to provide input and have indicated consent to be bound.

The United States disagrees that any development of such a right has occurred to date as a matter of international law and thus any future developments should not be considered as "further" developments that take place.

Moreover, the resolution asserts that states have obligations with respect to the right, including an obligation to provide access to effective remedies. This, however, seems to prejudge the existence and content of such a right. A "right to effective remedy/remedies" is only relevant where provided under international human rights law, and only in the context of or in relation to states' respective obligations under international law. Here, the right, as specified, does not exist as a matter of international human rights law.

As a result, the United States reads references to obligations in the text to refer to states' respective obligations only, meaning the obligations of those states that have consented to be bound by the relevant obligations – and not to all states. The same applies to references in the text to the "rights" to participate safely and effectively in the conduct of government and public affairs, access to information, access to justice, to development, and to health – as such rights do not exist per se in any of the core human rights conventions. For the avoidance of doubt, the United States does not consider the adoption of this resolution to establish any additional obligations on states that would be cognizable in domestic courts or international fora. More specifically, to the extent the resolution refers to general obligations and commitments of states under human rights "relating to" a clean, healthy, and sustainable environment, the United States interprets such rights to be those that are recognized in core instruments international human rights law, not to include a "right to a clean, healthy, and sustainable environment" as such.

The resolution further suggests that States have responsibilities regarding "compliance" with "commitments." The United States underscores that the concept of compliance is appropriate only in reference to legally binding obligations, and thus references to compliance with "obligations and commitments" are read to mean compliance with binding legal obligations. In that vein, the references to compliance only refer to those rights for which states have obligations as a matter of international human rights law.

We also note concerns with the ninth preambular paragraph of this resolution, which conflate the contents of multilateral environmental agreements with human rights law. We do not agree with any suggestion that multilateral environmental agreements are implemented "under the principles of international environmental law" or have any bearing on any State's international legal obligations. There is no single set of principles under which multilateral environmental agreements operate, and such agreements are each implemented in accordance with their own provisions and are applicable only to those States that have joined them. In addition, HRC resolutions should only reference transparent, Member State-negotiated outcome documents from UN conferences.

Furthermore, where obligations under multilateral environmental agreements are referenced, we understand such references to be to states' respective obligations, and we understand "environmental laws and policies" to refer to national environmental laws and policies. We emphasize that development and enforcement of strong domestic environmental laws and policies is what leads to a healthy environment. More broadly, as a factual matter, we

recognize the relationship between a clean, healthy, and sustainable environment and the enjoyment of human rights; yet, there has yet to be a basis for claiming that such an environment is necessary to the enjoyment of "all" human rights.

With respect to the reference in the second preambular paragraph to the UN Framework Convention on Climate Change, while we question the need or basis for selectively highlighting only certain multilateral environment agreements, we note that if only one agreement is to be referenced with respect to climate change it should be the Paris Agreement, as it is the latest agreement setting out the goals and obligations of states on climate change.

The United States strongly believes in the importance of preserving the ability of those who exercise their human rights while working on environmental matters, referenced in the resolution as environmental human rights defenders, to do their work.

The United States also recognizes the role that national human rights institutions (NHRIs) play in supporting the protection of and respect for human rights that exist as a matter of international law. To the extent that certain states have established a right to a clean, healthy, and sustainable environment domestically or through their regional treaties, NHRIs should play a robust role in protecting that right.

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4. Purported Right to Development

On November 7, 2023, Eric Merron, U.S. Adviser to the Third Committee, delivered the U.S. explanation of vote at a UN Third Committee resolution on a purported right to development. The statement is excerpted below and available at https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-the-right-to-development-2/.

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A commitment to development lies at the very core of U.S. foreign policy. The United States has provided more in foreign assistance than any other country – over $3.75 trillion since the end of World War II. We remain the world's largest bilateral donor today, partnering with countries around the world to support their development priorities. Just in the last two years of this Administration, we invested over $100 billion to drive development progress and have mobilized billions more just in the last two years in private sector investments. The United States remains deeply committed to the full implementation of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs). Our commitment is grounded in our determination to uphold the inherent dignity of every human being. We welcome international collaboration to pursue more inclusive development partnerships.

While there can be no uncertainty about the importance of development, we are concerned that the Right to Development resolution creates a detrimental narrative which would elevate the process of development above human rights, undermine the human rights system, and harm development rather than promote it. The resolution shifts focus from an approach that

respects the central importance of human rights to development, to one that prioritizes development above human rights and thus tilts the decades long balance between these two imperatives. Why do we say this? Because the "right to development" identified within the text appears to protect states instead of individuals. States do not have human rights; they guarantee them to individual human beings.

We note that the "right to development" is not recognized in any of the core UN human rights conventions, does not have an agreed international meaning, and is not recognized as a universal right held and enjoyed by individuals. We are also concerned about the related draft treaty and the lack of meaningful negotiations on the proposed legally binding instrument that has incomplete support. We are additionally concerned that this resolution refers to the draft treaty as a "covenant" which would purportedly place it on the same level as the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights.

For this reason, we must respectfully vote no on this resolution.

As I said, the United States is committed to the full implementation of the 2030 Agenda for Sustainable Development, both at home and abroad. At their heart, the SDGs are about this universal aim: expanding economic opportunity, advancing social justice, caring for our planet, promoting good governance, and putting equity at the core of development by ensuring no one is left behind. This is what the United States stands for, and it is why we are committed to global achievement of the SDGs.

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Cross References

L'Association des Americains Accidentels v. State ("AAA I"), **Ch. 1.A**
Indication of Gender on Consular Reports of Birth Abroad, **Ch. 1.A.6**
Asylum, Refugee, and Migrant Issues, **Ch. 1.C**
Trafficking in Persons, **Ch. 3.B.2.b**
Terrorism and human rights, **Ch. 3.B.4.d**
International Criminal Court cases, **Ch. 3.C.2**
Accountability in Ukraine, **Ch. 3.C.4.a**
Doe I v. Cisco Sys. Inc., **Ch. 5.B.2**
UN resolutions related to Russia's aggression against Ukraine, **Ch. 7.A.2**
ICJ Advisory Opinion on the Occupied Palestinian Territory, **Ch. 7.B.2.a**
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ILC Draft Articles on Crimes Against Humanity, **Ch. 7.C.1**
OAS on repression in Nicaragua, **Ch. 7.D.4**
Inter-American Commission on Human Rights ("IACHR"), **Ch. 7.D.7**
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Sanctions, visa restrictions, and export controls relating to human rights, **Ch. 16.A.2.b(3)** *(Iran);* **Ch. 16.A.3.a** *(China);* **Ch. 16.A.3.a** *(Uyghur Forced Labor Prevention Act);* **Ch. 16.A.4.a** *(Russia);* **Ch. 16.A.5** *(Belarus);* **Ch. 16.A.11** *(GloMag and 7031c));* **Ch. 16.B.3** *(Export controls and human rights)*
Atrocities prevention, **Ch. 17.C**
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Atrocities in Northern Ethiopia, **Ch. 17.C.4**
Atrocities in Ukraine, **Ch. 17.C.5**
Atrocities in Sudan, **Ch. 17.C.6**
International humanitarian law, **Ch. 18.A.5**
Human rights implications of new and emerging technologies in the military domain, **Ch. 18.B.2**

CHAPTER 7

International Organizations

A. UNITED NATIONS

1. General

a. President Biden's Address to the General Assembly

On September 20, 2023, President Biden delivered remarks before the 78th session of the UN General Assembly. His remarks are excerpted below and available at https://geneva.usmission.gov/2023/09/20/remarks-by-president-biden-at-unga-78/.

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My fellow leaders, we gather once more at an inflection point in world history with the eyes of the world upon all of you — all of us.

As president of the United States, I understand the duty my country has to lead in this critical moment; to work with countries in every region linking them in common cause; to join together with partners who share a common vision of the future of the world, where our children do not go hungry and everyone has access quality healthcare, where workers are empowered and our environment is protected, where entrepreneurs and innovators everywhere can access opportunity everywhere, where conflicts are resolved peacefully and countries can chart their own course.

The United States seeks a more secure, more prosperous, more equitable world for all people because we know our future is bound to yours. Let me repeat that again: We know our future is bound to yours.

And no nation can meet the challenges of today alone.

The generations who precede us — preceded us organized this body, the United Nations, and built international financial institutions and multilateral and regional bodies to help take on the challenges of their time.

It isn't always perfect — it wasn't always perfect. But working together, the world made some remarkable and undeniable progress that improved the lives of all people.

We avoided the renewal of global conflict while lifting more than 1 billion people — 1 billion people — out of extreme poverty.

We together expanded access to education for millions of children.

We saved tens of millions of lives that would have otherwise have been lost to preventable and treatable diseases like measles, malaria, tuberculosis.

HIV/AIDS infections and deaths plummeted in no small part because of PEPFAR's work in more than 55 countries, saving more than 25 million lives.

It's a profound testament to what we can achieve when we act together when we take on tough challenges and an admonition for us to urgently accelerate our progress so that no one is left behind, because too many people are being left behind.

The institutions we built together at the end of the second world war are an enduring bedrock of our progress, and the United States is committed to sustaining them.

And this year, we're proud to rejoin UNESCO. But we also recognize that to meet the new challenges of our decades-old institutions and approaches, they must be updated to keep peace [pace] with the world.

We have to bring in more leadership and capability that exists everywhere, especially from regions that have not — have not always been fully included. We have to grapple with the challenges that are more connected and more complex. And we have to make sure we are delivering for people everywhere, not just somewhere. Everywhere.

Simply put, the 21st century — 21st century results are badly needed — are needed to move us along. That starts with the United Nations — starts right here in this room.

In my address to this body last year, I announced the United States would support expanding the Security Council, increasing the number of permanent and non-permanent members.

The United States has undertaken serious consultation with many member states. And we'll continue to do our part to push ref- — more reform efforts forward, look for points of common ground, and make progress in the year ahead.

We need to be able to break the gridlock that too often stymies progress and blocks consensus on the Council. We need more voices and more perspectives at the table.

The United Nations must continue to preserve peace, prevent conflict, and alleviate human suffering. And we embrace nations stepping up to lead in new ways and to seek new breakthroughs on hard issues.

For example, on Haiti, the Caribbean Community is facilitating a dialogue among Haitian society.

I think President Ruto of Kenya's — I thank him for his willingness to serve as the lead nation of a U.N.-backed security support mission. I call on the Security Council to authorize this mission now. The people of Haiti cannot wait much longer.

The United States is working across the board to make global institutions more responsive, more effective, and more inclusive.

For example, we've taken significant steps to reform and scale up the World Bank, expanding its financing to low- and middle-income countries so it can help boost progress toward meeting the Sustainable Development Goals and better address interconnected challenges like climate change and fragility.

Under the new president of the World Bank, change is already taking root.

Last month, I asked the United States Congress for additional funds to expand World Bank financing by $25 billion. And at the G20, we rallied the major economies of the world to mobilize even more funding. Collectively, we can deliver a transformational boost to World Bank lending.

And because the multilateral development banks are among the best tools we have for

modern- — mobilizing transparent, high-quality investment in developing countries, reforming these institutions can be a game-changer.

Similarly, we've proposed making sure developing countries have a strong voice and representation at the International Monetary Fund.

We're going to continue our efforts to reform the World Trade Organization and preserve competition, openness, transparency, and the rule of law while, at the same time, equipping it to better tackle modern-day imperatives, like driving the clean-energy transition, protecting workers, promoting inclusive and sustainable growth.

And this month, we strengthened the G20 as a vital forum, welcoming the African Union as a permanent member.

But upgrading and strengthening our institutions, that's only half of the picture. We must also forge new partnerships, confront new challenges.

Emerging technologies, such as artificial intelligence, hold both enormous potential and enormous peril. We need to be sure they are used as tools of opportunity, not as weapons of oppression.

Together with leaders around the world, the United States is working to strengthen rules and policies so AI technologies are safe before they are released to the public; to make sure we govern this technology — not the other way around, having it govern us.

And I'm committed to working through this institution and other international bodies and directly with leaders around the world, including our competitors, to ensure we harness the power of A- — artificial intelligence for good, while protecting our citizens from its most profound risk.

It's going to take all of us. I've been working at this for a while, as many of you have. It's going to take all of us to get this right.

In every region of the world, the United States is mobilizing strong alliances, versatile partnerships, common purpose, collective action to bring new approaches to our shared challenges.

Here in the Western Hemisphere, we united 21 nations in support of the Los Angeles Declaration on Migration and Protection, launching a region-wide approach to a region-wide challenge to better uphold laws and protect — protect the rights of migrants.

In the Indo-Pacific, we've elevated our Quad partnership with India, Japan, and Australia to deliver concrete progress for the people of the region on everything from vaccines to maritime security.

Just yesterday, after two [years of] consultations and diplomacy, the United States brought together dozens of nations across four continents to establish a new Partnership for Atlantic Cooperation so that the coastal Atlantic countries can better cooperate on science, technology, environmental protection, and sustainable economic development.

We've brought together nearly 100 countries in a global coalition to counter fentanyl and synthetic drugs to reduce the human cost of this affliction. And it is real.

And as the nature of the terrorist threats evolve and the geography expands to new places, we're working with our partners to bring capabilities to bear to disrupt plotting, degrade networks, and protect all of our people.

Additionally, we convened the Summit for Democracy to strengthen democratic institutions, root out corruption, and reject political violence.

And in this moment where democratically-elected governments have been toppled in quick succession in West and Central Africa, we're reminded that this work is as urgent and

important as ever.

We stand with the Ac- — with the African Union and ECOWAS and other regional bodies to support constitutional rule. We will not retreat from the values that make us strong. We will defend democracy — our best tool to meet the challenges we face around the world. And we're working to show how democracy can deliver in ways that matter to people's lives.

The Partnership for Global Infrastructure and Investment addresses the enormous need and opportunity for infrastructure investment in low- and middle-income countries, particularly in Africa, Latin America, and Southeast Asia.

Through strategic, targeted public investments, we can unlock enormous amounts of private-sector financing.

The G7 has pledged to work with parties to collectively mobilize $600 billion in infrastructure financing by 2027. The United States has already mobilized more than $30 billion to date.

We're creating a race to top with projects that have high standards for workers, the environment, and intellectual property, while avoiding the trap of unsustainable debt.

We're focusing on economic corridors that will max- — maximize the impact of our collective investment and deliver consequential results across multiple countries and multiple sectors.

For example, the Lobito Corridor will extend across Africa from the western port of Angola to the DRC to Zambia, boosting regional connectivity and strengthening commerce and food security in Africa.

Similarly, the groundbreaking effort we announced at the G20 connect India — to connect India to Europe through the UAE, Saudi Arabia, Jordan, and Israel will spur opportunities and investment across two continents.

This is part of our effort to build a more sustainable, integrated Middle East. It demonstrates how Israel's greater normalization and economic connection with its neighbors is delivering positive and practical impacts even as we continue to work tirelessly to support a just and lasting peace between Isr- — the Israelis and Palestinians — two states for two people.

Now, let me be clear: None of these partnerships are about containing any country. They are about a positive vision for our shared future.

When it comes to China, I want to be clear and consistent. We seek to responsibly manage the competition between our countries so it does not tip into conflict. I've said, "We are for de-risking, not decoupling with China."

We will push back on aggression and intimidation and defend the rules of the road, from freedom of navigation to overflight to a level economic playing field that have helped safeguard security and prosperity for decades.

But we also stand ready to work together with China on issues where progress hinges on our common efforts.

Nowhere is that more critical than accelerating the climate crisis — than the accelerating climate crisis. We see it everywhere: record-breaking heatwaves in the United States and China; wildfires ravaging North America and Southern Europe; a fifth year of drought in the Horn of Africa; tragic, tragic flooding in Libya — my heart goes out to the people of Libya — that has killed thousands — thousands of people.

Together, these snapshots tell an urgent story of what awaits us if we fail to reduce our dependence on fossil fuels and begin to climate-proof the world.

For one day — for one day [from day one], my administration, the United States, has

treated this crisis as an existential threat from the moment we took office not only for us but for all of humanity.

Last year, I signed into law in the United States the largest investment ever, anywhere in the history of the world to combat the climate crisis and help move the global economy toward a clean energy future.

We're also working with the Congress to quadruple our climate financing to help developing countries reach their climate goals and adapt to climate impacts.

And this year, the world is on track to meet the climate fund […] the climate finance pledge that — made under the Paris Agreement: $100 billion to raise collectively. But we need more investment from the public and private sector alike, especially in places that have contributed so little to global emissions but face some of the worst effects of climate change, like the Pacific Islands.

The United States is working directly with the Pacific Islands Forum to help these nations adapt and build resilience to climate impacts, even as we lead the effort to build innovative, new partnerships that attack the global challenges from all sides.

From the First Movers Coalition, which is mobilizing billions of private-sector community — in the private-sector commitments to creating a market demand for green products in carbon-intense sectors like concrete, shipping, aviation, and trucking; to the Agriculture Innovation Mission for Climate, which is bringing farmers into the climate solution and making our food supply more resilient to climate shocks; and the Global Methane Pledge, now endorsed by more than 150 countries, which expands our focus beyond our carbon emission targets to reduce the potential greenhouse gases in our atmosphere by 30 percent in this decade: It's all within our capacity.

We need to bring the same commitment and urgency and ambition as we work together to meet the Sustainable Development Goals of 2030. These goals were adopted at the United Nations in 2015 as a roadmap for improving lives around the world.

But the hard truth is: For decades of progress, the world has lost ground these past years in the wake of COVID-19, conflicts, and other crises.

The United States is committing to doing its part to get us back on track.

All told, in the first two years of my administration, the United States has invested more than $100 billion to drive development progress in bolstering food security, expanding access to education worldwide, strengthening healthcare systems, and fighting disease. And we've helped mobilize billions more in the private-sector investments.

But to accelerate our forward progress on the Sustainable Development Goals, we all have to do more. We need to build new partnerships that change the way we tackle this challenge to unlock trillions of additional financing for development, drawing on all sources. We need to fill the gaps and address the failures of our existing system exposed by the pandemic.

We need to ensure that women and girls benefit fully from our progress.

We must also do more to grapple with the debt that holds back so many low- and middle-income countries. When nations are forced to service unsustainable debt payments over the needs of their own people, it makes it harder for them to invest in their own futures.

And as we work together to recover from global shocks, the United States will also continue to be the largest single-community donor — country donor of humanitarian assistance at this moment of unparalleled need in the world.

Folks, cooperation, partnership — these are the keys to progress on the challenges that affect us all and the baseline for responsible global leadership.

We don't — we don't need to agree on everything to keep moving forward on issues like arms control — a cornerstone of international security.

After more than 50 years of progress under the Non-Proliferation Treaty, Russia is shredding longstanding arms control agreements, including announcing the suspension of New START and withdrawing from the Conventional Forces in Europe Treaty.

I view it as irresponsible, and it makes the entire world less safe.

The United States is going to continue to pursue good-faith efforts to reduce the threat of weapons of mass destruction and lead by example, no matter what else is happening in the world.

This year, we've safely destroyed at least — the last chemical munitions in the U.S. stockpile, fulfilling our commitment toward a world free of chemical weapons.

And we condemn the DPRK's continued violations of U.N. Security Council Resolutions, but we are committed to diplomacy that would bring about the denuclearization of the Korean Peninsula.

And we're working with our partners to address Iran's destabilizing activities that threaten regional and global security and remain steadfast in our commitment that Iran must never acquire a nuclear weapon.

Now, even as we evolve our institutions and drive creative new partnerships, let me be clear: Certain principles of our international system are […] sacrosanct.

Sovereignty, territorial integrity, human rights — these are the core tenets of the U.N. Charter, the pillars of peaceful relations among nations, without which we cannot achieve any of our goals.

That has not changed, and that must not change.

Yet, for the second year in a row, this gathering dedicated to peaceful resolution of conflicts is darkened by the shadow of war — an illegal war of conquest, brought without provocation by Russia against its neighbor, Ukraine.

Like every nation in the world, the United States wants this war to end. No nation wants this war to end more than Ukraine.

And we strongly support Ukraine in its efforts to bring about a diplomatic resolution that delivers just and lasting peace.

But Russia alone — Russia alone bears responsibility for this war. Russia alone has the power to end this war immediately. And it is Russia alone that stands in the way of peace, because the — Russia's price for peace is Ukraine's capitulation, Ukraine's territory, and Ukraine's children.

Russia believes that the world will grow weary and allow it to brutalize Ukraine without consequence.

But I ask you this: If we abandon the core principles of the United States [U.N. Charter] to appease an aggressor, can any member state in this body feel confident that they are protected? If we allow Ukraine to be carved up, is the independence of any nation secure?

I'd respectfully suggest the answer is no.

We have to stand up to this naked aggression today and deter other would-be aggressors tomorrow.

That's why the United States, together with our allies and partners around the world, will continue to stand with the brave people of Ukraine as they defend their sovereignty and territorial integrity and their freedom…

It's not only an investment in Ukraine's future, but in the future of every country that seeks a world governed by basic rules that apply equally to all nations and uphold the rights of

every nation, no matter how big or how small: sovereignty, territorial integrity. They are the fixed foundations of this noble body, and universal human rights is its North Star. We cannot sacrifice either.

Seventy-five years ago, the Universal Declaration of Human Rights captured a remarkable act of collective hope — and I say that again — collective hope — drafted by a committee representing different regions, faiths, philosophies, and adopted by the entire General Assembly. The rights contained in the declaration are elemental and enduring.

And while we still struggle to uphold equal and inalienable rights of all, they remain ever steady and ever true.

We cannot turn away from abuses, whether in Xinjiang, Tehran, Darfur, or anywhere else.

We have to continue working to ensure that women and girls enjoy equal rights and equal participation in their societies. That Indigenous groups; racial, ethnic, religious minorities; people with disabilities do not have their potential stifled by systemic discrimination. That the LGBTQI+ people are not prosecuted or targeted with violence because of who they are.

These rights are part of our shared humanity. When they're absent — when they are absent anywhere, their loss is felt everywhere. They are essential to the advancement of human progress that brings us together.

My fellow leaders, let me close with this. At this inflection point in history, we're going to be judged by whether or not we live up to the promises we have made to ourselves, to each other, to the most vulnerable, and to all those who will inherit the world we create, because that's what we're doing.

Will we find within ourselves the courage to do what must be done to preserve the planet, to protect human dignity, to provide opportunity for people everywhere, and to defend the tenets of the United Nations?

There can be only one answer to that question: We must, and we will.

The road ahead is long and difficult, but if we preserve –persevere and prevail, if we keep the faith in ourselves and show what's possible.

Let's do this work together. Let's deliver progress for everyone. Let's bend the arc of history for the good of the world because it's within our power to do it.

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b. Multilateralism at the UN Security Council

On April 24, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN Security Council open debate on effective multilateralism. The remarks are excerpted below and available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-open-debate-on-effective-multilateralism/.

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[T]hank you, colleagues, for coming together to talk about how we can defend the UN Charter and make multilateralism more effective. This is a serious topic – even if it was convened by a Council member whose actions demonstrate a blatant disregard for the UN Charter.

At the United Nations, if you ask a difficult policy question, you get 193 different answers. That makes our work challenging. But it is also right because after all, that is what the UN is all about: Member States can work through disagreements, find common ground, and see where we can make progress together.

And there are some things we are not meant to disagree about. There are some values and principles that are so fundamental, so critical to our purpose, that signing on to them is the price of admission to the UN. These are the values laid out in the United Nations Charter, a charter we have all sworn to uphold and to protect. And it is quite clear what those values are.

This little blue book is written in plain language. And it spells out our purposes and principles in its very first chapter, and I want to read it to you:

"Article 1: The purposes of the United Nations are: To maintain international peace and security…to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples…to achieve international cooperation in solving international problems…[and] promoting and encouraging respect for human rights and for fundamental freedoms."

And here, in Article 2, it states clearly: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."

Territorial integrity. Respect for human rights. International cooperation.

These are our values. These are the shared, stated principles we all agreed to uphold. All of us. And it is our belief in them that binds us together.

Those principles have been the basis for the UN's greatest triumphs over the past eight decades. Despite the international system's imperfections, our shared principles have helped us curtail nuclear proliferation, prevent mass atrocities, and forge peace through negotiation and mediation. They have undergirded an international order that has helped us provide humanitarian aid to those in desperate need, to lift over a billion people out of poverty, and to prevent another world war.

And right now, as much as ever, the world needs an effective UN and effective multilateralism. Challenges like the climate crisis, the global food security crisis, and the COVID-19 pandemic are exactly the kinds of borderless challenges we need the UN to tackle.

And yet, right when the world needed the UN most, we were plunged into a crisis of confidence. Our hypocritical convenor today, Russia, invaded its neighbor, Ukraine, and struck at the heart of the UN Charter and all the values we hold dear. This illegal, unprovoked, and unnecessary war runs directly counter to our most shared principles: that a war of aggression and territorial conquest is never, ever acceptable.

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Colleagues, while Russia may be undermining the UN Charter and this institution, the rest of us can and must do better. The UN needs reform – you've heard that. To support and maintain its fundamental principles, this body must evolve to meet the 21st century. As part of that evolution, the Security Council needs to better reflect today's global realities.

We must find credible, sensible, and politically viable paths to this end. And while we work to forge those paths, those of us on the Security Council have a duty to do more. To do better.

As you all know, in San Francisco last year I announced six principles for responsible behavior for Security Council permanent members. These were standards we set for ourselves; that we welcome all to hold us to; that we encourage for other permanent members.

Colleagues, the United States believes in the United Nations, and we believe in this Charter. And that belief gives us faith that it can be made better still. Our response to Russia's flagrant violations cannot be to abandon this institution's founding principles. Instead, we must recommit to the principles of sovereignty, of territorial integrity, of peace and security. And use those principles as guideposts, as we strengthen the United Nations and make it fit for the purposes of the 21st century.

We must reform this institution and support efforts, such as the Secretary-General's ambitious "Our Common Agenda" initiative, to modernize the multilateral system.

We must not shirk our responsibilities to address threats by the DPRK to international peace and security.

We must forcefully address the situation in Sudan as we heard the call from the Secretary-General for peace and a cessation of hostilities.

We must use our platform to call out aggression and human rights violations wherever and whenever we see them.

We must renew our commitment to achieve the Sustainable Development Goals, to heal the climate, to end poverty and hunger.

That is the brighter future we hope to build.

So, we must rally behind the UN Charter. Take our shared global challenges seriously. Do everything in our power to be better neighbors. And, together, create a more peaceful, more prosperous world for us all.

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2. Ukraine

On February 23, 2023, at the eleventh emergency special session of the UN General Assembly, addressing the Russian invasion of Ukraine, the Geneal Assembly adopted a resolution on Russia's invasion of Ukraine. See U.N. Doc. A/RES/ES-11/6, "Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine," available at https://undocs.org/A/RES/ES-11/6. See *Digest 2022* at 286 for five additional resolutions addressing the Russian invasion of Ukraine adopted by the General Assembly. Ambassador Linda Thomas-Greenfield's February 23, 2023 remarks at the General Assembly stakeout following the adoption of the resolution is available at https://usun.usmission.gov/remarks-at-the-un-general-assembly-stakeout-following-

the-adoption-of-a-resolution-on-a-comprehensive-peace-in-ukraine/, and excerpted below.

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Today's vote was really historic. You saw one year after Russia's illegal, unprovoked, full-scale invasion into Ukraine where the countries of the world stand. We showed where we stand – with Ukraine.

The vote was clear. A hundred forty-one countries voted to uplift and uphold the UN Charter. Only seven countries voted against it.

A hundred forty-one countries voted for a comprehensive, just, and lasting peace in Ukraine.

A hundred forty-one countries affirmed that such a peace must be rooted in the UN Charter's most fundamental principles of sovereignty, territorial integrity, and the inherent right of self-defense.

A hundred forty-one countries – 141 countries – recommitted to tackling the threats to energy, finance, the environment, food insecurity, nuclear security that Russia's war has unleashed upon the world.

And as stated in Ukraine's resolution, these 141 countries reiterated a clear demand to Russia: withdraw and – I'm sorry: Withdraw immediately, completely, and unconditionally from Ukraine's internationally recognized territory, send your troops home, and end this war.

When I was in Ukraine, I saw so much etched into the faces of the Ukrainian people. In President Zelenskyy's face, I saw resolve. In the faces of victims and civilians, I saw pain and sorrow. And in the faces of Ukraine's children, I saw hope.

Today we refuse to give up on hope. We refuse to give up on the potential for diplomacy, the power of dialogue, and the urgency of peace. And tomorrow we will continue to push for just that – a durable peace.

Secretary Blinken will return to the Security Council to outline the Council's unique responsibilities to uphold the UN Charter as Russia's horrific war enters its second year, and he will reaffirm America's commitment to supporting Ukraine and defending the UN Charter's most fundamental principles. As President Biden said when he was in Kyiv this week, "We stand together. We stand with Ukraine for as long as it takes."

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3. Taiwan at the United Nations

On April 10, 2023, the Department of State met with Taiwan counterparts for the semi-annual US-Taiwan Working Group on International Organizations, as part of the State Department's effort to support Taiwan's meaningful participation in international organizations. The readout of the meeting is available as a media note published on April 11, 2023 at https://www.state.gov/u-s-taiwan-working-group-meeting-on-international-organizations-2/, and includes the following:

This discussion focused on near-term opportunities to support Taiwan's expanded participation in the World Health Assembly (WHA) and other global public health bodies, the International Civil Aviation Organization (ICAO), as well as Taiwan's meaningful participation in non-UN international, regional, and multilateral organizations.

Participants exchanged views on addressing global challenges, such as global public health, aviation safety, climate change and the environment, transnational crime, and opportunities to jointly enhance technical standards and economic cooperation. U.S. participants highlighted the world-class expertise Taiwan brings in many areas of global concern, including health, food security, aviation green fuels, and bolstering women's economic and political empowerment, and reiterated the U.S. commitment to Taiwan's meaningful participation at the World Health Organization and ICAO. All participants recognized the importance of working closely with likeminded partners who share our concerns regarding attempts to exclude Taiwan from the international community.

The working group again met on December 13, 2023. The readout of the meeting is available as a State Department media note at https://www.state.gov/u-s-taiwan-working-group-meeting-on-international-organizations-3/.

On May 9, 2023, Secretary Blinken issued a press statement supporting Taiwan's invitation to the World Health Assembly as an observer. The statement is available at https://www.state.gov/taiwan-as-an-observer-in-the-world-health-assembly-2/ and follows.

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The World Health Assembly (WHA), the decision-making body of the World Health Organization (WHO), will hold its annual meeting May 21-30 in Geneva to discuss global public health priorities. It is a unique opportunity for delegates and health experts from around the world to advance global health and global health security. We strongly encourage the WHO to invite Taiwan to participate as an observer at this year's WHA meeting so it may lend its expertise to the discussions.

Inviting Taiwan as an observer would exemplify the WHO's commitment to an inclusive, "health for all" approach to international health cooperation. Taiwan is a highly capable, engaged, and responsible member of the global health community and has been invited to participate as an observer in previous WHA meetings.

Taiwan's distinct capabilities and approaches – including its significant public health expertise, democratic governance, and advanced technology – bring considerable value that would inform the WHA's deliberations. Taiwan's isolation from WHA, the preeminent global health forum, is unjustified and undermines inclusive global public health cooperation and security, which the world demands.

Taiwan is a reliable partner, a vibrant democracy, and a force for good in the world. The United States will continue to advocate for Taiwan's return as an observer at the WHA, and, moreover, for its meaningful and robust participation throughout the UN system and in international fora. Our support for Taiwan's participation in appropriate international fora is in line with our one China policy, which is guided by the Taiwan Relations Act, the three U.S.-China Joint Communiques, and the Six Assurances.

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4. International Organization for Migration Election

On May 10, 2023, Secretary Blinken issued a statement in support of U.S. nominated Amy E. Pope's campaign for Director General of the International Organization for Migration ("IOM"). The press statement is available at https://www.state.gov/u-s-support-of-amy-e-popes-campaign-for-director-general-of-the-international-organization-for-migration/. On May 15, 2023, the member states of the IOM elected Amy Pope as Director General. Secretary Blinken's statement on the election is available at https://www.state.gov/the-election-of-amy-e-pope-as-director-general-of-the-international-organization-for-migration/, and follows:

> Congratulations to Amy E. Pope on her historic win to serve as the next Director General of the International Organization for Migration (IOM). We thank Director General Vitorino for his service and leadership of IOM over the past five years. Ms. Pope's election reflects a broad endorsement by member states of her vision to keep people at the heart of IOM's mission, while implementing key governance and budget reforms to ensure IOM is prepared to meet the challenges it faces. She also becomes the first woman to lead this critical organization in its more than 70-year-old history.
>
> As IOM's largest bilateral donor, the United States strongly supports Ms. Pope's vision and looks forward to working with her to implement the critical reforms necessary to create a more effective, inclusive IOM.

On October 1, 2023, Amy Pope took office as Director General of the IOM. On October 2, 2023, Secretary Blinken issued a statement welcoming Amy Pope to the role, available at https://www.state.gov/welcoming-amy-e-pope-as-director-general-of-the-international-organization-for-migration/, and follows.

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The United States welcomes Amy E. Pope's appointment as the new Director General of the International Organization for Migration (IOM). Ms. Pope, who took on her new role October 1, is the first woman to lead this critical international organization in its more than 70-year-old history.

As we face the challenges presented by historic levels of migration and displacement around the world, IOM is an essential partner of the United States in promoting safe, orderly, and humane migration management and providing humanitarian assistance.

The United States is and remains IOM's largest bilateral donor. In support of Ms. Pope's vision for a more effective and inclusive IOM, I am announcing more than $19 million in funding to facilitate important capacity-building efforts around data, program oversight, and the impact of climate change on migration.

The State Department's Bureau of Population, Refugees, and Migration recently renewed a five-year memorandum of understanding (MOU) with IOM to continue our long-standing partnership on the U.S. Refugee Admissions Program (USRAP). This MOU will be instrumental in meeting the United States' goal to welcome 125,000 refugees in FY 2024.

The United States strongly supports Ms. Pope's vision, and we look forward to continuing our long-standing partnership with IOM to create lifesaving solutions for vulnerable populations.

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5. Rejoining the United Nations Educational, Scientific and Cultural Organization

On June 30, 2023, the United Nations Educational, Scientific and Cultural Organization ("UNESCO") members accepted the U.S. proposal to rejoin in an extraordinary session of the UNESCO General Conference. Secretary Blinken issued a statement, which is available at https://www.state.gov/unesco-general-conference-accepts-u-s-membership-proposal/, and follows.

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This week, UNESCO members met for an extraordinary session of the organization's General Conference to consider a U.S. proposal that would allow the United States to rejoin the organization with full membership privileges and restore U.S. leadership on a host of issues of importance and value to the American people.

In pursuing full membership with UNESCO, the United States makes clear its commitment to multilateralism and diplomacy on critical issues, including protection of journalists, expanding access to education, shaping best practices on new and emerging technologies, protecting cultural heritage, and remembering the immeasurable toll of the Holocaust to ensure such atrocities never happen again.

I am encouraged and grateful that today the membership accepted our proposal, which will allow the United States to take the next, formal steps toward fully rejoining the organization.

As President Biden has frequently noted, the United States is stronger, safer, and more prosperous when we engage with the rest of the world and when we seek cooperation, collaboration, and partnership. By rejoining UNESCO, the United States would reinforce that message and restore our leadership in a vital international space.

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On June 30, 2023, Ambassador Linda Thomas-Greenfield delivered a statement on UNESCO accepting the U.S. membership proposal. The statement is available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-unesco-accepting-u-s-membership-proposal/, and follows:

> Today, I am encouraged that the UNESCO membership accepted the proposal which will allow the United States to take the next steps toward rejoining the organization with full membership privileges. We thank our partners for their support for welcoming us back into the organization.
>
> If we are not engaged in international institutions, we leave a void and we lose an opportunity to advance American values and interests on the global stage. Wherever and whenever new rules are being debated, Americans need to be at the table.
>
> By returning to UNESCO, the United States is taking an important step in restoring our leadership on critical issues such as the preservation of cultural heritage, the evolution of artificial intelligence, the protection of journalists, and Holocaust education. Now more than ever, we need to work together with other countries to take on the greatest challenges of our time.

See the State Department July 17, 2023 media note on the appointment of Ambassador Erica Barks-Ruggles as head of the U.S. Mission to UNESCO, available at https://www.state.gov/appointment-of-ambassador-erica-barks-ruggles-as-head-of-the-u-s-mission-to-unesco/. See also Secretary Blinken's July 25, 2023 statement on the U.S. flag raising at UNESCO, available at https://www.state.gov/the-united-states-raises-its-flag-at-unesco/.

6. Criminal Accountability of United Nations Officials

On October 10, 2023, Attorney-Adviser Dorothy Patton delivered remarks at the 78th meeting of the UN General Assembly Legal Committee, or Sixth Committee, on "Agenda Item 76: Criminal Accountability of UN Officials and Experts on Mission." The statement is available at https://usun.usmission.gov/statement-at-the-78th-general-assembly-sixth-committee-agenda-item-76-criminal-accountability-of-un-officials-and-experts-on-mission/ and excerpted below.

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The United States thanks Secretary-General Guterres for his most recent reports of July 26 and August 1 on this issue. We thank the UN Secretariat, specialized agencies and related organizations as well as Member States that contributed to these reports, which assist the United

Nations and its Member States to remain vigilant in protecting the credibility of the United Nations in carrying out its work.

In particular, we were encouraged to read about the ongoing work of the Food and Agriculture Organization to establish an internal policy for the referral of credible allegations that a crime may have been committed by its personnel. We also welcome the efforts of the International Telecommunication Union to introduce mandatory training, including on the prevention of sexual exploitation and abuse and prevention of sexual harassment, as well as to introduce tools to facilitate the reporting of misconduct. We also appreciate the efforts in this reporting period by the UN to strengthen existing pre-deployment training and vetting measures for all UN personnel, including the launch of a revised mandatory e-course on sexual exploitation and abuse.

The United States also thanks the Secretary-General for his related February report on special measures for protection from sexual exploitation and abuse. We welcome the efforts described by all pillars of the UN – development, humanitarian, human rights and peace operations – to raise awareness, identify and manage risks, and implement survivor-centered institutional and operational processes to prevent and respond to such misconduct. The United States welcomes also the work of the Special Coordinator on Improving the UN Response to Sexual Exploitation and Abuse and was pleased to contribute to the Trust Fund that provides critical support to survivors.

We request that all UN programmes, specialized agencies, and related organizations continue to examine the issues addressed in these reports and revise internal rules and procedures, with the goals of further mitigating the risks of sexual misconduct and promoting greater accountability for criminal conduct, sexual exploitation or abuse committed by UN officials and experts.

Finally, the United States would like to provide an update on our accountability efforts in the case of Karim Elkorany. As noted in our statement in this Committee last year, the United States Department of Justice had charged Elkorany — a U.S. national, former State Department contractor, and former UN employee — with sexual assault, including against a fellow UN employee, while serving with the Organization on a UN mission in Iraq. Elkorany pled guilty to one count of sexual assault, while admitting to 19 other criminal acts, including at least 13 other sexual assaults. On October 27, 2022, Elkorany was sentenced to 15 years in prison for the drugging and sexual assault of one of the victims and making false statements to cover up another sexual assault.

The United States urges continued vigilance to prevent and respond to allegations of criminal conduct across the UN System and looks forward to continued engagement in this Committee and with the Secretariat on this important issue.

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7. Administration of Justice

On October 11, 2023, Attorney-Adviser Dorothy Patton delivered the U.S. statement at the78th meeting of the UN General Assembly Sixth Committee on "Agenda Item 144: Administration of Justice." The statement is at https://usun.usmission.gov/statement-

at-the-78th-general-assembly-sixth-committee-agenda-item-144-administration-of-justice/, and includes the following:

> The United States also commends the continued improvements in judicial and operational efficiency under the case disposal plan. These improvements resulted in the Dispute Tribunal and the Appeals Tribunal significantly reducing their pending caseloads. The United States looks forward to seeing the impact of efforts to increase the utilization of mediation, which would likely reduce the caseload of the Tribunals and resolve workplace disputes. The U.S. delegation applauds the improved access to justice and transparency that the caselaw portal, e-filing capabilities, and virtual courtrooms have brought.

8. Rule of Law

On October 16, 2023, Attorney-Adviser Elizabeth Grosso delivered the U.S. statement at the 78th meeting of the UN General Assembly Sixth Committee on "Agenda Item 83: The Rule of Law at the National and International levels." The remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-meeting-of-the-sixth-committee-on-agenda-item-83-the-rule-of-law-at-the-national-and-international-levels/.

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We are pleased to see the excellent work of the UN in promoting the rule of law at the national level. For example, we appreciate the UN's continued advocacy in Afghanistan to clarify the legal framework, allow the return to work of former judges and other justice personnel, especially women, and reinstate accountability within rule of law institutions. We also value the UN's efforts around the world aimed at enhancing access to justice for all in a manner that is "non-discriminatory, user-friendly, fair, and tailored to diverse people's needs." We also take this opportunity to recognize the UN's efforts to increase accountability for serious crimes under international law and to strengthen criminal accountability, including the laudable achievements of the Special Criminal Court in the Central African Republic.

As Ambassador Thomas-Greenfield has said, the rule of law "is an ironclad commitment for the United States and a fundamental principle of the United Nations". The responsibilities of the UN and Member States are to protect and enhance the rule of law in their respective jurisdictions, and to support other States and civil society organizations seeking to do the same. The United States believes that the rule of law is a critical factor in the advancement of democracy and human rights, and is a precondition for access to justice, especially for underrepresented populations. As such, the United States makes great effort to maintain and protect the rule of law in our own country as well as to support rule of law initiatives across the globe.

With respect to this year's subtopic of "using technology to advance access to justice for all", the United States continues to promote broad and creative thinking with our partners, civil society, investigative bodies as well as the tech sector to advance access to justice.

In April of this year, the United States Agency for International Development – USAID – released its updated Rule of Law Policy with a vision of "a renewed commitment to justice, rights, and security for all." This policy outlines a people-centered justice approach for the support of rule of law as a critical component of USAID's humanitarian and development mission. This approach aims to be holistic, seeking to improve the systems that support and manage the administration of justice, enhance the services that define and comprise how people, in all their diversity, encounter the delivery of justice, and meet the needs, demands, and ideas of societies. By supporting locally driven innovations and digital solutions to help rule of law institutions and justice providers better serve their communities, we hope this blueprint will increase the appropriate use of technology to improve access to justice, equity, and inclusion, and result in better justice outcomes for all.

The United States has also looked to leverage technological solutions as part of our commitment to supporting justice and accountability for international crimes. For example, the United States Department of State has established the Conflict Observatory program, which is making important contributions to Ukrainian and international accountability efforts by using innovative technology to document and analyze evidence of human rights abuses and atrocities committed in Ukraine.

The United States also takes note of the UN's efforts to utilize technology as part of its program to advance justice, particularly the development of the eCourt mobile application "aimed at speeding up and optimizing judicial process while enabling access to court services via smartphones".

As President Biden said in the General Assembly Hall a few weeks ago, the United States will continue our efforts to preserve "openness, transparency, and the rule of law…". The rule of law is a core American value, a foundation for democracy and good governance, and a pillar of the UN's important work.

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9. International Parliamentarians' Congress

On October 16, 2023, Attorney Adviser Dorothy Patton delivered remarks at a meeting of the UN General Assembly Sixth Committee on "Agenda Item 170: Observer status for the International Parliamentarians' Congress (A/78/141)," proposed by Pakistan. See U.N. Doc. A/78/141, available at https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/78/141&Lang=E. The remarks are available at https://usun.usmission.gov/remarks-at-a-meeting-of-the-sixth-committee-on-agenda-item-170-observer-status-for-the-international-parliamentarians-congress-a-78-141/, and follow.

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Thank you, Chair, and thank you to the proponents of this application.

In its decision 49/426 of 9 December 1994, the General Assembly decided to limit eligibility for observer status in the General Assembly "to States and to those intergovernmental organizations whose activities cover matters of interest to the Assembly." Although the United States welcomes the goals of the International Parliamentarians' Congress (IPC), the IPC is ineligible for observer status in the General Assembly because it is not an intergovernmental organization. In particular, its membership is not made up of states, but rather serves as a platform for individual members of national Parliaments. The IPC was also created by a resolution of the Senate of Pakistan and not as part of an international agreement between sovereign states.

In its resolution 71/156, the General Assembly did not intend to create a new, potentially limitless category of exceptionally "unique" organizations. To the contrary, the General Assembly emphasized that the eligibility criteria in decision 49/426 remain unchanged. The United States is concerned that additional exceptions would eventually render the General Assembly's decision meaningless, essentially changing the rule without debate on the merits of abandoning the criteria.

We voice our support for the objectives of the IPC "to bring together parliamentarians of different countries to achieve peace, prosperity and progress through cooperation; mutual understanding; sharing and exchange of ideas as well as experiences." We also voice our support for taking those perspective into account in UN deliberations, but we cannot support the request for observer status.

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10. United Nations Role in Advancing International Law

On October 19, 2023, Attorney-Adviser Dorothy Patton delivered the U.S. statement at the UN General Assembly Sixth Committee on "Agenda Item 78: UN Program of Assistance in the Teaching, Study, Dissemination and Wider Appreciation." The statement is available at https://usun.usmission.gov/statement-at-general-assembly-sixth-committee-agenda-item-78-un-program-of-assistance-in-the-teaching-study-dissemination-and-wider-appreciation/, and follows:

> The United States thanks the Secretary-General for his report on the work of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law. The work of the Codification Division of the Office of Legal Affairs in implementing the Programme of Assistance is foundational to promoting the understanding of international law. The regional courses in Africa, Asia-Pacific, and Latin America and the Caribbean by preeminent scholars and practitioners are effective because they are both timely and practical. The large numbers of applicants for these training programs demonstrate the great demand for this kind of high-quality instruction. The International Law Fellowship offers an important opportunity for scholars and practitioners from different legal systems and geographic regions. The Alumni

Network allows participants to reap benefits long after the completion of their programs through the continued sharing of ideas and experiences. The growing catalog of high-quality training materials, provided free of charge to more than 2.9 million people through the Audiovisual Library of International Law, is a testament to the breadth of the Programme's reach. The United States is pleased to serve on the Advisory Committee on the Programme of Assistance and to support the important work of increasing an appreciation for international law.

The United States takes this opportunity to commend the Codification Division on its work and to express its appreciation for the generous financial and in-kind contributions of Member States that make the work possible. The resources and experiences that the programs make available expand the global appreciation for international law, and in so doing, further the UN's highest goals for international peace and security.

11. Committees of the United Nations

a. Charter Committee

On October 19, 2023, Attorney-Adviser Dorothy Patton delivered the U.S. statement at a 78th meeting of the UN General Assembly Sixth Committee. The United States reiterated its position on "Agenda Item 82: Report on the UN Charter and Strengthening the Role of the Organization," as delivered in 2022. See *Digest 2022* at 287-88. The 2023 U.S. statement is available at https://usun.usmission.gov/statement-at-the-78th-general-assembly-sixth-committee-agenda-item-82-report-on-the-un-charter-and-strengthening-the-role-of-the-organization/.

b. Committee on Relations with the Host Country

On November 6, 2023, Attorney-Adviser Dorothy Patton delivered the U.S. statement at the 78th meeting of the UN General Assembly Sixth Committee on "Agenda Item 161: Report of the Committee on Relations with the Host Country." The remarks are excerpted below and available at https://usun.usmission.gov/statement-at-the-78th-general-assembly-sixth-committee-agenda-item-161-report-of-the-committee-on-relations-with-the-host-country/.

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Our leadership has also engaged throughout this year with the members of the Host Country Committee, representatives of interested states, and with the UN's Office of Legal Affairs to address concerns. We continuously work to improve processes, respond efficiently to questions, and resolve outstanding issues. Our work has paid off.

Over the past year, we have issued the vast majority of visas requested for UN-related work. This year's High-Level Week is a case in point: we issued approximately 99 percent of visas. As noted in the report and at our meetings, this year there was a decline in visa-related issues. In addition, as some Missions recently acknowledged, there has been a noticeable reduction in processing times, a direct result of our continuing work to streamline procedures. This year's success continues a clear trend. Over the past number of years, we have continued to improve visa-related procedures, devote more resources to visa processing, and speed up processing times, despite major hurdles.

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Although our travel control policies in no way affect any Missions' ability to transit to and work at the UN, this year we modified our travel policies pertaining to certain Permanent Missions and expanded particular port of entry/exit policies. On other topics some delegations have raised today, I refer you to the summaries of U.S. statements included in the full report of the Host Country Committee.

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B. INTERNATIONAL COURT OF JUSTICE

1. General

a. Report of the International Court of Justice

Richard Visek, Acting Legal Adviser of the Department of State, delivered remarks at a UN General Assembly debate on a report of the International Court of Justice ("ICJ") on October 26, 2023. The remarks follow and are available at https://usun.usmission.gov/remarks-at-a-un-general-assembly-debate-on-the-international-court-of-justice/.

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Thank you, Mr. President, and thank you, President Donoghue, for your informative report today and for your leadership as President of the Court.

During your tenure, you have helped navigate the Court through the Covid pandemic, and guided the Court in managing a case load that has never been greater, whether in number of cases, their complexity, or their importance to the parties and international community at large.

We thank you for your service to the Court, to the United Nations, and the international community.

We also commend the Court's investment in future practitioners of public international law around the world through the Court's Judicial Fellowship Program, and its related Trust Fund to support participants from developing countries. The United States is pleased to have made a contribution to the fund earlier this year and encourages others to do likewise.

Before I continue, I would like to take a moment to acknowledge the passing in May of this year of Judge Thomas Buergenthal. He was a Holocaust survivor, a member of the Court from 2000 to 2010, and a renowned international jurist and champion of human rights. Judge Buergenthal set an example for all of us by living a life of purpose and humanity. He is greatly missed.

The Court has a vital role to play in the maintenance of international peace and security, and has made important contributions to the realization of the purposes and principles of the United Nations through the peaceful settlement of disputes.

During the reporting period, we have been reminded yet again of the pivotal role the Court plays in addressing some of the most important questions of international law.

Looking to the Court's future, it is clear that the Court's caseload will only continue to grow, posing further challenges to the Court's administration and management of its docket.

The increase in cases and questions before the Court is matched only by the continuing importance of the issues that are brought before it.

We note in this regard Ukraine's continuing case against the Russian Federation under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Ukraine's application seeks to address Russia's claims of genocide and to establish that Russia has no lawful basis to take military action in Ukraine on the basis of those claims.

The United States continues to call on the Russian Federation to comply with the Court's March 16 order on provisional measures and suspend its military operations against Ukraine.

Other important cases that have been brought before the Court include that brought by Canada and the Netherlands against Syria under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We take note not only of those cases before the Court that implicate its contentious jurisdiction, but also of the vital questions on which the Court's advisory opinion is sought.

In this regard, the United States looks forward to sharing its views to assist the Court in considering the questions referred in the General Assembly's recent requests.

This year's elections to the Court provide an opportunity to ensure the Court continues to be made up of judges able to take on this solemn responsibility.

The United States is therefore proud to support Professor Sarah Cleveland as a candidate to the Court.

We also extend our appreciation to the Court and its staff for their service to the international community, promotion of the rule of law, and for continually stressing the need for all States to act in conformity with their obligations under international law, whether in times of peace or war.

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b. International Court of Justice Elections

On November 9, 2023, Secretary Blinken issued a press statement on the election of Professor Sarah H. Cleveland, to the International Court of Justice. See Digest 2022 at

295-96 for discussion of Professor Cleveland's nomination by the U.S. National Group to the Permanent Court of Arbitration. Secretary Blinken's press statement is available at https://www.state.gov/election-of-professor-sarah-h-cleveland-to-the-international-court-of-justice/, and follows:

> Congratulations to Professor Sarah Cleveland on her election to serve as a judge on the International Court of Justice (ICJ). United Nations member states clearly endorsed Professor Cleveland's vision for an ICJ that is judicially independent, preserves the integrity and authority of the Court, and ensures the dignity of all people. As the sixth female judge, and the second American woman ever elected to serve in the Court's 77-year history, Professor Cleveland's election also helps rectify the Court's historic gender imbalance.
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> The United States values the critical work of the ICJ as the principal judicial organ of the United Nations. The Court's contributions to the peaceful settlement of disputes and its work as a guardian of international law has never been more important.

2. Cases

a. Advisory Opinion on the Occupied Palestinian Territories

On January 20, 2023, the UN General Assembly requested an advisory opinion from the ICJ in resolution on "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem." See U.N. Doc. A/RES/77/247, available at https://www.un.org/unispal/document/res-77-247/; see also *Digest 2022* at 298-99. Although the United States is opposed to the request for an advisory opinion, it joined over 50 participants in submitting a written statement in the case, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. The U.S. July 25, 2023 written submission is available at https://www.icj-cij.org/sites/default/files/case-related/186/186-20230725-wri-20-00-en.pdf.[*] On October 25, 2023, the U.S. submitted written comments on the initial submissions by other participants, available at https://www.icj-cij.org/sites/default/files/case-related/186/186-20231025-wri-05-00-en.pdf.

b. Ukraine's Allegations of Genocide against Russia

As discussed in *Digest 2022* at 296-97, Ukraine filed an application at the ICJ to initiate proceedings against Russia under the Convention on the Prevention and Punishment of the Crime of Genocide. On February 13, 2023, the United States filed observations on the admissibility of the U.S. Declaration of Intervention, filed in 2022, in the case of

[*] Editor's note: See also, the U.S. position on the request for an advisory opinion set out in the 2022 U.S. General Statement on the UN General Assembly Fourth Committee Resolutions on Israeli-Palestinian Issues, available at https://usun.usmission.gov/general-statement-on-the-un-general-assembly-fourth-committee-resolutions-on-israeli-palestinian-issues/.

Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation). The written observations are available at https://www.icj-cij.org/sites/default/files/case-related/182/182-20230213-wri-12-00-en.pdf.

c. Advisory Opinion on Climate Change

On March 29, 2023, the UN General Assembly adopted a resolution entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect to climate change." See U.N. Doc. A/RES/77/276, available at https://perma.cc/YZ4U-H8GZ and excerpted below.

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Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

"Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

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On March 29, 2023, Nicholas Hill, Deputy U.S. Representative to the United Nations Economic and Social Council ("ECOSOC"), delivered the U.S. explanation of position on the resolution to request an advisory opinion of the ICJ on climate change. The explanation of position is available at https://perma.cc/KWR8-STQN, and follows.

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Addressing the climate crisis is of the highest priority for the United States, both at home and abroad. In this context, the United States reaffirms our fundamental view that diplomacy is the best pathway to achieving our shared climate goals.

Domestically, President Biden has taken the strongest climate action in U.S. history. Through the Inflation Reduction Act and other efforts, we are on track to achieve our ambitious nationally determined contribution under the Paris Agreement, which is consistent with keeping a 1.5-degree Celsius temperature limit within reach.

Internationally, the United States has put the climate crisis at the center of our foreign policy and diplomacy. President Biden, Secretary of State Blinken, Special Presidential Envoy for Climate John Kerry, cabinet officials across the U.S. government, and our diplomats around the world have been working tirelessly to advance global climate ambition in order to keep a 1.5 degree C limit on temperature rise within reach, to help countries adapt to and manage climate impacts, and more.

This has taken many diplomatic forms, among them:

President Biden has convened fellow leaders of the world's largest economies three times since taking office – and will do so again in April – to press for countries to enhance ambition in line with what the science tells us is needed to keep the 1.5 degree C limit within reach, complementing our broader efforts to drive ambitious implementation of the Paris Agreement at the COPs and other key milestones throughout the year;

- promoting emission reductions in sectoral fora such as the International Civil Aviation Organization and the International Maritime Organization;
- spearheading bilateral and multilateral cooperative initiatives, such as the Global Methane Pledge and the Green Shipping Challenge; and
- launching the President's PREPARE initiative, aimed at working together with developing countries to help over 500 million people worldwide adapt to climate change.

And we are focused on mobilizing resources to support developing countries as they address the climate crisis by providing assistance with our own public resources and mobilizing support from the private sector, the multilateral development banks – including through critical, ongoing discussions about their reform and evolution–and other sources and working to make broader global finance flows aligned with the goals of the Paris Agreement.

We are also focused on minimizing the risks of sea level rise for small island and low-lying states and working to address its impacts through our policies and support. This includes our commitment to preserve the legitimacy of states' maritime zones, and associated rights and entitlements, that have been established consistent with international law.

In this context, the United States has engaged in discussions on this resolution with a view to considering how best we can advance our collective efforts. We have considered this carefully, recognizing the priority that Vanuatu and other Small Island Developing States have placed on seeking an advisory opinion from the International Court of Justice with the aim of advancing progress towards climate goals.

However, we have serious concerns that this process could complicate our collective efforts and will not bring us closer to achieving these shared goals. We believe that launching a judicial process – especially given the broad scope of the questions – will likely accentuate disagreements and not be conducive to advancing ongoing diplomatic and negotiations

processes. In light of these concerns, the United States disagrees that this initiative is the best approach for achieving our shared goals, and takes this opportunity to reaffirm our view that diplomatic efforts are the best means by which to address the climate crisis.

While we recognize that this process will go forward in light of the significant support for the resolution, we underscore our continuing belief that successfully tackling the climate crisis is best achieved through doubling down on the types of diplomatic efforts that we are engaged in, including multilateral engagement under the Paris Agreement and other fora, plurilateral initiatives, and bilateral efforts that advance solutions to the multifaceted challenges caused by the climate crisis.

The United States will welcome the opportunity to share our legal views and engage with states and the Court on the questions posed. For now, we would like to share a few observations with respect to the text of the resolution:

First, with respect to the chapeau of the question, while the Paris Agreement sets forth certain climate change obligations (as well as many non-binding provisions), the reference to other treaties should not be understood to imply that each of those treaties contains obligations to ensure the protection of the climate system. In addition, we emphasize that reference to certain principles and duties should not be understood as reflecting any conclusion about the nature, scope, or application of any such principles or duties to the question at hand.

Second, we note that the question asks about obligations and related legal consequences under those obligations for all states. The question does not prejudge the nature of any such obligations or the legal consequences for any breaches of those obligations. Nor does it presuppose that such breaches have occurred or are occurring, but asks about the consequences if and when they do, whether now or in the future.

Finally, with respect to the preamble, we note that several of the paragraphs (such as those related to non-binding goals) address matters that are not related to legal obligations and thus are not relevant to the questions posed. In this regard, matters addressed in the preamble should not be assumed to have bearing on the Court's advisory opinion.

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d. Certain Iranian Assets

As discussed in *Digest 2022* at 297-98, *Digest 2019* at 212-13, and *Digest 2018* at 227-34, the United States appeared before the International Court of Justice ("ICJ") in the case, *Certain Iranian Assets* (Islamic Republic of Iran v. United States of America), in which Iran challenges measures adopted by the United States to allow the entry and enforcement of judgments against Iran in favor of U.S. victims of Iran-sponsored terrorism. On March 30, 2023, the ICJ issued a judgment rejecting the majority of Iran's case under the now-terminated Treaty of Amity. The Court's judgement is available at https://www.icj-cij.org/sites/default/files/case-related/164/164-20230330-jud-01-00-en.pdf. The State Department issued a press statement, available at https://www.state.gov/judgment-in-certain-iranian-assets-case/, and included below.

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Today the International Court of Justice issued a judgment in the Certain Iranian Assets case rejecting the vast majority of Iran's case under the now-terminated Treaty of Amity. This is a major victory for the United States and victims of Iran's State-sponsored terrorism.

Iran sought to use the Treaty to challenge payments to U.S. victims of Iran-sponsored terrorism who obtained U.S. court judgments against Iran. The decision today is a significant blow to Iran's attempt to avoid its responsibility, in particular to the families of U.S. peacekeepers who were killed in the 1983 bombing of the Marine Corps barracks in Beirut.

The United States recognizes the Court's important role and contributions to the rule of law. And the United States commends the Court's ruling related to Bank Markazi. We are disappointed that the Court has concluded that the turnover of assets of other Iranian agencies and instrumentalities to U.S. victims of Iran's sponsorship of terrorism was inconsistent with the Treaty. U.S. courts directed the turnover of assets to victims pursuant to U.S. laws that have helped those and other victims of State-sponsored terrorism receive compensation for the grave losses that they and their families have suffered. As the United States made clear in its arguments to the Court, the Treaty was never intended to shield Iran from having to compensate U.S. victims of its sponsorship of terrorism.

The Court's decision was clear that it will have no impact on the U.S. laws that allow U.S. victims of terrorism to seek compensation from Iran or any other State sponsor of terrorism in U.S. courts going forward, in light of the Treaty's termination.

The United States continues to strongly support victims of terrorism, and we stand with those who seek to hold Iran and all State sponsors of terrorism accountable.

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e. Proceedings against the Syrian Regime

On June 14, 2023, the State Department released a press statement welcoming Canada and the Netherland's decision to initiate proceedings at the ICJ to hold the Syrian regime accountable for reported torture. The statement is available at https://www.state.gov/welcoming-proceedings-at-the-international-court-of-justice-to-hold-the-syrian-regime-accountable/, and follows:

> The United States welcomes Canada and the Netherlands' decision to initiate legal proceedings at the International Court of Justice to hold Syria accountable for the reported torture of thousands of individuals at the hands of the Assad regime. For over twelve years, the Assad regime has been responsible for innumerable atrocities, including those involving killings, torture, enforced disappearance, the use of chemical weapons, and other inhumane acts.
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> Those abuses are well documented, and the Assad regime must be held accountable for them. Together, the United States and our international partners will continue to seek a durable political solution for the conflict in Syria that is grounded in justice and accountability.

C. INTERNATIONAL LAW COMMISSION

1. Draft Articles on Crimes Against Humanity

See *Digest 2022* at 306-07 for a discussion of a draft resolution entitled "Crimes against humanity" adopted by the Sixth Committee in 2022. Under the resolution, the Sixth Committee reconvened for the first of two resumed sessions in April 2023 to debate the crimes against humanity draft articles, with the opportunity for States to provide written comments by the end of 2023. U.S. statements at the resumed session follow.

On April 10, 2023, Attorney Adviser Brian Kelly delivered the U.S. statement at the April 2023 resumed session of the UN General Assembly Sixth Committee International Law Commission's ("ILC") draft articles on the prevention and punishment of crimes against humanity regarding "Cluster One" issues. The statement follows and is available at https://usun.usmission.gov/statement-at-the-april-2023-resumed-session-of-the-sixth-committee-ilcs-draft-articles-on-the-prevention-and-punishment-of-crimes-against-humanity/.

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Cluster 1 (Introductory Provisions: Preamble and Article 1)

Thank you, Mr. Chair. The United States welcomes this opportunity to exchange substantive views with other States on the International Law Commission's Draft Articles on the Prevention and Punishment of Crimes against Humanity. We were proud to join over eighty other co-sponsors of resolution 77/249, which called for this Resumed Session, and we wish to thank the Commission and Special Rapporteur Sean Murphy, in particular, for their valuable contributions to this important project.

The United States has a long and proud history of supporting accountability for those responsible for crimes against humanity, dating back to the instrumental role the United States played in the first prosecution of such crimes before the International Military Tribunal at Nuremberg. We would like to take a moment here to acknowledge, in particular, the extraordinary life and legacy of Ben Ferencz, who passed away on April 7th. After prosecuting perpetrators of crimes against humanity and other atrocities at the Nuremberg Military Tribunals, Mr. Ferencz dedicated his life to advocating for greater international cooperation in holding accountable those responsible for international crimes. His courage, vision, and commitment to international justice should serve as an inspiration to all of us.

More than 75 years after the Nuremberg trials, there is no general multilateral convention on the prevention and punishment of crimes against humanity. Meanwhile, crimes against humanity continue to be committed – all too often with impunity.

The Draft Articles are an important step in that regard. Accordingly, during the Sixth Committee discussions last year, the United States supported an in-depth discussion of the substance of the Draft Articles in a dedicated time and place apart from the usual busy Sixth Committee regular discussions. This Resumed Session is not the place to engage in negotiations of the Draft Articles and does not prejudge the question of whether to launch a process to negotiate a convention on crimes against humanity. Rather, it is an opportunity to exchange

views, including expressions of support, concerns, and any relevant observations about the Draft Articles. We very much look forward to a robust and fruitful discussion.

Turning now to Cluster 1, the United States notes at the outset the important role that the Preamble and Draft Article 1 play in the overall structure of the Draft Articles. We were pleased, in particular, to see that the Preamble draws inspiration from language used in the Convention on the Prevention and Punishment of the Crime of Genocide in setting out the general context and the main purpose of the Draft Articles. The United States views the Genocide Convention, in many respects, as the primary model for any future convention on the prevention and punishment of crimes against humanity.

Nonetheless, we think Draft Article 1 could be clarified in certain respects. For instance, nothing in the Draft Articles should be construed as authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations. The Draft Articles should guard against the possibility that the duty to prevent and punish crimes against humanity could be used as a pretext for unlawful uses of force. Similarly, we believe the language should be clearer that the Draft Articles would not modify international humanitarian law, which is the lex specialis applicable to armed conflicts. We would not want the Draft Articles to be interpreted in ways that may purport to alter international humanitarian law or criminalize conduct undertaken in accordance with international humanitarian law.

With those observations in mind, we appreciate the interventions made earlier today and we look forward to hearing from others about the value of this initiative given the need for the international community to do more to work toward the prevention and punishment of crimes against humanity the world over.

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On April 11, 2023, Attorney Adviser Brian Kelly delivered the U.S. statement at the April 2023 resumed session of the UN General Assembly Sixth Committee ILC's draft articles on the prevention and punishment of crimes against humanity regarding "Cluster Two" issues. The statement follows and is available at https://usun.usmission.gov/statement-april-2023-resumed-session-of-the-sixth-committee-ilcs-draft-articles-on-the-prevention-and-punishment-of-crimes-against-humanity-2/.

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Cluster 2 (Definition and General Obligations: Arts. 2, 3, and 4)

Thank you, Madame Chair. The United States is pleased to address the provisions of the Draft Articles relating to the definition of crimes against humanity, the general obligations of States, and the obligation of prevention.

Turning to Draft Article 2, the United States notes that this is, in many respects, the most important provision of the Draft Articles, as the definition of crimes against humanity has implications for all of the obligations and rights set forth in the other provisions of the Draft Articles. We note, in particular, the critical role that the chapeau element plays in the definition of crimes against humanity—certain acts are crimes against humanity only when they are

committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. This element makes the constituent acts of crimes against humanity that would not already be violations of international law matters of international concern. The chapeau element is fundamentally consistent with international humanitarian law, under which making the civilian population the object of attack is prohibited and punishable as a war crime. This element also distinguishes crimes against humanity from other international crimes, such as genocide.

The United States recognizes at the outset that Draft Article 2 is drawn nearly verbatim from the definition of crimes against humanity in Article 7 of the Rome Statute of the International Criminal Court. We appreciate that State Parties to the Rome Statute may have an interest in ensuring that the definition of crimes against humanity in the Draft Articles is consistent with the definition of crimes against humanity in the Rome Statute. While the United States is not a party to the Rome Statute, we recognize that Article 7 of the Rome Statute provides the most comprehensive list of constituent acts of crimes against humanity in any multilateral instrument, including with respect to rape and other forms of sexual violence, which are far too often overlooked in efforts to hold accountable those responsible for atrocities.

Nonetheless, we think there is value in States giving further consideration to the definition of crimes against humanity in the Draft Articles. As noted in the United States' previous written observations, some of the terms used in Draft Article 2, in our view, lack clarity, which could create challenges for prosecutions under any future convention based on this definition. We note, in this regard, the important role that the ICC Elements of Crimes have played in clarifying the definition of crimes against humanity in the Rome Statute. We think further consideration should be given to whether aspects of the ICC Elements of Crimes could be drawn on here, where appropriate, to help clarify the definition in Draft Article 2.

We also note that Draft Article 2 differs in certain respects from Article 7 of the Rome Statute. Notably, Draft Article 2 does not include the definition of "gender" found in Article 7 of the Rome Statute, which we view as a positive change.

Turning to Draft Article 3, the United States welcomes the fact that the Draft Article draws inspiration from Article I of the Genocide Convention in providing that States undertake to prevent and punish crimes against humanity and clarifying that crimes against humanity are crimes under international law, whether or not committed in time of armed conflict. The United States also appreciates the clear statement, inspired by Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that no exceptional circumstances may be invoked as a justification for crimes against humanity. These principles are, in our view, of critical importance if States are to effectively prevent and punish crimes against humanity.

With respect to Draft Article 4, we welcome the clarification that efforts to prevent crimes against humanity must be undertaken in conformity with applicable international law. In our view, it would be useful to clarify that efforts to punish crimes against humanity also must be undertaken in conformity with applicable international law, including fair trial guarantees.

With regard to sub-paragraph (a), we note that States should take effective legislative, administrative, and judicial measures to prevent crimes against humanity, including crimes against humanity committed by their personnel outside their territory. With respect to sub-paragraph (b), we appreciate that Draft Article 4 draws attention to the significant role that international cooperation plays in efforts to prevent crimes against humanity. However, as reflected in the United States' previous written observations, we have questions and concerns

about its scope, including with respect to the obligation to cooperate with other States and relevant international organizations, recognizing there may be circumstances where such cooperation might not be warranted.

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On April 12, 2023, Chris Jenks, Senior International Humanitarian Law Advisor, delivered the U.S. statement at the April 2023 resumed session of the UN General Assembly Sixth Committee ILC's draft articles on the prevention and punishment of crimes against humanity regarding "Cluster Three" issues. The statement follows and is available at https://usun.usmission.gov/statement-april-2023-resumed-session-of-the-sixth-committee-ilcs-draft-articles-on-the-prevention-and-punishment-of-crimes-against-humanity/.

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Cluster 3 (National Measures: Arts. 6, 7, 8, 9, and 10)

Thank you, Mr. Chair. The United States welcomes the opportunity to address the provisions of the Draft Articles relating to national measures.

Turning to Draft Article 6, we note that the obligation contemplated by paragraph 1—to take necessary measures to ensure crimes against humanity constitute offenses under each State's criminal law—would be key to efforts to more effectively prevent and punish crimes against humanity and combat impunity through national efforts.

In that regard, we note that, although crimes against humanity are not criminalized as such under U.S. law, many existing U.S. laws could be used to punish conduct that constitutes crimes against humanity, such as the domestic crimes of murder, sexual violence, and human trafficking. The Biden Administration has expressed its support for a proposed statute that would make crimes against humanity offenses under U.S. criminal law. This proposal remains a topic of discussion in the United States Congress.

Moving to the other paragraphs of Draft Article 6, we note that they reflect important principles recognized by the International Military Tribunal at Nuremberg that would be critical to the effectiveness of any future convention on the prevention and punishment of crimes against humanity. These include the principle that any person who commits, orders, or otherwise is complicit in crimes against humanity is liable to punishment and the principle that acting pursuant to an order of a government or superior does not relieve a perpetrator of a crime against humanity from responsibility.

With respect to the modes of liability encompassed by Draft Article 6, paragraph 2(c), we note that it would be vital for any future convention on crimes against humanity to address both direct and indirect modes of liability. However, we recognize that States' domestic criminal systems vary, and States may take different approaches to questions of complicity, whether they view it primarily through the lens of accomplice liability, conspiracy, participation in a joint criminal enterprise, common purpose, or another mode of responsibility. Accordingly, we think it would be important for any future convention to allow for flexibility in how States implement their obligations in that regard.

With respect to Draft Article 6, paragraph 3, we recognize the importance of the doctrine of command responsibility in holding accountable those superiors responsible for serious international crimes. Since World War II, this doctrine has played an integral role in holding military commanders and other superiors who have the requisite culpability accountable for offenses committed by their subordinates. However, we recognize that States may approach the concept of command responsibility—including its precise elements and its applicability to both military commanders and other superiors—in different ways. To that end, we are particularly interested in hearing the views of other States on this issue.

With respect to Draft Article 6, paragraph 8, which addresses the liability of "legal persons," we note that there is no universally recognized concept of criminal responsibility for legal persons in international criminal law. We appreciate that paragraph 8 acknowledges as much by expressly providing that national laws and "appropriateness" may dictate whether and how States establish liability for "legal persons." Nonetheless, we think there could be value in further discussion of this concept.

With regards to Draft Article 8, we support a provision requiring States to conduct investigations of crimes against humanity. The duty of States to undertake such investigations is critical if crimes against humanity are to be effectively prevented and punished. However, aspects of Draft Article 8 may warrant further discussion. For example, it is important for States to investigate allegations that their officials have committed crimes against humanity abroad.

The United States believes that Draft Article 9 seeks to address important practical issues in securing custody of alleged offenders. However, in the United States' view, the Draft Article warrants further consideration in light of other obligations States may have. For example, a State may have obligations under a status of forces agreement with regard to an alleged offender in its territory.

With respect to Draft Article 10, the United States welcomes the inclusion of a provision in the Draft Articles that would require States, if they do not extradite or surrender an offender in their territory, to submit the case to competent authorities for the purpose of prosecution. Similar provisions in other instruments have played an important role in helping States prevent and punish other acts prohibited under international law, such as torture. For any future convention on crimes against humanity to be effective, such a provision, in our view, would be critical.

With regard to Draft Articles 8, 9, and 10, the United States believes it would be useful to clarify the situation of alleged offenders who already have been the subject of genuine investigation or other proceedings by their State of nationality. It could be a source of international tension if persons who already were genuinely investigated or even prosecuted for allegations of crimes against humanity by their State were the subject of duplicative or conflicting proceedings in another State.

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On April 12, 2023, Attorney Adviser Brian Kelly delivered the U.S. statement at the April 2023 resumed session of the UN General Assembly Sixth Committee ILC's draft articles on the prevention and punishment of crimes against humanity regarding "Cluster Four" issues. The statement follows and is available at https://usun.usmission.gov/statement-at-the-resumed-session-of-the-un-sixth-committee-on-the-ilcs-draft-articles-on-the-prevention-and-punishment-of-crimes-against-humanity/.

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Cluster 4 (International Measures: Arts. 13, 14, and 15 and Annex)

Thank you, Madame Chair. The United States welcomes the opportunity to address the provisions of the Draft Articles relating to international measures.

Turning to Draft Articles 13 and 14, the United States notes that cooperation between States in matters relating to extradition and mutual legal assistance in cases involving crimes against humanity is critical to international efforts to prevent and punish such crimes. As history has shown, crimes against humanity rarely respect international borders. In that regard, Draft Articles 13 and 14 play an important role in the overall structure of the Draft Articles. We also note that there are widely ratified instruments, such as the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime, that address extradition and mutual legal assistance with respect to specific crimes. In general, the United States believes closely following those provisions, with which a large number of States are familiar, is beneficial.

With respect to Draft Article 15, and in particular paragraph 2, we recognize the important role that the International Court of Justice can play in settling disputes concerning the interpretation or application of any future convention on the prevention and punishment of crimes against humanity. At the same time, we welcome the inclusion in paragraph 3 of a process by which States could declare that they do not consider themselves bound by paragraph 2. In this regard, we note that conventions under which States may make reservations to or otherwise opt out of the Court's jurisdiction, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are more likely to be widely ratified by States.

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On April 13, 2023, Attorney Adviser Brian Kelly delivered the U.S. statement at the April 2023 resumed session of the UN General Assembly Sixth Committee ILC's draft articles on the prevention and punishment of crimes against humanity regarding "Cluster Five" issues. The statement follows and is available at https://usun.usmission.gov/statement-april-2023-resumed-session-of-the-sixth-committee-ilcs-draft-articles-on-the-prevention-and-punishment-of-crimes-against-humanity-3/.

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Cluster 5 (Safeguards: Arts. 5, 11, and 12)

Thank you, Madam Chair. The United States welcomes the opportunity to address the provisions of the Draft Articles relating to safeguards.

With respect to Draft Article 5, the United States recognizes the important role that the principle of non-refoulement plays in protecting individuals from certain acts prohibited under international law. The non-refoulement provisions of the Convention Relating to the Status of Refugees and its protocol and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for example, are critical to ensuring that individuals around the world are protected from return to countries where they face persecution or torture. We note that many of these individuals would receive complementary protection under Draft Article 5. At the same time, we are cognizant of the fact that some States have faced challenges in implementing their non-refoulement obligations and note that Draft Article 5, in contrast to Article 33 of the Refugee Convention, provides for no exceptions. In that regard, we think the non-refoulement obligation contemplated by Draft Article 5, and its potential scope, would be important topics for States to further consider in connection with any future convention on the prevention and punishment of crimes against humanity.

Turning to Draft Article 11, the United States notes that it reflects an important principle recognized by the International Military Tribunal at Nuremberg: that any person charged with a crime under international law must be treated fairly during all stages of the proceedings. This principle is reflected in other instruments, such as the International Covenant on Civil and Political Rights and the Convention against Torture. In our view, references to fair trial guarantees would be an important element of any future convention on crimes against humanity. We note, however, that Draft Article 11 could be clearer and more effective by specifying which rights under applicable national or international law, including international human rights law and international humanitarian law, are included.

With respect to Draft Article 12, the United States welcomes its focus on the rights of victims, their relatives and representatives, and witnesses, who play a key role in proceedings relating to crimes against humanity. Ensuring that they are heard, not subjected to retaliation, and able to obtain redress, as appropriate, is critical to holding those responsible for crimes against humanity accountable and providing victims and their families with some measure of justice. Draft Article 12 is an important step in that regard.

Nonetheless, we do have questions about the "right to obtain reparation." Recognizing that States may address issues relating to remedies in their domestic legal systems in a range of different ways—and that provisions of widely ratified treaties, such as the Convention against Torture, provide useful models—the United States believes there would be value in further discussion of this concept and is interested in hearing the views of other States.

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On October 11, 2023, Legal Adviser Mark Simonoff delivered the U.S. statement at a meeting of the UN General Assembly Sixth Committee on "Agenda Item 83: Crimes against Humanity." The statement follows and is available at https://usun.usmission.gov/remarks-at-meeting-of-the-sixth-committee-on-agenda-item-83-crimes-against-humanity/.

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The United States aligns itself with the statement delivered by the representative of The Gambia on behalf of a broad cross-regional group and makes this further additional statement.

The United States has a long history of supporting accountability for those responsible for crimes against humanity, dating back to the instrumental role the United States played in the first prosecution of such crimes before the International Military Tribunal at Nuremberg. However, more than 75 years after the Nuremberg trials, there is no general multilateral convention on the prevention and punishment of crimes against humanity. Meanwhile, crimes against humanity have continued to be committed around the world – all too often with impunity.

The United States views the International Law Commission's Draft Articles on the prevention and punishment of crimes against humanity as an important step in this regard. We express our deep appreciation to the Commission and to Special Rapporteur Sean Murphy, in particular, for his valuable contributions to this project.

Last fall, the United States was happy to join over eighty other co-sponsors of UN General Assembly resolution 77/249, which established a process for States to further examine and exchange substantive views on the Draft Articles through two resumed sessions of the Sixth Committee and the submission of written comments and observations. We were pleased to participate in the first such session in April, which provided all Member States with the opportunity to engage in a thoughtful, robust exchange of views, without prejudging the decision that this Committee will make next fall on the Commission's recommendation for the elaboration of a convention on the basis of the Draft Articles. The United States looks forward to submitting written comments and observations on the Draft Articles later this year and encourages all other Member States to do so. We also look forward to next year's resumed session of the Sixth Committee, where we hope the rich exchange of views by Member States on this important topic will continue.

Separately, we note that the United States continues to take other important steps to address accountability for crimes against humanity. This includes, among other things, the Biden Administration's expression of support for a proposed statute that would make crimes against humanity offenses under U.S. criminal law, which remains a topic of discussion in the United States Congress.

Finally, the United States unequivocally condemns the appalling attacks by Hamas terrorists against Israel, including civilians and civilian communities, as well as the taking of hostages. There is never any justification for terrorism. Hundreds of civilians were brutally murdered, including children and the elderly. The United States stands in solidarity with the government and people of Israel and we extend our condolences for the lives lost in these attacks.

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In December 2023, the United States provided written comments and final observations on the ILC's draft articles on the prevention and punishment of crimes against humanity. The comments are excerpted below and available at https://www.un.org/en/ga/sixth/78/cah/us_e.pdf.

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Cluster 1: Introductory Provisions (Preamble and Draft Article 1)

The first cluster encompasses the Preamble and Draft Article 1, which introduce and set out the scope of the Draft Articles.

The United States recognizes the important role that the introductory provisions play in the overall structure of the Draft Articles. The United States also appreciates that the Preamble draws inspiration from, among other things, language used in the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) in setting out the general context and the main purpose of the Draft Articles. We view the Genocide Convention, in many respects, as a useful model and starting point for any future convention on the prevention and punishment of crimes against humanity.

Nonetheless, the United States believes the introductory provisions of the Draft Articles could be clarified in certain respects. For instance, nothing in the Draft Articles should be construed as authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations. The Draft Articles should guard against the possibility that the duty to prevent and punish crimes against humanity could be used as a pretext for unlawful uses of force. To be sure, in our view, no provision of the Draft Articles, properly interpreted in good faith, would explicitly or implicitly authorize a State, acting on the pretext of preventing or punishing crimes against humanity, to commit aggression. However, we believe States should be mindful of this issue in connection with any discussions of a future convention on crimes against humanity. We note that potential models for such language could be found in other international instruments, including the preamble to the 1977 Additional Protocol I to the 1949 Geneva Conventions.

Moreover, the United States believes the introductory provisions should make clear that the Draft Articles would not modify international humanitarian law, which is the *lex specialis* applicable to armed conflicts. In the United States' view, it is important that the Draft Articles not be interpreted in ways that may purport to alter international humanitarian law or criminalize conduct undertaken in accordance with international humanitarian law. As discussed in our comments and observations on Cluster 2 below, some of the terms used in the definition of crimes against humanity reflected in Draft Article 2, in our view, lack clarity and could be misinterpreted to criminalize conduct by State actors that is permissible under international law, including international humanitarian law.

Cluster 2: Definition and General Obligations (Draft Arts. 2, 3, and 4)

The second cluster encompasses Draft Article 2, which defines crimes against humanity; Draft Article 3, which sets forth the general obligations of States regarding the prevention and punishment of crimes against humanity; and Draft Article 4, which addresses in more detail how States should undertake to prevent crimes against humanity.

The United States recognizes that Draft Article 2 is, in many respects, the most important provision of the Draft Articles, as the definition of crimes against humanity has implications for all of the obligations and rights set forth in the other provisions of the Draft Articles. As a preliminary matter, we emphasize the critical role that the chapeau element plays in the definition of crimes against humanity--certain acts are crimes against humanity only when they are committed as part of a widespread or systematic attack directed against any civilian

population, with knowledge of the attack. The chapeau element is fundamentally consistent with international humanitarian law, under which making the civilian population the object of attack is prohibited and punishable as a war crime. It also distinguishes crimes against humanity from other international crimes, such as genocide.

The United States recognizes that Draft Article 2 is drawn nearly verbatim from the definition of crimes against humanity in Article 7 of the Rome Statute of the International Criminal Court (ICC). We appreciate that State Parties to the Rome Statute may have an interest in ensuring that the definition of crimes against humanity in the Draft Articles is consistent with the definition of crimes against humanity in the Rome Statute. While the United States is not a party to the Rome Statute, the United States believes the definition of crimes against humanity in the Rome Statute largely should be understood to reflect customary international law. The United States also recognizes that Article 7 of the Rome Statute provides the most comprehensive list of constituent acts of crimes against humanity in any multilateral instrument, including with respect to rape and other forms of sexual violence, which are far too often overlooked in efforts to hold accountable those responsible for atrocities. Closing the impunity gap for crimes involving sexual violence should be, in the United States' view, a goal for any future convention on crimes against humanity.

Nonetheless, we continue to believe that there is value in States giving further consideration to the definition of crimes against humanity reflected in the Draft Articles. As the United States has previously noted, some of the terms used in Draft Article 2 lack clarity, which could create certain challenges for States seeking to implement obligations under any future convention based on this definition, including with respect to prosecuting individuals responsible for crimes against humanity. We note, in this regard, the important role that the ICC Elements of Crimes have played in clarifying the definition of crimes against humanity in the Rome Statute. Further consideration should be given to whether aspects of the ICC Elements of Crimes could be drawn upon, where appropriate, to help clarify the definition in Draft Article 2 and, in turn, the scope of the obligations and rights set forth in the other provisions of the Draft Articles. We also note that Draft Article 2 already differs in certain respects from Article 7 of the Rome Statute. Among other things, Draft Article 2 does not include the definition of "gender" found in Article 7 of the Rome Statute, which the United States views as a positive change that should be retained. Recognizing that the definition of "gender" was highly controversial at the time the Rome Statute was negotiated, any future convention on crimes against humanity should leave this concept undefined to avoid defining "gender" in a strictly binary manner, as is done in the Rome Statute, which fails to reflect an intersectional and gender inclusive approach. In this regard, we also acknowledge efforts by civil society to encourage States to consider gender within the framework of the "crime of apartheid" in any future convention on crimes against humanity.

With regard to Draft Article 3, the United States welcomes the fact that it draws inspiration from Article I of the Genocide Convention in providing that States undertake to prevent and punish crimes against humanity and clarifying that crimes against humanity are crimes under international law, whether or not committed in time of armed conflict. However, as a point of clarification, Article 3(2) might be expanded slightly to confirm that crimes against humanity can be committed by both state and non-state actors, especially given that Article 3(1) might imply that crimes against humanity can only be committed by State actors. In addition, it would be useful to consider whether the provision would be clearer if the phrase "in time of armed conflict" were changed to "in the context of armed conflict." Likewise, the United States

appreciates the clear statement, inspired by Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), that no exceptional circumstances may be invoked as a justification for crimes against humanity. These principles are, in our view, of critical importance to States' efforts to prevent and punish crimes against humanity. Moreover, as a general matter, the United States believes that it would be important for any future convention on crimes against humanity to draw on, to the extent possible, similar provisions in widely ratified instruments such as these.

With respect to Draft Article 4, the United States welcomes the confirmation that efforts to prevent crimes against humanity must be undertaken in conformity with applicable international law. We would welcome similar language elsewhere in the Draft Articles confirming that efforts to punish crimes against humanity must also be undertaken in conformity with applicable international law. However, we also believe further consideration should be given to whether Draft Article 4 could be clarified in certain respects.

As a general matter, the United States notes that it could be helpful to elucidate the relationship between Draft Articles 3 and 4. With respect to Draft Article 4, sub-paragraph (a), we note that, in addition to taking effective legislative, administrative, and judicial measures to prevent crimes against humanity in territories under their jurisdiction, it is critical to clarify that States also should take such measures to prevent crimes against humanity committed by their personnel outside their territory. With respect to sub-paragraph (b), the United States appreciates that it draws attention to the significant role that international cooperation plays in efforts to prevent crimes against humanity. However, as noted in our earlier comments, the United States continues to have questions and concerns about this provision, including with respect to the proposed obligation to cooperate with other States, relevant intergovernmental organizations, and other organizations.

Cluster 3: National Measures (Arts. 6, 7, 8, 9, and 10)

The third cluster encompasses a broad range of provisions. These include Draft Article 6, which generally requires States to criminalize crimes against humanity in their domestic laws and punish offenders appropriately, including when the crimes are committed through various direct or indirect modes of liability or committed by government officials, and to take measures, where appropriate, to establish liability for "legal persons"; Draft Article 7, which sets forth the bases of jurisdiction that States must establish; Draft Article 8, which establishes obligations with respect to when and how States investigate allegations of crimes against humanity; Draft Article 9, which addresses the preliminary measures States should take with regard to offenders; and Draft Article 10, which generally requires States, if they do not extradite or surrender an offender found in territory under their jurisdiction, to submit the case to their competent authorities for the purpose of prosecution.

With respect to Draft Article 6, the United States notes that the obligation contemplated by paragraph 1-to take necessary measures to ensure crimes against humanity constitute offenses under each State's criminal law-is key to efforts to more effectively prevent and punish crimes against humanity and combat impunity through national efforts. We note that, although crimes against humanity are not criminalized as such under U.S. law, many existing U.S. laws could be used to punish conduct that, depending on the circumstance, may constitute a crime against humanity, including federal criminal laws addressing murder, sexual violence, human trafficking, torture, and war crimes. The Biden Administration also supports draft legislation in the United States Congress to make crimes against humanity a separate offense under U.S. criminal law and, to that end, is engaging with members of Congress on this issue.

Moving to the other paragraphs of Draft Article 6, we note that they reflect, in many respects, important principles recognized by the International Military Tribunal at Nuremberg that would be critical to the effectiveness of any future crimes against humanity convention. These include the principle that any person who commits, orders, or otherwise is complicit in crimes against humanity is liable to punishment and the principle that acting pursuant to an order of a government or superior does not categorically relieve a perpetrator of responsibility for crimes against humanity.

With respect to the modes of liability encompassed by Draft Article 6, paragraph 2(c), we believe that it would be vital for any future convention on crimes against humanity to address both direct and indirect modes ofliability. We also note that paragraph 2(c) could, for example, be expanded to conclude with a clause such as", including acting in concert with a group pursuant to a shared common purpose." However, we recognize that States' domestic criminal systems vary, and States may utilize different approaches to questions of complicity, including accomplice liability, conspiracy, participation in a joint criminal enterprise, common purpose, or other modes of responsibility. Accordingly, it is important that any future convention allow flexibility in how States implement their obligations in that regard.

With respect to Draft Article 6, paragraph 3, we recognize the importance of the doctrine of command responsibility to holding accountable those superiors who are responsible for serious international crimes. Since World War II, this doctrine has played an integral role in holding military commanders and other superiors accountable for offenses committed by their subordinates when they have the requisite culpability. However, we also recognize that States may approach the concept of command responsibility-including its precise elements and its applicability to both military commanders and other superiors-in different ways, just as there are different approaches to other indirect modes of liability. To that end, it is important that any future convention allow flexibility in how States implement their obligations with regard to indirect modes of liability and we continue to be interested in hearing the views of other States on this issue.

With respect to Draft Article 6, paragraph 8, which addresses the liability of "legal persons," we note that there is no universally recognized concept of criminal responsibility for legal persons in international criminal law. We appreciate that paragraph 8 acknowledges as much by expressly providing that national laws and "appropriateness" may dictate whether and how States establish liability for "legal persons." Nonetheless, we think there is value in States further considering this concept, including with respect to the scope of liability and the elements to establish such liability. To that end, the United States also would welcome the opportunity to hear from States that recognize liability for "legal persons" for international crimes about their experiences in this area.

Turning to Draft Article 7, which addresses the establishment of national jurisdiction, the United States recognizes how this provision can support efforts to improve international cooperation to hold accountable individuals responsible for crimes against humanity consistent with international law. In that regard, we support national authorities taking steps to establish jurisdiction over such crimes, as appropriate. We recognize that States take a number of different approaches to the question of jurisdiction, and it would be important to provide flexibility for domestic implementation in any future convention. Furthermore, the establishment of jurisdiction should not be used to facilitate inappropriate prosecutions. While we continue to examine this provision, we generally believe Draft Article 7, including paragraph 2's

contemplation of a form of present-in jurisdiction, may be appropriately crafted, provided that appropriate safeguards can also be established, as discussed below.

Nevertheless, we recognize that Draft Article 7 generated a robust discussion in April's resumed session and note the concerns expressed by several delegations that Draft Article 7 does not address the possibility of overlapping or competing claims of jurisdiction by States. Accordingly, we believe it is important for States to consider whether the Draft Article should expressly acknowledge the priority of the State whose official or national allegedly committed the crime or in whose territory the crime allegedly occurred if there are overlapping or competing exercises of jurisdiction. The United States has previously expressed its concerns regarding unwarranted assertions of jurisdiction in this context, which could lead to increased tensions between States as States seek to exercise jurisdiction over the same matter in conflicting ways. We also would encourage States to consider whether a reference to States' obligations under international law regarding fair trial guarantees and other applicable legal protections should be added to Draft Article 7, sub-paragraph (3), recognizing that a State's exercise of criminal jurisdiction under its domestic law must still be in accordance with its obligations under international law, as Draft Article 11 also acknowledges. In this regard, we also note that sub-paragraph (3) as currently drafted is overbroad because the Draft Articles should seek to exclude exercises of criminal jurisdiction that are not in conformity with applicable international law. Sub-paragraph (3) of Draft Article 7 could be refined to clarify this.

With regards to Draft Article 8, the United States supports a provision requiring States to conduct investigations of crimes against humanity. Undertaking such investigations is critical if crimes against humanity are to be effectively prevented and punished. However, we note that certain aspects of Draft Article 8 may warrant further discussion and consideration by States. For example, Draft Article 8 does not currently contemplate an obligation for States to investigate allegations that their officials have committed crimes against humanity abroad, which would be important if States are to more effectively prevent and punish crimes against humanity.

Accordingly, the text of the Draft Article could be easily amended to incorporate such an obligation. Similarly, the relationship between the investigation contemplated in Draft Article 8 and the preliminary inquiry in Draft Article 9 should be considered further and clarified.

Turning to Draft Article 9, the United States believes it addresses important, practical issues in securing custody of alleged offenders. However, in the United States' view, the Draft Article warrants further consideration by States. For example, a State may have relevant obligations under a status of forces agreement with regard to an alleged offender in its territory.

With respect to Draft Article 10, the United States welcomes the inclusion of a provision in the Draft Articles that would require States, if they do not extradite or surrender an offender in territory under their jurisdiction, to submit the case to competent authorities for the purpose of examining whether prosecution would be appropriate. Similar provisions in other instruments have played an important role in helping States prevent and punish other acts prohibited under international law, such as torture. For any future convention on crimes against humanity to be effective, such a provision, in our view, would be critical.

Finally, with respect to Draft Articles 8, 9, and 10 more generally, the United States believes it would be useful to consider and develop safeguards to avoid any future convention on crimes against humanity providing a pretext for prosecutions inappropriately targeting officials of foreign States. For example, it would be useful to clarify the situation of alleged offenders who already have been the subject of genuine investigation or other proceedings by their State of nationality. We note that it could be a source of international tension if persons who already were

genuinely investigated or prosecuted for allegations of crimes against humanity by their State were the subject of duplicative or conflicting proceedings in another State. Recognizing that several delegations raised similar concerns during the April 2023 resumed session, the United States believes this issue, including as it concerns double jeopardy or *ne bis in idem,* would benefit from further consideration and discussion by States.

Cluster 4: International Measures {Arts. 13, 14, and 15 and Annex)

The fourth cluster encompasses Draft Article 13, which addresses extradition; Draft Article 14 and the related Annex, which address mutual legal assistance; and Draft Article 15, which addresses dispute settlement.

With respect to Draft Articles 13 and 14, the United States notes that cooperation between States for the purpose of extradition and mutual legal assistance in cases involving crimes against humanity is critical to international efforts to prevent and punish such crimes. As history has shown, crimes against humanity rarely respect international borders. Draft Articles 13 and 14, accordingly, play an important role in the overall structure of the Draft Articles and the critical twin goals of effective prevention and punishment.

We also note that there are widely ratified instruments, such as the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC), that address extradition and mutual legal assistance with respect to specific crimes. In general, the United States believes that it would be beneficial for any future convention on crimes against humanity to closely follow those provisions, recognizing many States are familiar with them. With respect to Draft Article 15, and particularly paragraph 2, we recognize the important role that the International Court of Justice could play in settling disputes concerning the interpretation or application of any future convention on the prevention and punishment of crimes against humanity. At the same time, we welcome the inclusion in paragraph 3 of a process by which States could declare that they do not consider themselves bound by paragraph 2. In this regard, we note that conventions under which States may make reservations to or otherwise opt out of the Court's jurisdiction, such as the Genocide Convention and the CAT, are more likely to be widely ratified by States.

The United States also noted the suggestion from some delegations during the April 2023 resumed session that a treaty body could be established to monitor implementation of States' obligations under any future convention on crimes against humanity. We recognize the important role that treaty bodies have played in monitoring the implementation of State Parties' obligations under various human rights treaties, including, for instance, the International Covenant on Civil and Political Rights (ICCPR) and the CAT.

With respect to the Annex, we continue to believe that paragraph 2 could benefit from streamlining. This could include deleting the second, fourth, and sixth sentences, which are drawn from UNCAC and UNTOC but are seemingly extraneous in this context. It could also include deleting the seventh sentence, recognizing that one of the purposes of the Draft Articles would be to bypass the *ad hoc* diplomatic process for requesting legal assistance, which can be cumbersome and time consuming, and note that the reference to INTERPOL is unnecessary if the purpose of the Draft Articles is to encourage working through central authorities in each State.

Cluster 5: Safeguards (Arts. 5, 11, and 12)

The fifth cluster encompasses Draft Article 5, which contemplates an absolute prohibition on refoulement; Draft Article 11, which addresses fair treatment of offenders; and Draft Article

12, which sets forth rights and obligations regarding victims and witnesses, including with respect to reparations.

With regards to Draft Article 5, the United States recognizes the important role that the principle of non-refoulement plays in protecting individuals from certain acts prohibited under international law. The non-refoulement provisions of the 195 l Convention Relating to the Status of Refugees (the Refugee Convention), its 1967 Protocol, and the CAT, for example, are critical to ensuring that individuals around the world are protected from return to countries where they face persecution or torture. We note that many of these individuals would receive complementary protection under Draft Article 5.

At the same time, we are cognizant of the fact that some States have faced challenges in implementing their non-refoulement obligations under other treaties and recognize that several delegations raised questions and concerns about Draft Article 5 during the April 2023 resumed session. We also note that widely ratified conventions have framed non-refoulement obligations in different ways. The Refugee Convention and its Protocol, for instance, generally exclude from protection individuals who have committed particularly serious crimes, including crimes against humanity, and individuals who pose a danger to the security of the country they are in. The CAT, by contrast, recognizes no exceptions to the obligation of non-refoulement. Accordingly, we think the non-refoulement obligation contemplated by Draft Article 5, and its potential scope, would be important issues for States to further consider in connection with any future convention on crimes against humanity.

Turning to Draft Article 11, the United States notes that it reflects an important principle recognized by the International Military Tribunal at Nuremberg: that any person charged with a crime under international law must be treated fairly during all stages of the proceedings. This principle is reflected in other instruments, such as the ICCPR, the CAT, and the 1949 Geneva Conventions. In our view, references to fair trial guarantees would be an important element of any future convention on crimes against humanity.

Nevertheless, we note that Draft Article 11 could be clearer in several respects. For instance, Draft Article 11, paragraph 1, would require States to guarantee the "full protection" of the offender's "rights under applicable national and international law, including human rights law and international humanitarian law," but it does not specify which rights under international human rights law and international humanitarian law are contemplated. We note that this issue generated a robust discussion during the April 2023 resumed session. Given that, the United States believes there would be value in States further considering whether Draft Article 11 could be more effective if it specified which rights under applicable national or international law it encompasses.

We also share the concerns expressed by several other delegations in the April 2023 resumed session that Draft Article 11(2), which addresses communication between a detainee and representatives of their State of nationality, does not precisely follow the language used in Article 36 of the Vienna Convention on Consular Relations, and instead alters the formulation in ways that deviate from Article 36. Moreover, we reiterate that the "rights" of consular notification and access described in Article 36 of the Vienna Convention on Consular Relations belong to States, not individuals, and, as such, they are not enforceable by private individuals.We also believe the novel language on stateless persons in Draft Article 11(2)(a) would benefit from further consideration and discussion by States. Moreover, Draft Article 11(2)'s application in circumstances of armed conflict should also be considered, because such visits to persons covered by the Third or Fourth Geneva Conventions typically would be performed by the

Protecting Power or the International Committee of the Red Cross, rather than representatives of the opposing belligerent State.

With respect to Draft Article 12, the United States welcomes its focus on the rights of victims, their relatives and representatives, and witnesses, who play a key role in proceedings relating to crimes against humanity. Ensuring that they are heard, not subjected to retaliation, and able to obtain redress, as appropriate, is critical to holding those responsible for crimes against humanity accountable and providing victims and their families with some measure of justice. Draft Article 12 is an important step in that regard.

Nonetheless, we believe that Draft Article 12 lacks clarity in certain respects, including with respect to the scope of the "right to complain" contemplated by Draft Article 12(1) and the "right to obtain reparation" contemplated by Draft Article 12(3). Recognizing that States may address these and other issues relating to remedies in their domestic legal systems in a range of different ways-and that provisions of widely ratified treaties, such as the CAT, could serve as useful models in that regard-the United States believes that Draft Article 12 warrants further consideration and discussion by States.

The ILC's Recommendation

The United States believes that a convention on crimes against humanity could play an important role in strengthening international efforts to prevent and punish such crimes and views the Draft Articles as an important step in that regard. Recognizing the importance of the process established by resolution 77/249, the United States remains focused on sharing its views on the content of the Draft Articles and hearing the views of other Member States. To that end, the United States was pleased to participate in the first resumed session in April 2023 and looks forward to reviewing the written comments and observations on the Draft Articles by other Member States. We also look forward to next year's resumed session, during which we hope the robust exchange of views between States will continue. As the United States has previously noted, we do not believe this process should prejudge the decision the Sixth Committee will make next fall on the Commission's recommendation.

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2. Draft Articles on Protection of Persons in the Event of Disasters

On October 4, 2023, Acting Deputy Legal Adviser Elizabeth Grosso delivered the U.S. statement at the UN General Assembly Sixth Committee meeting on "Agenda Item 86: Protection of Persons in the Event of Disasters." The statement follows and is available at https://usun.usmission.gov/remarks-at-meeting-of-the-sixth-committee-on-agenda-item-86-protection-of-persons-in-the-event-of-disasters/.

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The United States is deeply committed to providing assistance to persons affected by disasters and is the largest single provider of humanitarian assistance worldwide. U.S. funding provides life-saving assistance to tens of millions of displaced and crisis-affected people worldwide,

including food, shelter, safe drinking water, improved sanitation and hygiene, emergency healthcare services, protection programs, and education, among other activities.

The United States recognizes and appreciates the efforts of the International Law Commission in preparing the Draft Articles on the Protection of Persons in the Event of Disasters. In particular, we appreciate the ILC's decision to include provisions on the protection of personnel providing assistance following disasters. While the United States believes that the Draft Articles can contribute to the provision of practical guidance and cooperation for disaster assistance, we continue to have reservations about several aspects of the Draft Articles.

In particular, the United States believes the definition of "disaster" in the Draft Articles may be problematic insofar as it does not clearly exclude circumstances such as situations of armed conflict or other political or economic crises. This approach creates a risk that the Draft Articles could conflict with international humanitarian law.

The United States also has concerns about the statement in Draft Article 13 that the provision of external assistance requires the consent of the affected state. While the United States agrees in principle that external assistance should normally be delivered with the consent of the affected state, it would be necessary to consider, based on all of the facts and circumstances, whether the provision of assistance without consent would violate the territorial integrity of the affected state or would violate the principle of non-intervention. There may be situations, such as where the government of an affected state has collapsed, where consent is either unavailable or unnecessary. We believe further changes are required for this provision to appropriately describe the role of state consent in the provision of disaster assistance.

Finally, the Draft Articles include numerous assertions of obligations that are not currently part of international law and should not, as a whole, be relied upon as a codification of existing law. For example, with respect to Draft Article 7, we do not agree that states currently have a specific legal obligation to cooperate with the range of organizations listed in this paragraph in responding to disasters. Similarly, Article 12 purports to establish a duty of potential assisting actors such as other states or the United Nations to "expeditiously" consider and reply to requests. Though we agree this may be an appropriate best practice, it is not an existing obligation under international law. Careful analysis and consultations with relevant actors will be necessary to ensure that the Draft Articles do not undermine existing bodies of international law, such as international human rights law. In some instances, provisions currently described as binding obligations may be more appropriately framed as non-binding guidelines.

The United States welcomes the opportunity to further discuss the Draft Articles in the Working Group and looks forward to valuable discussions in the coming days.

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On October 5, 2023, Attorney Adviser Sam Birnbaum delivered the U.S. statement at the UN General Assembly Sixth Committee meeting on "Agenda Item 86: Protection of Persons in the Event of Disasters Cluster 1." The statement follows and is available at https://usun.usmission.gov/remarks-at-meeting-of-the-sixth-committee-working-group-on-agenda-item-86-protection-of-persons-in-the-event-of-disasters-cluster-1/.

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The United States is pleased to participate in this working group on an area of international law with the potential to impact many lives around the globe. As we discussed in our remarks before the plenary yesterday, we believe the Draft Articles can make a valuable contribution to the provision of practical guidance and cooperation for disaster assistance, though we have concerns about several aspects of specific Draft Articles as written. We emphasize that this Working Group is not the place to engage in negotiations of the Draft Articles and does not prejudge the question of whether to launch a process to negotiate a convention on protection of persons in the event of disasters. Rather, it is an opportunity to exchange views, including expressions of support, concerns, and any relevant observations about the Draft Articles. We very much look forward to a robust and fruitful discussion.

I will turn directly to Draft Article 3, which contains the Draft Articles' definition of disaster. The United States appreciates the considerable thought that went into the Commission's work on these Draft Articles, including the definition of "disaster," but has significant concerns with this definition. The United States is concerned that the definition of "disaster" does not clearly exclude circumstances such as situations of armed conflict or other political and economic crises. Regrettably, "great human suffering and distress," "mass displacement," and "widespread loss of life" regularly occur in armed conflict. International humanitarian law, which governs the conduct of hostilities and the protection of victims of war, provides principles and rules to address the humanitarian consequences of armed conflict. There is a risk that the Draft Articles could conflict with this body of law, and that this risk is not adequately addressed by

Draft Article 18, which I will turn to in a moment. The better approach to mitigating this risk, in our view, is to define "disaster" so as to remove the consequences of armed conflict from the definition. This would not be a blanket exclusion of the applicability of the Draft Articles in all situations of armed conflict, but instead would only exclude the consequences of an armed conflict in order to avoid potential inconsistency with international humanitarian law.

Turning now to Draft Article 18, the United States appreciates the Commission's revision to this draft article to include paragraph two's express statement that the Draft Articles do not apply to the extent that a response to a disaster is governed by the rules of international humanitarian law. However, in our view, this provision is not sufficiently clear regarding whether the Draft Articles would apply in situations of armed conflict where there is no specifically applicable "rule" of international humanitarian law governing the response to a disaster We recommend that Draft Article 18(2) expressly affirm that the Draft Articles do not regulate the consequences of armed conflict but may apply in relation to disasters that coincide with situations of armed conflict, to the extent that the activities are not governed by international humanitarian law.

Separately, the United States has concerns with the definitions of "assisting State" and "other assisting actor" in Draft Article 3 insofar as those definitions are limited to states and other actors providing assistance to affected States that have provided "consent." As we will discuss in more detail in our comments on Draft Article 13, the United States does not believe that international law categorically requires state consent for the delivery of humanitarian assistance.

Finally, the United States notes that the definition of "affected state" in Draft Article 3 is problematic insofar as the definition covers situations that occur outside the territory of a state

but under the state's "jurisdiction or control." Under this definition, a state could incur responsibilities as an "affected state" with respect to territory over which it does not have sovereignty, and over which another state claims sovereignty. This element of the definition creates the potential for confusion or disagreement among "affected states" that could delay an effective response. We therefore recommend limiting the definition of "affected state" to states affected by disasters on their territory and subject to their jurisdiction.

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3. Work of the International Law Commission's 74th Session

On October 23, 2023, Acting Legal Adviser Richard Visek delivered the U.S. statement at the 78th session of the General Assembly Sixth Committee meeting on "Agenda Item 79: Report of the International Law Commission on the work of its seventy-fourth session (Cluster One)." That statement follows and is available at https://usun.usmission.gov/remarks-at-the-sixth-committee-on-agenda-item-79-report-of-the-international-law-commission-on-the-work-of-its-seventy-fourth-session-cluster-one/.

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The United States continues to strongly support the work of the International Law Commission. Over time, the ILC has provided products for this Committee's consideration that both codify international law and represent progressive development of international law. Some of these products have proved useful to the international community in determining the content of international law. Others have resulted in multilateral treaties.

Along these lines, the United States was proud last Fall to join over eighty other co-sponsors of UN General Assembly resolution 77/249, which provided for two resumed sessions of this Committee to further examine and exchange substantive views on the ILC's draft articles on the prevention and punishment of crimes against humanity. We were pleased to participate in the first session in April, where all Member States had the opportunity to engage in a thoughtful, robust exchange of views. The United States looks forward to submitting written comments and observations on the draft articles later this year and encourages other Member States to do so. We also look forward to next year's resumed session of the Sixth Committee, where we hope the rich exchange of views by Member States on this important topic will continue. As we have previously stated, a convention on crimes against humanity would fill an important gap in the international legal framework – one that is critical now more than ever.

I will now turn to address the specific topics on the agenda for this cluster, namely general principles of law, sea-level rise in relation to international law, and other decisions and conclusions of the Commission.

General Principles of Law

Turning first to the topic "General Principles of Law," I join others in thanking ILC Special Rapporteur Marcelo Vazquez-Bermudez for his clear exposition of the topic and the

thoughtful work over the last several years. This is an important and challenging issue, and we welcome the Commission's efforts to address it. We are mindful, however, of the possibility that litigants in international disputes may draw upon the Commission's work to argue for obligations in ways that states don't agree with or did not intend. Therefore, as some Members have recognized, the Commission should be careful not to engage in an exercise of progressive development on a topic concerning one of the sources of international law.

In this regard, and by way of example, I will highlight two areas of concern.

The first relates to Draft Conclusion 7, which provides that a particular principle "formed within the international legal system" may be considered a general principle of law.

We are not yet convinced that there is sufficient practice by States to assess whether or how general principles can be formed solely on the international plane. We note that some Members of the Commission expressed a similar concern. Given the differing views on the question of whether sufficient practice exists to conclude that general principles may be formed within the international legal system, the better course of action may be to include a "without prejudice" conclusion that would allow the question to be addressed in the future if that state practice were to evolve.

Separately, we question whether Draft Conclusion 7 sets out an appropriate test for determining whether a general principle of law has emerged. The "intrinsic" test that is currently discussed in the draft seems to have an element of automaticity to it that is difficult to square with the guidance in Draft Conclusion 2 that for a general principle of law to exist, it must be recognized by the community of nations. Given the Commission's acknowledgement in the draft that this second category of general principles may not exist, it would seem prudent to include in Draft Conclusion 7 an express requirement that states recognize a principle as legally binding—not simply that it is "intrinsic" to the international legal system.

An additional area of concern relates to the test for assessing whether principles of law from municipal systems have been transposed to the international plane. To be sure, the Commentary to Draft Conclusion 6 does acknowledge that recognition by states of transposition is "required." However, the commentary goes on to say that such recognition by states is "implicit" whenever a principle is "compatible" with the international legal system. This suggests a level of automaticity that again we do not think is supported.

Under Article 38(1) of the ICJ Statute there is no hierarchy between treaties, customary international law, and general principles as sources of binding law. We therefore believe that state consent is required to find a general principle just as it is for states to be bound by treaties or customary international law, even if such consent may be manifested differently. We encourage the Commission to examine this issue further and revisit its conclusion. In our view, there needs to be some objective indication—in the form of state recognition of a principle through pleadings in international courts, for example—that states consider a rule to be applicable on the international plane before it may be considered to have reached the status of a general principle of law.

Notwithstanding these concerns I wish to reiterate that the United States very much welcomes that the Commission has taken this on. It is an important topic, and we look forward to continuing our engagement as the project develops.

Sea-Level Rise in Relation to International Law

With respect to the topic of "sea-level rise in relation to international law," the United States appreciates the Commission's continuing efforts with respect to issues related to the law of the sea. The issues under consideration are complex, and we recognize the Study Group's

efforts to find reliable solutions. The United States is committed to working with others to preserve the legitimacy of maritime zones, and associated rights and entitlements, that have been established consistent with international law as reflected in the UN Convention on the Law of the Sea and that are not subsequently updated despite sea-level rise caused by climate change.

The United States recognizes that new trends are developing in the practices and views of States on the need for stable maritime zones in the face of sea-level rise. We also emphasize the universal and unified character of the UN Convention on the Law of the Sea. The United States encourages States that have not yet done so to take steps now to determine, memorialize, and publish their coastal baselines in accordance with the international law of the sea as set out in the Convention.

Such actions will assist other States in implementing their policies on sea-level rise. In this respect, the United States notes its own commitment not to challenge lawfully established baselines and maritime zone limits that are not subsequently updated despite sea-level rise caused by climate change. The United States urges States that have not made similar commitments to do so to promote the stability, security, certainty, and predictability of maritime entitlements that are vulnerable to sea-level rise.

We recognize that sea-level rise poses a threat to more than just maritime entitlements; it also poses substantial threats to coastal communities and island States around the world. On a global scale, the combination of warming ocean waters and melting ice located on land is leading to sea-level rise that is occurring at an ever-increasing rate. For some States, particularly low-lying island States in the Pacific Ocean, increasing sea levels pose an existential threat. In recognition of this, the United States announced in September that it considers that sea-level rise driven by human-induced climate change should not cause any country to lose its statehood or its membership in the United Nations, its specialized agencies, or other international organizations. The United States is committed to working with Pacific Island States and others on issues relating to human-induced sea-level rise and statehood to advance those objectives.

Other Decisions and Conclusions of the Commission

I turn now to the last topic in cluster 1, namely, "other decisions and conclusions of the Commission." We would like to make four brief points concerning the issues summarized in Chapter Ten of the ILC's Report.

First, the United States notes the Commission's decision to include the topic "non-legally binding international agreements" in its program of work and congratulates Mr. Mathias Forteau for his appointment as Special Rapporteur. We [suggest/echo the suggestions of others], however, that the title for this topic be changed to "non-legally binding international instruments" to reflect the position of many States that the term "agreement" is reserved for those of a legally binding nature.

Second, we congratulate Mr. Claudio Grossman for his appointment as Special Rapporteur for the topic of "immunity of State officials from foreign criminal jurisdiction." As the United States has previously explained, we have longstanding concerns with these draft articles both in terms of the process by which they have been developed and the substance. We will not raise all of these concerns again here but highlight once again that we do not agree that Draft Article 7 is supported by consistent State practice and opinio juris and therefore do not agree that it reflects customary international law.

Despite the concerns that the United States and others have articulated, the Commission adopted the draft articles at the first reading last year. We expect to submit detailed written comments later this year. We appreciate the Special Rapporteur's emphasis on the importance of

States' comments and welcome the Commission's commitment to reflect further on the concerns raised by States in their written submissions. If the articles are left unrevised, the commentary should indicate where such articles reflect a proposal for the progressive development of the law rather than codification. Further, the likelihood of the draft articles being adopted by States as an international convention will be greatly reduced if they continue not to reflect customary international law and diverge from the expressed views of States. We urge the Commission to reconsider the draft articles in this light, both in substance and in format.

Third, the United States takes note of the efforts of the working groups on the program, procedures and working methods of the Commission. In particular, we welcome the reconstitution of the Working Group on Methods of Work and congratulate Mr. Charles Jalloh on his election as its Chair.

In this connection, the United States has raised concerns in the past with the ILC's working methods. Such concerns include the lack of clarity between products that constitute codification and those that constitute progressive development, and confusion about how the Commission chooses the format of its work products. Both issues impact how the ILC's work products are developed by the ILC and are to be understood by the broader community.

We are therefore interested in proposals such as the possible development of guidance on the nomenclature of the texts and instruments adopted by the Commission. We gather that this guidance would include the meaning of output on topics described as draft articles, draft conclusions, draft guidelines, and draft principles. We are also interested in the proposal to establish a mechanism to review the reception by Member States of past products of the Commission.

Fourth, the United States notes the Commission's highly ambitious tentative schedule for its work programme over the next five years. We would urge the Commission to ensure that it takes a deliberative and measured approach to these important topics, including to allow sufficient time to receive and reflect the input of Member States.

The United States remains, as ever, supportive of the work of the International Law Commission, and congratulates its members on a very productive session.

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On October 27, 2023, Attorney Adviser Nicole Thornton delivered the U.S. statement at the UN General Assembly Sixth Committee meeting on the Report of the ILC on its 74th Session regarding "Cluster 2" issues. The remarks are excerpted below and available at https://usun.usmission.gov/statement-on-the-report-of-the-ilc-on-the-work-of-its-74th-session-cluster-2/.

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Thank you, Chair. The United States is pleased to address both topics in this cluster, settlement of disputes to which international organizations are parties and prevention and repression of piracy and armed robbery at sea.

Settlement of disputes to which international organizations are parties

Turning to the first topic, the United States provides its thanks and appreciation to Special Rapporteur August Reinisch for his initial scoping and exploration of important questions underpinning the topic.

We acknowledge the commentary's explanation that the guidelines are intended to restate the existing practices of international organizations concerning the settlement of their disputes and to develop recommendations for the most appropriate ways of handling them. In this vein, the United States appreciates the approach to elaborate a set of draft guidelines as the form for the Commission's output on this topic.

We also appreciate that this project will be focused on the availability and adequacy of means for the settlement of disputes to which international organizations are parties, and not intended to elaborate or rewrite rules and principles that apply to international disputes more generally.

We look forward to future work on this topic.

Prevention and repression of piracy and armed robbery at sea

Turning next to the second topic on piracy, the United States also extends its appreciation to Special Rapporteur Yacouba Cissé for his efforts in producing his first report. The United States was pleased to provide information to the Commission regarding the law and practice of the United States and our support for efforts at the international, regional, and subregional levels to prevent and counter piracy and armed robbery at sea.

We appreciate the report's survey of the abundant state practice in this area, both as regards the well-established international law crime of piracy, codified in Article 101 of the UN

Convention on the Law of the Sea, and states' treatment of crimes occurring at sea that fall outside that definition. This clear articulation of the international crime of piracy in Article 101 has been widely accepted since the adoption of the 1958 Convention on the High Seas. It remains fit for purpose, and serves important functions, including that states seeking to enforce their laws can distinguish between criminal acts that are subject to universal jurisdiction and those that, appropriately, are not. In this regard, we question whether draft articles are the most appropriate or useful vehicle for this particular topic. Moreover, international cooperation is important regarding both piracy and other crimes at sea that do not fall within the meaning of piracy under international law, with potential considerations that can vary depending on the nature of the offense. To that end, we appreciate that the Commission will continue to take the opinions and practices of states carefully into account, and we will follow with interest as the Commission continues to explore the existing relevant domestic legal frameworks, including states' laws on the treatment of conduct that falls within their jurisdiction but outside the definition of piracy under international law, including armed robbery at sea.

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On October 31, 2023, Attorney Adviser Nicole Thornton delivered the U.S. statement on the Report of the ILC on its 74th Session regarding "Cluster 3" issues. The remarks follow and are available at https://usun.usmission.gov/statement-at-the-unga-78-report-of-the-ilc-on-the-work-of-its-74th-session-cluster-3/.

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Thank you, Chair. The United States is pleased to address both topics in this cluster, subsidiary means for determining rules of international law and succession of States in respect of State responsibility.

Subsidiary Means

Turning first to subsidiary means for the determination of rules of international law, we'd like to reiterate our support for this important project and thank Special Rapporteur Charles Jalloh for this extensively researched and thorough first report. The United States was pleased to provide information to the Commission earlier this year on the topic.

At the outset, we agree that it will be important to study the function of subsidiary means early in the Commission's examination of this topic, and we look forward to the Special Rapporteur's second report.

With respect to the possibility of clarifying or adding additional subsidiary means, beyond those which are identified in Article 38, paragraph 1(d) of the Statute of the International Court of Justice, we appreciate the Commission's caution and look forward to seeing how this issue develops. In this respect, we note that many of the other proposed sources of subsidiary means described in the report are expert bodies that are typically themselves comprised of publicists. We also urge caution with respect to the use of resolutions or decisions of international organizations as subsidiary means given the high number of such resolutions, most of which are non-binding, and which are often adopted with minimal debate and through consensus procedures. For these and other reasons, we also wonder whether the proposed criteria for assessing the weight of subsidiary means are adequately developed with respect to these or other potential additional subsidiary means.

We also support those Members who identified the cogency and quality of the reasoning as an important factor in assessing the weight of subsidiary means. For example, when assigning weight to the decisions of courts and tribunals as addressed in draft conclusion 4, it is important to consider whether the decision is well-reasoned. A decision that provides evidence of any conclusions concerning the existence and content of a rule of international law, including references to the extensive state practice and *opinio juris* upon which it relies, should be accorded more weight than one that is simply declaratory. In addition, while the commentary does not suggest any hierarchy among the criteria for assessing the weight of subsidiary means, the reception by States should be of prime importance, together with the quality of the reasoning.

We look forward to future work on this important topic.

Succession of States in respect of State Responsibility

Turning to the second topic for this cluster, that of succession of States in respect of State responsibility, we take note of the establishment of a Working Group on the topic and congratulate Mr. Reinisch on his appointment as Chair.

The United States welcomes the incremental approach of the Commission to this topic. In particular, we agree with the decision to continue consideration of the issue but not proceed with the appointment of a new Special Rapporteur while the Working Group takes more time to reflect on the best way forward. We look forward to further engaging on this topic when it is ripe to do so. Thank you.

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4. Draft Articles on Criminal Immunity of State Officials

On December 6, 2023, the United States submitted written comments on the ILC's draft articles on the immunity of State officials from foreign criminal jurisdiction, adopted by the Commission in 2022 on First Reading. The comments are available at https://legal.un.org/ilc/sessions/75/pdfs/english/iso_us.pdf, and excerpted below (footnotes omitted).

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General Observations

The United States appreciates the opportunity to provide written comments on the International Law Commission's (ILC) Draft Articles on the Immunity of State Officials from Foreign Criminal Jurisdiction, which were adopted on first reading on June 3, 2022, and associated commentaries. The United States recognizes and appreciates the efforts of the Commission to take into account the views of States. The United States also wishes to recognize and thank the efforts of two prior Special Rapporteurs on this project, most recently Ms. Concepción Escobar Hernández and, before her, Mr. Roman Anatolevich Kolodkin. The United States welcomes Mr. Claudio Grossman Guiloff as the new Special Rapporteur and looks forward to a continued dialogue on the form and substance of this complex and challenging project.

The topic of immunity of State officials from foreign criminal jurisdiction is of vital importance and practical significance. The United States remains prepared to engage with the Commission on this topic and committed to identifying the rules under which State officials performing their official duties overseas are adequately protected – particularly in those jurisdictions which allow for private parties (as opposed to State entities) to initiate a criminal prosecution – and ensuring that those responsible for international crimes do not go unpunished.

The Commission's mandate is to document the areas in which States have established international law or to propose new rules for States to consider adopting through conventions or State practice. In addressing customary law, the Commission needs to ensure its work is well supported by relevant practice and properly distinguishes between efforts to codify international law and recommendations for its progressive development.

The Draft Articles in many instances are not supported by sufficient State practice and *opinio juris,* and accordingly do not reflect customary international law. Rather, the Draft Articles frequently appear to articulate new legal duties or proposals for the progressive development of the law but do so without adequately acknowledging that intention. This lack of clarity makes it difficult to determine how much weight to accord various provisions as reflecting (or not) existing international law and thereby undermines the overall utility of the Draft Articles to States and risks misapplication by others who look to ILC work products as authoritative.

Our concern is heightened by the striking lack of consensus regarding these Draft Articles. The United States and others have consistently objected to Draft Article 7, which presents a clear example of this issue. Disagreement is evident among States, the Drafting Committee, and even the two prior Special Rapporteurs, who reached opposite conclusions with respect to international crimes exceptions to functional immunity. The Commission's split vote in 2017 that advanced the provisional adoption of Draft Article 7 underscores this division and was a highly unusual deviation from the normal consensus process that has promoted support for the ILC's work products. When the Draft Articles were adopted on first reading last summer, it was noted that although there was not a vote, concerns about Draft Article 7 had not been resolved. The Commentary to Draft Article 7, too, notes various theories for the international crime exceptions rather than presenting a unified legal rationale. The failure in this draft to reach consensus on whether or how there are or should be exceptions or limitations to functional immunity for international crimes, and the reasons for it, undermines the entire endeavor, including by exposing ambiguities in the Draft Articles' definition of an "official act." Additional State practice and broadly supported legal rationales would provide a foundation for consensus on these sensitive issues. As currently written, the Draft Articles risk uneven application, interference with existing State processes, and resulting increased tension among States. An alternative approach would be to recraft Draft Article 7 so that instead of trying to set forth a list of crimes that would not benefit from functional immunity it instead addresses the issue conceptually by delineating the factors or considerations that States should weigh in assessing whether a particular defendant charged with serious crimes would not benefit from functional immunity in a specific case. The practice in the United States has been to consider the application of functional immunity on a case-by-case basis.

The United States urges the Commission to take advantage of the appointment of the new Special Rapporteur to revisit these issues and refocus the Draft Articles on the codification of customary international law. In light of the controversy regarding the support for certain proposed provisions in the Draft Articles, a refocus on the codification of existing customary international law would be most useful to States and least harmful to what is now a workable immunity doctrine. Those aspects of the current Draft Articles that are not ripe for codification could be set aside until there is additional accumulation of widespread and consistent State practice performed out of a sense of legal obligation. The Commission should consider additional revision of the progressive elements of the Draft Articles, either by the Drafting Committee or refer these elements to a study group. The Commission should also consider presenting those elements in an annex to the Commentaries that makes clear these elements do not reflect current international law.

The Commission notes that it "has not yet decided on the recommendation to be addressed to the General Assembly regarding the present draft articles, be it to commend them to the attention of States in general or to use them as a basis for the negotiation of a future treaty on the topic." The United States recommends that before either step is taken, the Commission start afresh on the areas of disagreement and work toward consensus. The start of Special Rapporteur Grossman's tenure provides an opportunity to take into account new ideas and perspectives. Additionally, recent events around the world have made clear the implications of these Draft Articles and should be given due consideration. We urge the Commission not to rush the next phase of review of the Draft Articles to give adequate consideration to States' concerns.

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Article 7 Crimes under international law in respect of which immunity ratione materiae shall not apply

1. Immunity ratione materiae from the exercise of foreign criminal jurisdiction shall not apply in respect of the following crimes under international law:

(a) crime of genocide;

(b) crimes against humanity;

(c) war crimes;

(d) crime of apartheid;

(e) torture;

(d) enforced disappearance.

2. For the purposes of the present draft article, the crimes under international law mentioned above are to be understood according to their definition in the treaties enumerated in the annex to the present draft articles.

U.S. Comments:

The United States' longstanding concerns with Draft Article 7 remain. Fundamentally, Draft Article 7 is not supported by widespread and consistent State practice and *opinio juris* and, as a result, it does not reflect customary international law. Although State officials may not enjoy functional immunity in certain circumstances, Draft Article 7 creates the false impression that the non-applicability of immunity for international crimes is sufficiently established in State practice such that it forms per se rules under customary international law—and it simply does not. The United States reiterates our belief that the Commission should work by consensus on this difficult topic given the serious issues it implicates and the importance of State practice. Such consensus has not been achieved, and the United States does not agree that the Commission chose the correct path in adopting Draft Article 7 despite the many serious concerns expressed.

The Commentary purports to root Draft Article 7 in a "discernable trend" in judicial decisions of national courts and national legislation, but the text does not make clear that these examples are not equivalent to a widespread and consistent State practice and *opinio juris* and accordingly do not establish customary international law. Of the examples cited in the Commentary, the large majority are from European States, with little representation of other regions. State practice is especially limited in this area because there is little visibility into criminal investigations that do not result in prosecutions brought by national authorities either due to immunity or for other reasons, and case law is exceedingly sparse. In 2010, the then-Special Rapporteur concluded in his second report that it was "impossible to assert definitively that there is a trend toward the establishment of such a norm." This uncertainty underscores the need for this critical issue to be revisited and reconsidered under the auspices of the new Special Rapporteur.

Moreover, certain examples of State practice included in the Commentary stretch the meaning of the law beyond its proper application. To highlight one example, the Commentary observes that "in rare cases, this trend has also been reflected in the adoption of national legislation that provides for exceptions to immunity *ratione materiae* in relation to the commission of international crimes." To support this assertion, the Commentary cites to the terrorism exception of the Foreign Sovereign Immunities Act (FSIA) of the United States and its nexus to acts of torture and extrajudicial killing. However, unlike the sovereign immunity statutes of some States, the FSIA addresses only the jurisdictional immunity of foreign *States* in

U.S. courts in civil matters and not the functional immunity of foreign government *officials in criminal cases*.

The United States has also adopted the extraterritorial criminal torture statute and War Crimes Act, consistent with U.S. obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Convention of 1949, respectively. Neither statute addresses or explicitly abrogates the functional immunity of foreign officials. Any such prosecution in the future would be addressed by prosecutors and courts on a case- and fact-specific basis rather than by application of a categorical rule denying immunity.The Commentary also cites to implementing legislation for the Rome Statute, which is inapposite. As Draft Article 1 paragraph 3 provides, any rules arising from the Rome Statute only operate as among Rome Statute Parties. The lack of adequate State practice contributes directly to the lack of consensus for Draft Article 7, which was punctuated by the controversial split vote in 2017 that advanced the provisional adoption of Draft Article 7.

In addition to further consideration of the limited available State practice (and implications of otherwise unavailable State practice), Draft Article 7 requires additional review with respect to the legal basis for any exceptions to functional immunity. While Draft Article 7 states that functional immunity will not apply to certain crimes under international law, it does not explain why. Without a clear and broadly supported rationale, the Draft Article lacks a persuasive explanation and justification for the inclusion and exclusion of crimes in the exception. The Commentary acknowledges that the Commission has sidestepped the question of whether any of the enumerated international crimes could be performed in an official capacity within the meaning of Draft Article 2(b) because it has identified practice and doctrine reflecting different interpretations as to whether the inapplicability of functional immunity is explained by an absence of immunity or an exception to immunity. As mentioned in our comments to Draft Article 2, this divergence adds to the uncertainty about what is or is not an act taken in an official capacity and fuels confusion about the fundamental basis of the rules the Draft Articles purport to codify. Whatever the rationale for any purported exception to functional immunity, we agree that there is no such exception to personal immunity.

The confusion surrounding what legal basis supports Draft Article 7 extends to additional crimes, not included in the text of the Draft Article but identified in the Commentary. For example, the Commentary states that the omission of corruption from the enumerated list of crimes does not imply that immunity would apply. The explanation provided is that the crime of corruption could not be considered an official act, though the Commentary also notes the alternative view that it is the official's status that makes the crime possible.

Consensus on these significant, unresolved matters is not only important to enhance the utility of the Draft Articles to States but also is necessary to avoid the destabilization of foreign relations. In considering whether further restrictions on immunity were "desirable," the Special Rapporteur's 2010 report recalled "the need to avoid impairing friendly international relations." The Draft Articles should be careful with the ways in which they will touch on and propose to exercise of domestic criminal jurisdiction. The United States is deeply concerned that Draft Article 7 in its current form could disturb the current environment of relative stability and mutual restraint that generally characterizes States' conduct in this space. Lacking any other guidance, magistrates, judges, prosecutors, private parties initiating criminal cases, and scholars could look to Draft Article 7 as reflective of existing international law, which it in fact is not. The development of law in this sensitive area properly belongs in the first instance to States. The

Commission's work is at its strongest when it rests on a solid foundation of coherent methodology and even-handed assessment of evidence. As detailed above, Draft Article 7 risks creating the false impression that the Commission is codifying customary international law rather than proposing progressive development of the law, it rests on limited state practice, and it lacks a clear and broadly supported legal rationale.

Finally, none of these comments should be understood to undercut the United States' support for holding accountable those responsible for international crimes. The United States agrees that there must not be impunity for international crimes. Immunity does not mean impunity, however. In the United States, and in many other States, determinations of the applicability of immunity from criminal prosecution are fact-intensive and specific to each case. Furthermore, there is the possibility of waiver or prosecution in an appropriate domestic or international court of such crimes depending upon the specific facts and circumstances. Immunity from a foreign State's criminal jurisdiction can be critical to a State's exercise of its own criminal jurisdiction over its officials and the effective administration of its system of accountability. The United States urges the Commission to give these concerns careful consideration and revisit its work on Draft Article 7.

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D. ORGANIZATION OF AMERICAN STATES

1. Inter-American Democratic Charter

On May 30, 2023, Ambassador Francisco O. Mora delivered remarks at a special meeting of the Organization of American States ("OAS") Permanent Council on implementation of all aspects of the Inter-American Democratic Charter and its challenges. The remarks are excerpted below and available at https://usoas.usmission.gov/oas-holds-special-meeting-on-the-inter-american-democratic-charter/.

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Colleagues, I think we can all agree that we need an Organization that responds effectively and consistently to regional crises – and promotes meaningful cooperation on shared interests.

Recent events have placed the OAS front and center on the world stage over the past year.

In the current era of increasing authoritarianism, democratic norms and institutions are under intensifying threat – and this meeting is an opportunity to urge for renewed focus on implementing and upholding the principles of the Democratic Charter.

With this in mind, we want – we need – the OAS to address democratic backsliding by following through on commitments to make governments serve every citizen.

Governments must emphasize efforts to advance the effective implementation of the Democratic Charter, adopted on that fateful September 11th of 2001 in Peru, as well as the Inter-

American Action Plan on Democratic Governance, adopted at the Ninth Summit of the Americas in Los Angeles last year.

As Secretary Blinken put it at the last OAS General Assembly in Lima, "we have to recommit to delivering on the core principles of our OAS and Inter American Democratic Charters."

The various ideas proposed today are urgently needed in our region. Many of these approaches were also underscored at the recent second Summit for Democracy which President Biden co-hosted along with Costa Rica, the Netherlands, the Republic of Korea, and Zambia. The OAS played a role and voice at that Summit on issues of Democratic Charter follow-up.

Mr. Chair, as we heard again today — following the adoption of the Democratic Charter in 2001, countries from across the hemisphere have been in favor of introducing a mechanism for implementing Article 14 of the Democratic Charter. This would allow member states to review periodically the actions adopted and carried out by the OAS to promote dialogue on democracy, and to take the appropriate measures to further those objectives.

Compatible positions have also surfaced over the last two decades on the need to boost the OAS' preventive capacity, mechanisms, and actions for strengthening and preserving democratic institutions and judicial independence; to act in advance, appropriately and in a timely fashion; and to avert democratic crises.

With this in mind, colleagues, the United States is committed to advancing new proposals and ideas for next month's General Assembly. In particular, I think we can make very good progress on the following four ideas:

Establishment of a new mechanism that would systematize and facilitate the preparation of periodic reports on the state of democracy in the region, using guidelines or parameters set by us, the member states, that adhere to the essential elements of democracy and the fundamental components of the exercise of democracy that the Democratic Charter proclaims.

The establishment of a peer review process, on a voluntary basis; and the compilation of a compendium of best practices to foster sharing of progress made, experience, and lessons learned with respect to democratic governance.

Consideration of the appointment, by member states via the General Assembly or this Council, of a Special Rapporteur, Ombudsman, High Commissioner, or Special Envoy, who would be independent of the Secretary General. Such a figure could keep systematic, well-informed track of political processes in each country and open room for dialogue and channels of communication with a series of political, social, and economic players in each country, with a view to prevention.

And…

Updating of the dormant Inter-American program on education in democratic values/human rights. This effort, which could include the Inter-American Institute for Human Rights, would focus on training of young people and newly-elected legislators related to intersectional approaches to strengthen judicial independence and rule of law, including gender equity and equality;

Mr. Chair, these needed proposals reflect the reality that sustained and effective preventive action in support of democracy avoids having to activate the defense and punitive mechanisms contemplated in the Democratic Charter and avoids the costs associated with an interruption of the democratic order, not only for the state concerned, but also for this Organization.

Taken together, progress on the above proposals provides a basis for more effective early warning — as well as strengthening of the Democratic Charter as a tool for promoting and consolidating democracy, judicial independence and rule of law.

Simply put, these efforts give greater impetus to the role, mechanisms, and instruments of the OAS in accompanying countries in efforts to strengthen democratic institutions and in providing advisory services, assistance, and technical support.

Colleagues, the United States believes strongly that we all benefit from a capable, effective, and responsive OAS that is able to engage on all the issues we care about — from free and fair elections to social inclusion and gender equity.

I want to be very clear none of the ideas proposed during today's session are incompatible with the concept of state sovereignty. They strengthen our work in support of the collective defense of democracy.

Let me close by sharing that, despite the region's many pressing challenges, as Secretary Blinken has said, "There's no threat we face that better democracy, more democracy, cannot fix."

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2. Organization of American States General Assembly

On June 23, 2023, Secretary Blinken delivered remarks at the OAS General Assembly Third Plenary Session in Washington, DC. Secretary Blinken's remarks related to the OAS Charter are excerpted below. The full remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-the-organization-of-american-states-general-assembly-third-plenary-session/.

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More than 75 years ago, our nations came together to affirm what the OAS Charter called the "indispensable" role of democracy in delivering on security, on human rights, on development, on other vital needs of people across our hemisphere. And at the heart of this charter – and the Inter-American Democratic Charter that followed – is the recognition that the fates of our individual democracies are bound up in one another. And that when it comes to improving the lives of our people, our democracies are better together.

Yet, as we meet today, a number governments in the Americas are questioning the relevance of the OAS – and democracy, more broadly – the relevance to solve the problems facing many people across the hemisphere. A lack of economic opportunity, widespread insecurity, endemic corruption, an accelerating climate crisis. All problems that have helped drive an unprecedented number of people in our region from their homes.

So, we find ourselves at a moment of reckoning. Do we still believe that democracy is the best system to deliver for our people? And if so, are we willing to recommit ourselves to strengthening our fellow democracies and the institutions where we work together?

The United States answer to this question is unequivocal: We believe in democracy – in its enduring capacity for renewal and for revitalization. We believe it is the best way to meet the needs of our citizens and people across the region that we share.

And we believe in the OAS – both in its capacity to improve our individual democracies and unite us to solve problems that none of us have the capacity to tackle effectively alone.

As our former president, President Jimmy Carter, said at the OAS many decades ago now, to make our charter, and I quote, "more than empty pieces of paper – to make it a living document," all of our member states must believe, and act, to uphold and to improve it.

So today, let me briefly make the case for how we can recommit ourselves, together, to make our charter a living thing for people across our hemisphere.

First, we can continue to support and strengthen the OAS's core competencies – where it has a proven track record of improving our democracies in concrete ways. The OAS electoral observer missions are the gold standard for providing an independent, impartial assessment of whether elections are free and fair. In 2023 alone, the OAS has observed elections in Antigua and Barbuda, in Ecuador, in Paraguay, and it will observe Guatemala's presidential vote on June 25th – just two days from now.

The Inter-American Commission on Human Rights has for decades provided a forum for citizens in all of our nations to seek justice for human rights violations and abuses – from the enforced disappearances and extrajudicial killings of the Dirty Wars and the drug wars to the report it published just last week concluding that Cuban Government agents were involved in the 2012 deaths of human rights defenders Oswaldo Payá and Harold Cepero. And the commission has been a trailblazer in promoting the rights of traditionally marginalized populations, including peoples of African descent, Indigenous communities, and LGBTQI+ people.

The Americas Health Corps – we talked about that earlier today – will train half a million healthcare workers over five years – half a million – on key issues like maternal and child health. And we're well on our way to realizing that goal: We've already trained 119,000 people just in the last year. That is going to make a material, concrete difference in the lives of our citizens.

Longstanding strengths like these are the reason that our ambassador to the OAS, Frank Mora, fought so hard to rally support for one of the biggest increases to the organization's budget that we've seen in decades. The United States funds approximately half of that budget, thanks to the support of our Congress. I want to thank CARICOM for spearheading the effort to approve what is a crucial increase.

We also fully support the outside review of the OAS General Secretariat, so that we can ensure that people in the Americas are getting the most out of the resources that all of us are contributing.

Second, we can recommit to holding ourselves – and countries across the region – to the core principles of the OAS and the Inter-American Democratic Charters. And that of course means continuing to shine a spotlight on the widespread violations of human rights perpetrated by authoritarian governments, and looking for ways to hold them appropriately accountable – and stop their repression – at the same time as we seek to aid their victims.

But that's only part of it. We also have to make our voices heard when our fellow democracies stray from the principles that we have all agreed repeatedly to uphold. When democratically elected leaders in our region try to weaken the independent institutions that provide checks and balances; when they crack down on the media and on civil society; when they fire or harass prosecutors, judges, election officials, or other independent government officials just for doing their jobs; when they try to extend term limits; when they attack or try to

discredit multilateral institutions – including this one, for raising legitimate criticisms – we cannot stand by. We need to speak up – not because any one of our members thinks that we're perfect – we know that we're not; no democracy is – but rather because we're invested in each other's democracies, because we made a commitment to hold one another accountable. Because we know that one of the most dangerous steps a democracy can take is to strip away citizens' rights to improve the system from within. And because we know that the risks inherent in backsliding – not just to individual countries and their citizens, but to entire regions – are real.

The United States is not immune to this. Throughout our history, we have grappled with challenges to our own democracy. We continue to grapple with them to this very day. Indeed, in so many ways, these experiences underscore for us the importance of always striving to address our own shortcomings, and to do it openly, to do it transparently – not to pretend they don't exist or to try to sweep them under the rug. Because we know, ultimately, that is the only way to get better; the only way, as we would say, to try to form a more perfect union. That's why we open ourselves up to review – and criticism – from journalists, from human rights defenders, from regional and multilateral organizations. And that includes from the OAS and the Inter-American Commission on Human Rights, which recently conducted site visits to the United States to focus on homelessness, indigenous rights, and climate change.

Third, and finally, we must continue to adapt our institutions and partnerships to try to seize some of the emerging opportunities and meet emerging threats. Never has the need to do this been so acute. Look at any of the big challenges that we all face, that are actually affecting the lives of our people – not a single one of them can we solve by acting alone. That's why President Biden has worked relentlessly to reinvigorate institutions like the OAS, and to try to stand up new coalitions across our region and around the world.

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3. Inter-American Juridical Committee Candidacy

On October 17, 2023, the Permanent Mission of the United States to the OAS sent a diplomatic note to the OAS Permanent Council proposing the election of Professor Nienke Grossman to the U.S. National seat of the Inter-American Juridical Committee ("CJI"). The diplomatic note, excerpted below, notes the vacancy of the seat, formerly occupied by Stephen Larson.

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The Permanent Mission of the United States to the Organization of American States (OAS) presents its compliments to the Chair of the OAS Permanent Council and has the honor to inform the Chair that the seat on the Inter-American Juridical Committee (CJI) formerly occupied by U.S. National Stephen Larson is presently vacant.

The Permanent Mission of the United States has the honor to present the candidacy of Professor Nienke Grossman, whose curriculum vitae is attached hereto, to finish the term of Mr. Larson, which ends on December 31, 2024. Ms. Grossman would bring to the CJI a wealth of experience and expertise across a wide array of international and domestic legal fields. Ms.

Grossman is a professor at the University of Baltimore and has held leadership positions at the American Society of International Law, among other professional honors. Consistent with Article 101 of the OAS Charter and Article 7 of the CJI Statutes, the Permanent Mission of the United States respectfully requests that the Chair of the Permanent Council inform the OAS Member States of the vacancy and circulate this note, with its attachment, to all Permanent Missions for their consideration.

The Permanent Mission avails itself of this opportunity to renew to the OAS Chair of the Permanent Council the assurances of its highest consideration and esteem.

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4. Nicaragua

On February 22, 2023, the United States joined the other OAS member states in issuing a declaration on Nicaragua's release of political prisoners. The declaration is available as a press statement on the U.S. Mission to the OAS website at https://usoas.usmission.gov/member-states-issue-declaration-on-nicaragua/. The press statement includes the following:

> Today the United States joined with other OAS member states condemning the moves of the government of Nicaragua to revoke the citizenship of many of the 222 political prisoners just released by the government of Nicaragua. Article 15 of the Universal Declaration of Human Rights states that all individuals have a right to a nationality, and no one shall be arbitrarily deprived of such nationality. The following countries joined the statement: Argentina, Antigua & Barbuda, Barbados, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Guyana, Jamaica, Paraguay, Peru, Trinidad & Tobago, United States, and Uruguay.

On October 11, 2023, Ambassador Francisco O. Mora delivered remarks to the OAS Permanent Council following the adoption of resolution OAS Doc. CP/RES. 1231 (2458/23) on developments in Nicaragua. The remarks are included below are available, along with the text of the resolution, at https://usoas.usmission.gov/permanent-council-pronounces-itself-over-developments-in-nicaragua/, and included below.

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Once again, OAS member states have spoken out strongly against the grave human rights abuses and destruction of democracy in Nicaragua.

Nicaraguan President Daniel Ortega and his wife, Vice President Rosario Murillo, continue to intensify their attacks on democratic values, on democratic institutions, and on the

Nicaraguan people's basic freedom. They have demonstrated their utter disdain for the Charter of the OAS and the Inter-American Democratic Charter.

We must keep pressure on them to change course and return democracy to the courageous people of Nicaragua.

This year, Chair, Nicaraguans marked five years since the bloody crackdown on widespread popular protests against the misrule of Ortega and Murillo. Yet, nothing has changed. In fact, the situation has worsened.

Nicaraguans continue to suffer intensified repression, the closing of all democratic spaces, and the forced exile of thousands of journalists, civil society members, human rights defenders, religious actors, and opposition figures. Hundreds of thousands of Nicaraguans are now asylum seekers and migrants throughout the region.

Mr. Chair and colleagues, the United States calls yet again on Ortega and Murillo to take immediate steps to restore democracy in Nicaragua, and to immediately and unconditionally release those clamoring for the right of Nicaraguans to vote in free and fair elections, as well as those unjustly imprisoned for speaking out against abuses, including Catholic Bishop Rolando Álvarez.

We remain deeply concerned by the systematic targeting of members of the Catholic Church, of the Catholic Church itself, and of many other religious organizations in Nicaragua.

Some religious organizations, like Caritas, merely provided social services to Nicaragua's most vulnerable. Even this humanitarian work came under attack, forcing many faith-based organizations to close and their workers to flee the country.

Over the past two years, Ortega and Murillo have ordered the arrest and exile of priests and bishops, labeling them "criminals" and "coup-plotters," accusing them of inciting violence. It is absurd and outrageous, only demonstrating the desperation of their politically illegitimate rule.

Ortega and Murillo revoked the broadcasting licenses of three television stations and 10 radio stations operated by the Catholic Church. They shuttered the only television channel that broadcast local and foreign evangelical programming.

Other anti-Catholic activities have included death threats, theft of Catholic religious items, and desecration of and unlawful entry into Catholic churches. And in May, the bank accounts of at least three of the nine dioceses of the Catholic Church were frozen for alleged acts linked to money laundering and "treason."

With these actions in mind, in November of 2022, in accordance with the International Religious Freedom Act of 1998, Secretary of State Blinken designated Nicaragua a Country of Particular Concern for having engaged in or tolerated particularly severe violations of religious freedom.

Most recently, Ortega and Murillo shut down and seized the Jesuit-affiliated Central American University (or "UCA") and the Central American Institute of Business Administration, two of the country's most renowned centers of higher learning, under arbitrary and unfounded pretenses. UCA's shutdown has affected at least 5,000 students and has had a chilling impact on Nicaraguan society.

UCA's Jesuit community has been subjected to intimidation and harassment in retaliation for its support for — and defense of — the rights of students who took part in the 2018 social protests.

Additionally, Ortega and Murillo have targeted independent academic institutions, disrupting the hopes and dreams of tens of thousands of Nicaraguans seeking to build a better future in their homeland.

And just this month, as underscored yesterday in a statement by the Inter American Commission on Human Rights (IACHR), Ortega and Murillo detained two members from the YATAMA party in the National Assembly – the only Indigenous representatives in that body – without due process. They subsequently rescinded the legal status of the party and closed two YATAMA-run radio stations.

YATAMA has been present in Nicaragua for over 33 years representing the people of the Atlantic coast. Its banishing demonstrates once again that Ortega and Murillo do not brook dissent of any kind.

The United States urges Ortega and Murillo to reverse course in their denouncement of the OAS Charter, due to take effect next month, to re-engage with this Organization, and to create an open environment for free and fair elections that will allow the Nicaraguan people to determine the future of their country.

In adopting today's resolution focused on religious and academic freedom, we as OAS member states and citizens of the Americas speak strongly against the continued human rights abuses and lack of democratic governance in Nicaragua.

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On November 19, 2023, the State Department released a press statement on the effective date of Nicaragua's withdrawal from the OAS Charter. The statement follows and is available at https://www.state.gov/accountability-for-daniel-ortega-and-rosario-murillo-following-oas-departure/.

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Today, Nicaragua's withdrawal from the Organization of American States (OAS) Charter took effect. Daniel Ortega and Rosario Murillo's decision to further isolate Nicaragua from the international community demonstrates their desperation to avoid any effort by the OAS or like-minded partners to hold them accountable for egregious human rights abuses. Their abuses include unjustly detaining, convicting, and mistreating political prisoners – including Bishop Rolando Alvarez; attacking independent journalists; and forcing hundreds of civil society organizations and educational institutions to close or hand over operations to the state.

Nicaragua's actions are an affront to the Western Hemisphere's commitment to democracy. Despite Ortega and Murillo's denunciation of the OAS Charter, Nicaragua remains bound by its human rights and governance obligations under remaining treaties and instruments, including the American Convention on Human Rights. The United States, working with our partners in the OAS, continues to review all available and appropriate tools to hold Ortega, Murillo, and their surrogates accountable for their actions. We renew our call for the Nicaraguan authorities to uphold their obligations and fulfill the recommendations of the Inter-American Commission on Human Rights.

The OAS serves as the preeminent multilateral organization in the Western Hemisphere and has a long history of supporting the democratic advancement of all nations in the Americas. The United States reiterates our support for the people of Nicaragua and their pursuit of fundamental freedoms, human rights, and democracy.

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5. Guatemala

On November 15, 2023, Ambassador Francisco O. Mora delivered remarks on an OAS resolution on the situation in Guatemala. The remark are available at https://usoas.usmission.gov/oas-adopts-resolution-on-the-situation-in-guatemala/ and excerpted below.

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Colleagues, the situation in Guatemala has now reached a difficult juncture. In two rounds of voting, the Guatemalan people demonstrated their unwavering determination to protect their democratic rights and ensure the legitimacy of their electoral process. Our responsibility is to stand by them in this time of need.

Regrettably, alarming developments in Guatemala have underscored continuing and serious concerns. The recent provisional suspension of President-elect Arévalo's political party, Semilla, by Guatemalan authorities, is a highly disturbing indication of ongoing efforts to obstruct the peaceful transition of power.

It appears these authorities remain determined to prevent President-elect Arévalo and his party from assuming office in January, in direct contradiction to the democratic will of the Guatemalan people.

Colleagues, should malign authorities succeed in preventing President-elect Arévalo from taking office, I fear we would witness a major crisis not only in Guatemala, but also throughout the region, resulting in large outward migration flows from Guatemala and the risk of widespread violence and civil unrest. That represents what is at stake here.

Without a doubt, the Organization of American States has shown its commitment to supporting democracy and the rule of law in Guatemala. Member states and observer states alike have provided funding and assistance for the work of the OAS Electoral Observation Mission (EOM) in Guatemala, and we have actively engaged in diplomatic, respectful efforts to encourage a peaceful and orderly transition. It bears repeating that the EOM found the election to be free and transparent, with zero evidence of major irregularities.

Over the past five months, we have reiterated our call on Guatemala to uphold its commitments under the Inter-American Democratic Charter and ensure a smooth and peaceful transfer of power.

We have heard a now-familiar refrain from the Guatemalan government that invokes a spurious "separation of powers" argument to justify inaction against the Public Ministry and its blatantly political attacks on President-elect Arévalo and the TSE. It is an argument

that utterly lacks credibility. Fundamental principles of democracy and respect for the will of the people must prevail.

The OAS Secretary General's special mission and the subsequent mediation and dialogue mission in Guatemala have been essential to this Council's efforts. Additionally, the Inter-American Commission on Human Rights has played a crucial role in monitoring human rights and rule of law developments in the country.

In light of these developments and our collective commitment to defending representative democracy, Mr. Chair, we thank all those Member States who support the adoption of today's resolution.

This resolution takes a measured and balanced approach but maintains a reference to Chapter IV of the Inter-American Democratic Charter, should further steps be necessary in accordance with the Charter's roadmap for action.

The text also recalls the principles enshrined in the Democratic Charter, emphasizing the right of the peoples of the Americas to democracy and their governments' obligation to promote and defend it. It recognizes the importance of an orderly, transparent, and peaceful transition of power in Guatemala — in accordance with the country's constitution and the Democratic Charter.

The resolution also considers our prior declaration adopted by consensus on September 1, Mr. Chair, which called for the OAS to observe and accompany the presidential transition process in Guatemala. And it welcomes the continued efforts of the OAS' Missions for Electoral Observation Mission, for peaceful transition, and for mediation and dialogue.

Bearing in mind these developments and the potential for further anti-democratic actions, my delegation believes it fully appropriate that we respond strongly today regarding the ongoing post-electoral actions, partisan disputes, and actions that are undermining the presidential transition process and representative democracy in Guatemala.

Simply put: we must remain resolute in our commitment to upholding democratic values in Guatemala and throughout the Americas. The United States stands with the people of Guatemala and their democratic aspirations, and we urge all member states to join us in doing the same.

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6. Haiti

On November 17, 2023, U.S. Ambassador to the OAS Franciso O. Mora delivered remarks welcoming the OAS Permanent Council resolution concerning the security situation in Haiti. The remarks are available at https://usoas.usmission.gov/oas-adopts-resolution-on-the-situation-in-haiti/, and excerpted below.

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This resolution represents a crucial step forward in addressing the pressing challenges Haiti faces, and reaffirms our collective commitment to supporting the people of Haiti in their quest for peace, security, and stability.

First and foremost, I would like to commend the leadership of Ambassador Phillips-Spencer, the chair of our Working Group on Haiti, in coordinating today's text. We express our gratitude to him and the delegation of Trinidad and Tobago for aiding our Organization in responding to Haiti's call for assistance.

We also recognize the willingness of Kenya to positively consider leading the new Multinational Security Support (MSS) mission to Haiti. Their initiative is testament to a strong dedication to international peace and security.

Mr. Chair, the United Nations Security Council's authorization of the MSS mission on October 2, through a resolution co-penned by the United States and Ecuador, was a historic moment. It marked a significant turning point in our collective efforts to address the multidimensional crisis that has plagued Haiti, characterized by alarming levels of gang violence, insecurity, and a dire humanitarian situation.

We extend our appreciation to Ecuador for its tireless work on that resolution, demonstrating through action a strong commitment to the cause of peace and stability in Haiti.

The new MSS mission, which was initiated at the request of the Haitian government, the UN Secretary General, and various members of civil society, addresses the urgent need to combat insecurity and provide immediate support to the Haitian National Police.

Its success depends on a truly multinational effort, and we urge all fellow OAS member states to contribute funding, equipment, training, and personnel to ensure the mission's success.

While the MSS mission is a significant step forward, it is just one part of a broader effort to address Haiti's multifaceted crisis. Our resolution today clearly underscores this point.

This crisis encompasses acute food insecurity, humanitarian challenges, economic difficulties, and political instability. To address these issues comprehensively, the MSS mission will closely coordinate with the UN Integrated Office in Haiti (BINUH) and relevant UN agencies. It will also be important to ensure coordination and support on the part of Inter-American bodies, including the OAS Haiti Working Group.

The MSS mission is committed to operating in strict compliance with international law, with a focus on anti-gang operations, community-oriented policing, and protecting vulnerable groups, including women and children.

It will also take necessary measures to prevent sexual exploitation and abuse, upholding the highest standards of conduct and discipline.

We are heartened by the strong and united response from the international community, including on the part of the Inter-American Commission on Human Rights and particularly the support from Jamaica, Bahamas, Barbados, and Antigua and Barbuda — who have pledged personnel to the mission. We acknowledge the leadership they have demonstrated.

Mr. Chair, as we have heard in various OAS meetings, the adoption of the Chapter VII UN Security Council resolution was a requirement for many contributing nations, and it underscores a collective commitment to addressing Haiti's urgent needs.

Since October 2022, the United States has taken steps to impose sanctions and visa restrictions on over 50 individuals for undermining Haiti's democratic processes, supporting or financing gangs and criminal organizations, or engaging in significant corruption and human rights violations. We call on all OAS member states to impose these sanctions.

Taken together, colleagues, these steps reflect what President Biden emphasized at the recent UN General Assembly: "The people of Haiti cannot wait much longer." With the adoption of these new UN and OAS resolutions, we can now work together to answer that call.

In terms of next steps, colleagues, the OAS Working Group on Haiti has a critical role to play in facilitating regional contributions and support for the implementation of the UN Security Council resolutions. We urge the Working Group to prioritize these efforts and work closely with all member and observer states, as well as the Government of Kenya, to ensure the success of the MSS mission.

The global community owes a debt of gratitude to Kenya and all the nations that have pledged their support for this mission to date. Together, we must now focus on mobilizing support needed to deploy the mission swiftly, effectively, and safely.

Of course, we recognize that the ultimate resolution of the situation in Haiti must be determined by the Haitian people themselves.

In conclusion, the United States reaffirms its strong commitment to the people of Haiti and will continue to advocate for free and fair elections as soon as conditions permit. The conduct of these overdue elections is essential to restoring democratic governance and enabling Haiti to overcome its current challenges.

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7. Organization of American States: Inter-American Commission on Human Rights

The Charter of the OAS authorizes the Inter-American Commission on Human Rights ("IACHR" or "Commission") to "promote the observance and protection of human rights" in the Hemisphere. The Commission hears individual petitions and provides recommendations principally on the basis of two international human rights instruments, the American Declaration of the Rights and Duties of Man ("American Declaration") and the American Convention on Human Rights ("American Convention"). The American Declaration is a nonbinding statement adopted by the countries of the Americas in a 1948 resolution. U.S. federal courts of appeals have independently held that the American Declaration is nonbinding and that the Commission's decisions do not bind the United States. The OAS Charter does not suggest an intention that member states will be bound by the Commission's decisions before the American Convention goes into effect. As the American Declaration is a non-binding instrument and does not create legal rights or impose legal duties on member States of the OAS, the United States understands that a "violation" in this context means an allegation that a country has not lived up to its political commitment to uphold the American Declaration. The United States respects its political commitment to uphold the American Declaration.

The American Convention is an international agreement that sets forth binding obligations for States parties. The United States has signed but not ratified the American Convention. As such, the IACHR's review of petitions with respect to the United States takes place under the substantive rubric of the American Declaration and the procedural rubric of the Commission's Statute (adopted by OAS States via a nonbinding resolution) and the Commission's Rules of Procedure ("Rules") (drafted and adopted by the Commissioners themselves).

In 2023, the United States continued its active participation before the IACHR through participation in a number of hearings and written submissions. The IACHR holds

two or three periods of sessions annually, which consist of a variety of working meetings and hearings. While these typically take place in Washington D.C., in March 2023, the University of California Los Angeles hosted the 186th Period of Sessions. During the first week, there were 18 in-person public hearings attended by more than 70 civil society organizations. The United States, with representatives from the State Department and the Department of Homeland Security participated in a case on Haitian migrants. In November 2023, the U.S. participated in two hearings at the 188th Period of Sessions: one on abortion access in the United States and another case specific hearing regarding the immigration detention of Iranian brothers in the early 2000s.

The United States also filed several written submissions before the IACHR in 2023. The U.S. merits brief in one of these filings is discussed below. Other U.S. responses to petitions and merits submissions that are not discussed herein are posted in full on the State Department website at https://www.state.gov/digest-of-united-states-practice-in-international-law/.

Case No. 14.066: Domestic Workers Employed by Diplomats

In April 2023, the United States provided further observations on the petition in Case No. 14.066. The Petition was filed by multiple civil society organizations on behalf of individual and organization petitioners, who alleged exploitative living and working conditions while employed by foreign diplomats serving in the United States. The Petitioners alleged that safeguards put in place by the United States to ensure a living wage and benefits were ineffective because of diplomatic immunity and that their exclusion from certain U.S. labor laws amounts to a violation under the American Declaration. Excerpts from the U.S. brief follows (footnotes omitted).

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A. The Petition Remains Inadmissible

The United States maintains that the Petition should be dismissed as set out in its 2016 Submission, as the Petition continues to fail to meet the Commission's established criteria for admissibility. In addition, the United States takes this opportunity to update its support for its assertion that the Petitioners have failed to exhaust their domestic remedies.

The Commission may reconsider objections to admissibility at the merits stage. The text of the Commission's Rules of Procedure ("Rules") indicates the Commission may review admissibility objections made under Article 34(a) at any stage in the proceedings. Article 34 provides that "[t]he Commission shall declare any petition *or case* inadmissible when," *inter alia*, "it does not state facts that tend to establish a violation of the rights referred to in Article 27 of these Rules of Procedure." Cases, by definition, have already been declared admissible by the Commission; as such, this Article indisputably requires the Commission to rule that cases previously declared admissible are actually inadmissible should the factors of Article 34 be satisfied.

This principle is further underscored by the fact that the Rules affirmatively indicate that objections based on non-exhaustion can be brought at any stage of the proceedings. Article 31(a) states that "[i]n order to decide on the admissibility of a *matter*, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted . . . .". Throughout the Rules, the word "matter" refers to both petitions and cases before the Commission and is used when a distinction between those two procedural stages is unnecessary. Therefore, it is clear that such objections may be brought and reconsidered at the merits stage.

As the Commission is aware, the requirement of exhaustion of domestic remedies stems from customary international law, as a means of respecting State sovereignty. It ensures that the State where a human rights violation has allegedly occurred has the opportunity to redress the allegation by its own means within the framework of its own domestic legal system. It is a sovereign right of a State conducting judicial proceedings to have its national system be given the opportunity to determine the merits of a claim and decide the appropriate remedy before resort to an international body. The Inter-American Court of Human Rights ("Inter-American Court" or "Court") has remarked that the exhaustion requirement is of particular importance "in the international jurisdiction of human rights, because the latter reinforces or complements the domestic jurisdiction."

The Individual Petitioners have not exhausted their remedies in the U.S. court system. Based on our review of the records and the representations on Petitioners,

- Petitioners Siti Aisah, Hildah Ajasi, Raziah Begum, and Otilia Luz Huaya have not filed suits against their former diplomat employers in the United States.
- Petitioner Ms. Huayta sought an alternative to litigation and received back wages on the condition that her employer not be named.
- Petitioner Susana Ocares filed a case against her employer, the U.S. citizen spouse of a diplomat, in the U.S. District Court for the District of Maryland in 2007 alleging labor law violations. Ms. Ocares voluntarily dismissed the lawsuit with prejudice in 2008. Note that the defendant in that case, the U.S. citizen wife of a diplomat, would not have enjoyed immunity from suit.
- There are no appeals on record from the Petitioners who have filed a case in U.S. courts.

To explain their failure to exhaust their remedies, Petitioners assert that there is no remedy for claims brought by domestic workers against their diplomat employers, citing Article 31(2)(b) of the Commission's Rules of Procedure. Article 31(2)(b) does not aid Petitioners here, however, because there are domestic remedies available to them. As set forth in Article 39(2) of the Vienna Convention on Diplomatic Relations ("VCDR"), diplomatic immunity only applies to certain personnel while serving in a diplomatic capacity, and it ceases to apply to those individuals after the end of their diplomatic assignment.

As explained in the 2016 Submission, only those diplomats who enjoy diplomatic agent-level immunity in the United States enjoy civil immunity with respect to potential claims by domestic workers. Many foreign mission members or their family members who employ domestic workers do not enjoy diplomatic-agent level immunity. For example, consulate personnel, administrative and technical staff at an embassy, and international staff employed by an international organization such as the United Nations or the World Bank generally would not enjoy immunity from civil jurisdiction for acts performed outside of their official duties. As such, civil lawsuits for labor law violations by employees, for example, may typically be brought against such personnel. There may also be circumstances under which a domestic worker could file suit against a foreign mission member's family member who did not enjoy privileges and

immunities, as appears to have been the case with respect to one of Ms. Ocares's employers. Ms. Ocares filed a case against the U.S. citizen spouse of a diplomat who would not have enjoyed immunity from suit, given her status as a U.S. citizen.

In addition, in many circumstances, cases by domestic workers employed by diplomats could be and have been brought after a diplomat has ended their assignment and left the United States. A diplomat's immunity ceases following the diplomat's termination pursuant to VCDR Article 39(2) and Vienna Convention for Consular Relations Article 53. Thus, while the U.S. legal obligation to provide diplomatic immunity may temporally limit the remedies of certain Petitioners, it does not bar them altogether; most diplomatic appointments are for a set term of two to five years.

Indeed, the Department has recently limited the duration of accreditation acceptance of bilateral foreign mission personnel, including diplomatic agents, to a maximum duration of five years.

Further, claims against diplomats after their departure from the United States have resulted in judgments. For example, in November 2016, the U.S. District Court for the District of Maryland issued a default judgment against former Malawian diplomat Jane Kambalame for violations of the Trafficking Victims Protection Act, the Fair Labor Standards Act, and the Maryland Wage and Hour Law, awarding her former domestic employee $1,101,345.20 in damages. While Ms. Kambalame enjoyed diplomatic-agent level immunity while on assignment, her immunity ceased when her assignment ended and she departed the United States. Her former domestic worker pursued a claim against her that resulted in a civil judgment. While that judgment remains unpaid, it resulted in a suspension of domestic worker visa issuance for the Malawian Mission to the United States as detailed below and efforts continue to seek its satisfaction. Individual Petitioners in this matter may thus be able to file a claim against their former employers, who are no longer serving in a diplomatic capacity within the United States. According to State Department records, none of the former employers of any of the individual Petitioners are still serving in a diplomatic capacity within the United States.

Finally, Petitioners argue that domestic workers employed by diplomats were without remedy because there is little practical chance of any judgment they could theoretically secure being satisfied once a former diplomat employer departed the United States. As detailed in our 2016 Submission and updated below, however, the State Department engages directly with governments and other stakeholders to seek resolution of outstanding judgments in such cases. Those engagements are in addition to the typical avenues a litigant may use to seek satisfaction of any outstanding judgment. Outstanding judgments against former diplomats have been satisfied in the past. For example, one of the cases that Petitioners cite in their 2021 Final Observations on the Merits as reflecting an unpaid judgment, *Butigan v. Al-Malki*, was settled confidentially with the docket reflecting that the court's order in the case was vacated as of February 14, 2017. In addition, Ms. Faith Sakala, a former domestic worker of diplomats who submitted a declaration in support of Petitioners in this case, secured a judgment in the amount of $113,895 against a former diplomat who had departed the United States. On December 29, 2021, Ms. Sakala's judgment was fully satisfied. As previously addressed by this Commission, "[m]ere doubt as to the prospect of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies." In this instance, the fact that judgments, once rendered, may be challenging to satisfy does not negate the Commission's exhaustion requirement. In light of the Commission's exhaustion requirement and the Petitioners' failure to exhaust domestic remedies in the U.S. court system, this Petition must be deemed inadmissible.

B. Petitioners' New Claims in the "Final Observations" are Out of Order

Petitioners now seek to introduce new claims and expand the scope of their request for relief based on factual allegations not included in the Petition. Petitioners cannot be permitted to introduce entirely new claims at the merits phase of this proceeding. Nothing in the Rules permits Petitioners, at this stage, to introduce new claims beyond those in the Petition, and Petitioners' new claims are plainly out of order under Article 34(b) of the Rules and, as such, inadmissible.

Moreover, allowing Petitioners to introduce new claims at this stage would be inequitable as the admissibility phase of this proceeding is closed, and the relevant facts and arguments have not been properly briefed by the parties or considered by the Commission. Even if the Commission were inclined to entertain new factual claims, it would require a new petition with a separate admissibility phase that cannot be incorporated into the merits phase of the present matter. The United States acknowledges that the Commission has previously allowed the consideration of additional claims or factual allegations on the basis that the State was "on notice" of the new claims, and "had the opportunity to present observations on the admissibility of all the claims raised by petitioner."

This explanation, however, cannot justify the inclusion of these new claims in the circumstances of this case and, moreover, such explanation is not compatible with the Commission's Statute or its Rules of Procedure. In this case, the United States was not on notice and did not have an opportunity to present observations in its 2016 Submission on the admissibility of the new claims Petitioners advance in their 2021 Submission. Petitioners did not assert claims on behalf of unnamed domestic workers not employed by diplomats nor did they advance arguments supporting that such claims should also be exempt from Rule 31's requirement to exhaust local remedies. Indeed, Petitioners based their futility arguments to the Commission in support of admissibility entirely on the U.S. domestic remedies available to domestic workers *employed by diplomats*. Notably, the Commission's decision on admissibility rests largely on its conclusion "that in the domestic venue, no remedies are available to assert the claims of the alleged victims due to the diplomatic immunity" and "the filing of civil actions once the immunity ceases to apply does not constitute an adequate remedy . . . ." The key alleged deficiency in the domestic remedies afforded to Petitioners, i.e., diplomatic immunity—which Petitioners repeatedly highlight in their Petition and the Commission repeatedly notes in its Decision on admissibility—is absent from the circumstances of domestic workers in the U.S. not employed by diplomats. As Petitioners did not raise arguments involving domestic remedies for domestic workers who are not employed by diplomats, the United States was not on notice and could not have had opportunity to respond to the admissibility of such claims. As such, it would be improper for the Commission to consider such claims as admissible without first having appropriate briefing on admissibility in order to verify whether the remedies of the domestic legal system have been properly pursued and exhausted in accordance with the generally recognized principles of international law, as required by Article 31(1) of the Rules.

Moreover, the explanation that the State was "on notice" of the new claims is not compatible with the Commission's Statute or its Rules of Procedure. There is no basis in the Rules of Procedure for a Petitioner to add new claims to his or her Petition during the merits phase of a proceeding. Allowing Petitioners to expand the scope of the Petition by introducing new claims at the merits stage further undermines the Commission's procedures and challenges the integrity of the Commission. This is especially so, as here, where the admissibility phase of a matter is closed. Accordingly, the new claims presented in Petitioners' "Final Observations"

must be deemed out of order at this stage under Article 34(b) of the Rules. The United States therefore regards the scope of the Petition to remain limited to those claims raised in the Petition.

C. Steps Taken to Prevent and Respond to Allegations of Abuse of Domestic Workers by Foreign Mission Personnel

Petitioners continue to argue in their 2021 Submission that the United States does not have adequate policies in place to address allegations of abuse of domestic workers by foreign mission personnel. The United States government, however, has continued to conduct and improve the policy and legal protections outlined in our 2016 Submission. As detailed below, the Department has implemented several changes to the Domestic Workers Program to increase protection for domestic workers and has taken proactive steps to ensure that the foreign mission community is abiding by the Program's requirements. Further, the Department has continued its work to respond to allegations of abuse by domestic workers, including with regard to engagement with appropriate law enforcement. Finally, the U.S. Congress has continued to focus on the issue, strengthening the Department's tools to use in seeking to ensure that any instances of domestic worker abuse by diplomats are appropriately addressed.

1. Update on Policies and Practices to Prevent Abuse of Domestic Workers by Foreign Mission Personnel

Since the 2016 Submission, the Department has developed additional program requirements that a foreign mission member employer must adhere to, as well as additional mechanisms to address any non-compliance with program requirements, many of which satisfy the Request for Relief that Petitioners have listed in its Final Observations on the Merits. As of September 2018, the bilateral missions were notified that the employment of nonimmigrant domestic workers by foreign mission members was designated as a "benefit" under the Foreign Mission Act. As such, the Secretary or designee can set terms and conditions on its provision, as well as cease provision of the benefit if those terms and conditions are not met. As set out in a September 19, 2018 Circular Diplomatic Note sent to all bilateral foreign missions in the United States, the Department announced that it may suspend the benefit for a mission member or all members of the mission should any mission member fail to meet the requirements of the Domestic Worker Program. In addition to the existing program requirements, the Department added the requirements below:

- Employers may not be related to the domestic worker they employ (exceptions can be made on a case-by-case basis);
- Employers or the employer's foreign mission or international organization (IO) must cover the medical expenses of domestic workers while they are in the United States;
- Employers under investigation for abuse or exploitation of a domestic worker or a pattern of repeated domestic worker terminations will not be able to participate in the Domestic Worker Program unless and until the matter is resolved;
- Chiefs of Mission, Deputy Chiefs of Mission, and Principal Officers may generally sponsor only two domestic workers. Other qualified employees may generally sponsor only one domestic worker. Members of the administrative and technical staff, service staff, miscellaneous foreign government office personnel, and their equivalents may generally not sponsor any domestic worker; and
- Missions and IOs that wish to participate in the Domestic Worker Program must agree that if any of their personnel request that a domestic worker be accompanied by a dependent, the mission or IO will submit a Dependent Protection and Oversight Plan signed by the Chief of Mission/senior IO official to accompany the pre-notification

request. The Plan must include regular monitoring of the dependent's welfare and living conditions, with increased oversight for minors, and written semi-annual certification by the employee, the employer, and the employer's mission/IO that the dependent is not working in the United States.

The Note also announced that, in general, members of the administrative and technical staff of an embassy, service staff, miscellaneous foreign government office personnel and their equivalents may not sponsor any domestic workers, further limiting the foreign mission members who are eligible to do so. Similar notes announcing the benefit designation and new program requirements went to the Permanent Missions and Observer Offices to the United Nations, the UN Secretariat, and relevant international organizations. The "benefit" designation, along with the imposition of additional program requirements, are meaningful measures designed by the Department to prevent abuse of domestic workers by the foreign mission community and to help ensure consequences if Program requirements are not met.

Further, on March 2021, the Department circulated a diplomatic note to remind foreign missions and IOs of mandatory Domestic Worker Program requirements, emphasizing the domestic worker employers' affirmative obligation to monitor changes to applicable minimum wage rates, comply with overtime requirements, and compensate domestic workers for back wages owed. The Department continues to place a high priority on the treatment of domestic workers and actively looks to Chiefs of Mission to provide oversight of personnel who employ domestic workers to ensure all Domestic Workers Program requirements are followed. The Department regularly reviews compliance with terms and conditions with the provision of this benefit and takes timely measures to address issues with compliance, including but not limited to suspending the benefit of the program for entire missions.

Finally, since its 2016 Submission, the Department has expanded its annual in-person registration program in efforts to directly and regularly engage with domestic workers without their employers present. These meetings involve providing workers with information on their rights under the law, discussions about their contracts and working conditions, as well as providing information to the workers, in a language they can understand, about workers' rights more generally and information about how to contact the Department and local NGOs, if needed. The in-person registration described in the 2016 Submission continues for bilateral foreign missions in Washington D.C. Since 2016, the program has expanded to cover international organization personnel, as well as domestic workers working for foreign consulate personnel. In April 2019, via diplomatic note, the United States Mission to the United Nations (USUN) notified UN Permanent Mission and Observer missions of the commencement of its in-person registration program for domestic workers of mission members. On May 18, 2020, a note announced the commencement of the program for domestic workers of UN Secretariat personnel. The Department regularly contacts foreign mission leadership to discuss domestic workers' rights under domestic and international law, and to discuss further as issues arise. This significant expansion of the annual in-person registration program largely addresses Petitioners' Request for Relief (e)(i) ("Ensuring that all A-3 and G-5 domestic workers across the United States have an in-person meeting with State Department officials..."), as well as Petitioners' Request for Relief (e)(iv) ("Conducting national follow-up with domestic workers of diplomats and international organization employees...), and Petitioners' Request for Relief (e)(ix) (Convening diplomatic employers on regular basis…). This expansion of the vigorous registration program demonstrates the Department's commitment to monitoring the well-being of domestic workers employed by foreign mission personnel.

* * * *

8. Organization of American States: Inter-American Court of Human Rights

The United States has neither ratified the American Convention nor accepted the contentious jurisdiction of the Inter-American Court of Human Rights ("IACtHR"). Nevertheless, the United States occasionally participates in requests for advisory opinions before the IACtHR.

In August 2023, the United States submitted written observations on a November 2022 request from Mexico for an advisory opinion on the "activities of private companies engaged in the firearms industry and their effects in human rights." The request concerned, *inter alia*, the scope of international responsibility for the acts of firearms manufacturers and the access to justice requirements under the American Convention on Human Rights and International Covenant on Civil and Political Rights ("ICCPR"). On November 27, 2023, the United States provided an oral presentation on the request at the Court in Costa Rica, presented by Asisstant Legal Adviser James Bischoff and Attorney-Adviser Sarah Hunter of the Office of the Legal Adviser at the State Department. The United States argued that matter was inappropriate for an advisory opinion given ongoing U.S.-Mexico bilateral discussions, that the request improperly seeks to extend state obligations to non-state actors and extraterritorially, and that the U.S. had undertaken significant measures to address illicit firearms trafficking. In particular, the United States cited laws and measures such as the Bipartisan Safer Communities Act and Operation Southbound, which have brought greater resources to combat illicit firearms trafficking. Written submissions and the hearing are available at https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2629. The oral presentation is excerpted below.

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Mr. President, Distinguished Members, the United States knows all too well the devastation caused by gun violence. The senseless loss of life in our communities is imprinted in our national consciousness. In view of these tragedies, the United States federal government is undertaking unprecedented actions to regulate firearms and combat this problem both domestically and internationally. The United States also recognizes that more work needs to be done and stands ready to continue are already extensive collaboration with our neighbors throughout the Americas to advance our shared goals in this space.

But as a legal matter, Mexico's request for an advisory opinion asks this Court to dispense with its procedures and ignore foundational principles of international law to reach its desired conclusion. The United States will argue today that this matter is not appropriate for an advisory opinion, that current treaties do not reach the conduct of private actors at issue, and that

the extraterritorial application of human rights obligations advocated for by Mexico would upend international human rights law. Finally, the United States will detail some of the many efforts it is taking to address the illicit trafficking in and misuse of firearms.

* * * *

II. Responsibility for Actions of Private Actors

I will next explain why Mexico's argument that States can be responsible for the action of certain private actors is unsound. Mexico's requested finding would obliviate the distinction between a State and private actors. The actions of private actors are generally not attributable to the State and, accordingly, cannot breach the international law obligations of the State or give rise to the responsibility of the State. Therefore, as Colombia has also acknowledged, actions by private actors themselves generally do not constitute violations of international human rights law.

Moreover, the American Convention does not impose on States Parties any obligation to prevent certain activities by private entities engaged in the firearms industry. Unlike in certain other conventions, which explicitly impose obligations on State Parties to prevent actions by non-State actors, there is no textual support in the American Convention for such a proposition. Moreover, while we respectfully disagree with the Court's position that it has the power to interpret the International Covenant on Civil and Political Rights, an obligation on States' parties to that treaty to prevent actions by non-state actors that may abuse human rights of other private parties is likewise absent from the Covenant's text.

The non-applicability of international human rights obligations to private conduct helped spur international negotiations to create binding obligations on States to regulate the activities of private actors. The resulting treaties are not, however, human rights conventions. For instance, the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, adopted in 1997, requires State Parties to take certain actions related to private actors. There are also similar obligations pertaining to firearms found in the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, supplementing the United Nations Convention against Transnational Organized Crime. If existing international instruments had already squarely addressed these matters, then such instruments would be largely redundant.

Here, the acts that allegedly constitute violations of the right to life are perpetrated by private actors in Mexico. Criminal actors in Mexico are not passive participants in violence involving firearms—they are proximately responsible. Yet Mexico asks the Court to render an opinion that would effectively hold the United States responsible for private actors engaging in killing and other serious crimes within Mexico's borders. But holding another State responsible for the conduct of private actors in an industry not involved in the acts of private violence at issue, while ignoring the direct involvement of private actors in Mexico, lacks any coherence and shifts the focus away from the root causes of gun violence at issue in this case.

* * * *

Conclusion

Your Honors, we conclude by reiterating our position that as a legal matter, Mexico's request is not reviewable under the Court's advisory jurisdiction and that the private criminal conduct in question falls outside the scope of OAS member States respective obligations under

international human rights law. Notwithstanding these legal views, we concur that the illicit trafficking of firearms in our hemisphere is a matter of very serious concern and one that the political organs of the Organization of American States must continue to seek ways to address as a matter of priority. We and our fellow member states, including Mexico, will continue to cooperate extensively both bilaterally and multilaterally to identify and implement effective solutions to hold violators accountable, bring justice to victims, and deter others from engaging in these illicit activities.

Your Honors, thank you for your attention and we look forward to any questions you may have.

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Cross References

International Tribunals and Accountability Mechanisms, **Ch. 3.C**
UN Third Committee statements, **Ch. 6.A.3**
Human Rights Council ("HRC"), **Ch. 6.A.4**
Iran-United States Claims Tribunal, **Ch. 8.A**
Determination under Foreign Missions Act with respect to the Permanent Mission of Venezuela to the OAS, **Ch.10.D.4**
International Civil Aviation Organization ("ICAO"), **Ch. 11.A**
World Trade Organization ("WTO"), **Ch. 11.C**
The Global Health Response to the COVID-19 Pandemic, **Ch. 13.C.5**
UNCITRAL, **Ch. 15.A**
UN humanitarian sanctions carveout, **Ch. 16.A.1**
Haiti, **Ch. 16.A.14.j**

CHAPTER 8

International Claims and State Responsibility

A. IRAN CLAIMS

In 2023, the Department prepared a multi-volume rejoinder submission in Case B/61 in the Iran-U.S. Claims Tribunal ("Tribunal").[*] On April 20, 2023, the Tribunal bifurcated proceedings on the U.S. counterclaim in Case B/1 into two phases concerning (1) jurisdiction, merits, and other issues joined to the merits; and (2) quantification of damages. Iran filed the English version of its brief on phase 1 issues on November 29, 2023. Iran filed a letter with the Tribunal requesting a hearing be scheduled in Case A30, which relates to Iran's claims that the United States violated the so-called "non-interference" pledge in the Algiers Accords. All briefs have been submitted in Case A30 since 2007, but a hearing was postponed by agreement of the parties. See *Digest 2022* at 344 and *Digest 2021* at 327 for a discussion of Iran Claims.

B. SUDAN CLAIMS

As discussed in *Digest 2022* at 344, *Digest 2021* at 327-28, and *Digest 2020* at 336-42, the United States and Sudan signed a claims settlement agreement in 2020, which entered into force on February 9, 2021. The Sudan Claims Resolution Act ("Act"), Title XVII, Div. FF, Pub. L. No. 116-260, 134 Stat. 1182 (2020), also signed into law in 2020, provides for the restoration of Sudan's sovereign immunity from terrorism-related claims in U.S. federal and state courts, upon certification by the Secretary of State that the United States has received sufficient funds pursuant to the agreement. The Department continues to administer claims payments to eligible claimants under the agreement. Payments to claimants were ongoing at the end of 2023.

Several litigants challenged the constitutionality of the Act. On July 21, 2023, the United States Court of Appeals for the District of Columbia Circuit held in *Mark, et al. v. Sudan, et al.*, that the Act's jurisdiction-stripping provision is a constitutional exercise of Congress's authority to prescribe the subject-matter jurisdiction of the lower federal courts. 77 F.4th 892. The court ruled that the Act "easily satisfies" rational-basis review and that the Plaintiff's claims "simply do not implicate the right to access the courts." *Id*. at 897-98. The court also stated that the right to access courts "does not constrain"

[*] Editor's note: The United States' rejoinder submission was filed on February 21, 2024.

either the President's authority to espouse claims or Congress's authority to prescribe jurisdiction. *Id*. On September 25, 2023, the D.C. Circuit declined to rehear the case en banc. No. 21-5250.[**]

C. ALBANIA CLAIMS

In 2023, the Foreign Claims Settlement Commission of the United States (the "Commission") within the Department of Justice continued to administer its Albania Claims Program, which began in 1995 following the conclusion of an agreement between the United States and Albania concerning claims arising from the expropriation of property of U.S. nationals after World War II. See Agreement on the Settlement of Certain Outstanding Claims, U.S.-Alb., Mar. 10, 1995, T.I.A.S. No. 12,611 (the "Agreement"), available at https://www.justice.gov/fcsc/agreement-web.pdf. The Commission has jurisdiction to adjudicate claims covered by the Agreement under Title I of the International Claims Settlement Act. 22 U.S.C. § 1623(a)(1)(B). See *Digest 1991-1999* at 1076-81 for discussion of the Agreement and the Albania Claims Program.

The Commission issued one Proposed Decision in 2023 in the *Claim of WILLIAM THOMAS*, Claim No. ALB-355, Dec. No. ALB-337 (Proposed Decision), available at https://www.justice.gov/d9/2024-06/ALB-355%20PD.pdf. The Claimant alleged that the Government of Albania confiscated real and personal property belonging to his father in different villages in Korçë, Albania, in 1945. In its Proposed Decision, the Commission denied the claim on the basis that the Claimant was unable to provide any evidence of ownership of the property beyond his own statements. The Commission added that the insufficiency of Claimant's evidence also made it difficult for the Commission to ascertain whether the land in question had already been the subject of restitution and compensation procedures under Albanian law, and thereby avoid a potential double recovery in this claim. See Settlement Agreement, Agreed Minute. The Proposed Decision is excerpted below.

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* * * *

Claimant asserts that his father, a naturalized United States citizen, owned personal and real property in Korçë that was confiscated by the Albanian government in 1945. Claimant states that the confiscated property included 1,000 hectares of land in Shamoll and Malavec. By letter dated January 6, 2023, Claimant was asked to submit proof of his father's ownership of the property and evidence to support his claims about its size, location, and nature. To date, Claimant has not provided any evidence beyond his own statements that his father owned hundreds of hectares of land at unspecified locations in Malavec and Shamoll.

The record also includes the Commission's decision in a claim filed by Claimant's father in the General War Claims program for the destruction of real and personal property in Shamoll,

[**] Editor's note: On April 29, 2024, the U.S. Supreme Court denied Plaintiff's petition for a writ of certiorari. No. 23-708.

Korçë during World War II. *Claim of SPEROS THOMAS*, Claim No. W-13637, Decision No. W-17,014. This decision does not, however, provide support for Claimant's assertions in this claim. The Commission denied Claimant's father's claim for the loss of personal property for lack of sufficient evidence, and while it awarded his father compensation for damage sustained to a home, depot, and stable in Shamoll, the size and precise location of the property are not described in the decision or in the administrative record of the claim. The decision is thus not sufficient to establish, as Claimant alleges here, that his father held hundreds of hectares of land in Shamoll and Malavec.[1]

> Section 509.5(b) of the Commission's regulations provides: The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. § 509.5(b)(2022).

The Commission finds that Claimant has not met his burden of proof to establish ownership, size, and location of the property that is the subject of this claim. In the absence of such evidence, the Commission must conclude that Claimant's claim is not compensable under the terms of the Settlement Agreement. Accordingly, the claim must be and is hereby denied.

* * * *

D. NEGOTIATIONS WITH CANADA PURSUANT TO THE 1977 TRANSIT PIPELINES TREATY

As discussed in *Digest 2022* at 344-45 and *Digest 2021* at 328-29, the governments of the United States and Canada have held negotiation sessions under the transit pipelines treaty since 2021, regarding actions in the State of Michigan relating to Line 5 and concerning actions of the Bad River Band in Wisconsin relating to Line 5. U.S.-Canada Agreement Concerning Transit Pipelines, Can.-U.S., Jan. 28, 1977, 28 U.S.T. 7449, 1086 U.N.T.S. 343, available at https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800f8f8b&clang=_en. On April 14, 2023, the United States participated in another negotiation session with Canada regarding actions in Wisconsin and Michigan concerning Line 5, which took place in Washington, D.C.

[1] The insufficiency of Claimant's evidence also makes it difficult, if not impossible, for the Commission to ascertain whether the land in question has already been the subject of restitution and compensation procedures under Albanian law, and thereby avoid a potential double recovery in this claim. *See* Settlement Agreement, Agreed Minute ("Recognizing that Albania is administering a domestic program for compensation and restitution of certain properties, the United States and Albania agreed to exchange information concerning the claims brought under the Albanian program by United States nationals covered by the agreement, as well as information concerning any compensation or restitution provided, in order to assist in avoiding double recovery by claimants.").

Cross References

Promoting Security and Justice for Victims of Terrorism Act, **Ch. 5.A.1**
International Court of Justice ("ICJ"), **Ch.7.B**
Foreign Sovereign Immunities Act, **Ch. 10.A**
Investor-State dispute resolution, **Ch. 11.B**

CHAPTER 9

Diplomatic Relations, Succession, Continuity of States, and Other Statehood Issues

A. DIPLOMATIC RELATIONS, SUCCESSION, AND CONTINUITY ISSUES

1. Bosnia and Herzegovina

On April 28, 2023, the State Department issued a press statement congratulating Bosnia and Herzegovina ("BiH") on the formation of the Federation of BiH Government. The statement follows and is available at https://www.state.gov/congratulating-the-citizens-of-bosnia-and-herzegovina-on-formation-of-the-federation-of-bih-government/.

> The United States congratulates the citizens of Bosnia and Herzegovina on the formation of the new government of the Federation of Bosnia and Herzegovina. We encourage the new ruling coalition to move quickly to advance Bosnia and Herzegovina along its Euro-Atlantic path by implementing important socioeconomic, rule of law, and anticorruption reforms. The United States remains a committed partner to Bosnia and Herzegovina and its people as they build a future in the Euro-Atlantic community.

On November 25, 2023, Secretary Blinken issued a press statement on Bosnia and Herzegovina Statehood Day. The statement is available at https://www.state.gov/bosnia-and-herzegovina-statehood-day-3/, and follows:

> On behalf of the United States of America, I congratulate the citizens of Bosnia and Herzegovina on marking Statehood Day.
>
> The United States has been your enduring partner for over three decades and remains firmly committed to protecting Bosnia and Herzegovina's sovereignty, territorial integrity, and multiethnic character. We will continue to work with institutions of Bosnia and Herzegovina to advance the reforms necessary to help secure your country's rightful place in the Euro-Atlantic community of nations, and we will continue to hold accountable those individuals and institutions that threaten Bosnia and Herzegovina's stability and security.

> The United States remains a friend and partner to all the people of Bosnia and Herzegovina – Bosniak, Croat, Serb, and all citizens – and stands steadfast in our commitment to helping the citizens of the country build a peaceful, democratic, and prosperous future for themselves, their children, and future generations.

2. Niger

On July 26, 2023, the State Department issued a press statement on reports of an attempted takeover in Niger. The statement is available at https://www.state.gov/on-reports-of-an-attempted-takeover-in-niger/ and follows:

> The United States is gravely concerned about developments in Niger. We strongly support the democratically elected President and condemn in the strongest terms any effort to seize power by force and disrupt the constitutional order. We call for the immediate release of President Mohamed Bazoum and respect for the rule of law and public safety. We echo the strong condemnation of today's action by the Economic Community of West African States. We are monitoring the situation closely and are in communication with the U.S. Embassy in Niamey.

On October 10, 2023, the United States announced that a military coup d'etat took place in Niger. A State Department press statement is available at https://www.state.gov/military-coup-detat-in-niger/ and excerpted below.

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The United States has concluded that a military coup d'etat has taken place in Niger. Pursuant to section 7008 of the Department of State's annual appropriations act, the United States is suspending most U.S. assistance to the government of Niger. On August 5, the United States temporarily paused certain foreign assistance programs to the government of Niger, totaling nearly $200 million. That assistance is now also suspended pursuant to section 7008 of the Department of State's annual appropriations act. We also note the Millennium Challenge Corporation's suspension of all assistance to Niger, including all preparatory work on its $302 million Niger Regional Transportation Compact and all new activity on its 2018 Compact.

We underscore that we will maintain our life-saving humanitarian, food, and health assistance to benefit the people of Niger. The United States also intends to continue to work with regional governments, including in Niger, to advance shared interests in West Africa.

We stand with the Nigerien people in their aspirations for democracy, prosperity, and stability. Since the coup, we have supported the Economic Community of West African States' efforts to work with Niger to achieve a return to democratic rule. Any resumption of U.S.

assistance will require action by the National Council for Safeguarding the Homeland to usher in democratic governance in a quick and credible timeframe.

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3. Cook Islands and Niue

On September 25, 2023, the United States recognized the Cook Islands and Niue as independent, sovereign nations and established diplomatic relations between the United States and the nations of the Cook Islands and Niue. President Biden's statements on the recognition and establishment of diplomatic relations with the Cook Islands and Niue are available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/statement-by-president-biden-on-the-recognition-of-niue-and-the-establishment-of-diplomatic-relations/ and https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/statement-by-president-biden-on-the-recognition-of-the-cook-islands-and-the-establishment-of-diplomatic-relations/. Secretary Blinken delivered remarks at joint statement signing ceremonies with the Prime Minister of the Cook Islands, Mark Brown, and the Premier of Niue, Dalton Tagelagi. The remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-a-joint-statement-signing-ceremony-with-cook-islands-prime-minister-mark-brown/ and https://www.state.gov/secretary-antony-j-blinken-at-a-joint-statement-signing-ceremony-with-niue-premier-dalton-tagelagi/. Also on September 25, 2023, the White House published a fact sheet on Enhancing the U.S.-Pacific Islands Partnership, which is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/fact-sheet-enhancing-the-u-s-pacific-islands-partnership/ and includes the following:

- Recognizing Cook Islands and Niue: President Biden announced that the United States recognized Cook Islands and Niue as independent, sovereign nations and intends to establish diplomatic relations with each nation. This momentous occasion celebrates our shared history, common values, and people-to-people ties. We also affirmed our shared values of promoting democracy, combating climate change, and supporting a free and open region that benefits people in the Pacific. The recognition of the Cook Islands and Niue and establishment of diplomatic relations with both nations marks a historic achievement that will further strengthen our friendships and deepen our bonds for many years to come.

4. Gabon

On October 23, 2023, the United States announced that a military coup d'état took place in Gabon. The State Department issued a press statement, which is available at https://www.state.gov/military-coup-detat-in-gabon/ and follows.

* * * *

The United States has concluded that a military coup d'état has taken place in Gabon. Pursuant to section 7008 of the Department of State's annual appropriations act, the United States is suspending most U.S. assistance to the Government of Gabon. This foreign assistance has been temporarily paused by the United States since September 26.

We underscore that our humanitarian, health, and education assistance will continue to benefit the people of Gabon.

The United States reaffirms our commitment to support Gabon in conducting a timely and durable transition to democratic civilian governance and advancing shared security interests in the Gulf of Guinea. We will resume our assistance alongside concrete actions by the transitional government toward establishing democratic rule. We will continue to work closely with the Gabonese people and regional partners.

The United States stands with the Gabonese people in their aspirations for democracy, prosperity, and stability.

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B. STATUS ISSUES

1. Ukraine

On July 18, 2023, Ambassador Jeffrey DeLaurentis, Acting Deputy Representative to the United Nations, delivered remarks at a UN General Assembly debate on the situation in the temporarily occupied territories of Ukraine. The remarks are available at https://usun.usmission.gov/remarks-at-a-un-general-assembly-debate-on-the-situation-in-the-temporarily-occupied-territories-of-ukraine/, and excerpted below.

* * * *

Colleagues, we express appreciation to Ukraine for organizing this important debate every year since 2014, when Russia brazenly seized and attempted to annex Ukraine's Crimean Peninsula. It was a violation of international law then and remains so today.

Nine years later, Russia has moved its armed forces deeper into Ukraine's territory. But its objectives remain the same: the brutal subjugation of its neighbor. The seizure of another UN Member State's territory by force.

Today, Russia is using the same playbook in Ukraine as it did in 2014. It resorts to the same attempts to annex additional areas of Ukraine through sham referenda. It attempts to further subjugate the people living in those regions through "passportization," the installation of Russian occupation authorities in regional governments, the conscription of Ukrainians into Russia's forces, and other illegitimate methods.

Since February last year, Russia has killed tens of thousands of Ukrainian men, women, and children. It has caused the displacement of millions of people from their homes and destroyed more than half of the country's energy grid. Russia has bombed more than 700 hospitals and 2,600 schools, and forcefully relocated as many as 20,000 Ukrainian children. Some of these children as young as four months old.

In areas under Russian occupation, Russia's forces have arrested and detained tens of thousands of Ukrainian civilians, many of whom have been subject to sexual violence or torture and held incommunicado.

We can all recount stories of the human faces behind these horrifying statistics. Last week in Geneva, the UN High Commissioner for Human Rights presented OHCHR's latest findings. He called them shocking. Among the many gruesome findings, OHCHR has documented several cases that suggest Russia's armed forces have used detained civilians as human shields.

Russia's occupation of parts of Ukraine has also resulted in danger to surrounding nuclear plants and other critical infrastructure. Let's be clear: Russia's militarization of the Zaporizhzhya Nuclear Power Plant, including its military presence on top of reactor buildings, jeopardizes global nuclear safety and security.

Last October, this General Assembly came together to affirm the fundamental principles of the UN Charter in the face of Russia's attempted annexation of Ukrainian territory. One hundred fifty-three* countries condemned Russia's attempted annexations via sham referenda.

And as we did last year, the international community must continue to make clear it will not tolerate an attempt by any UN Member State to seize land by force, and that it will not tolerate crimes against humanity and war crimes…

**One hundred forty-three*

* * * *

On September 7, 2023, Secretary Blinken issued a press statement on Russian's sham elections in Ukraine's sovereign territory. The statement is available at https://www.state.gov/russias-sham-elections-in-ukraines-sovereign-territory/ and below.

> The Russian Federation is in the process of conducting sham elections in occupied areas of Ukraine. These so-called elections are taking place nearly one year after the Kremlin staged sham referenda and purported to annex Ukraine's Kherson, Zaporizhzhya, Donetsk, and Luhansk oblasts, and over nine years after Russia purported to annex Ukraine's Autonomous Republic of Crimea and Sevastopol. The Kremlin hopes these pre-determined, fabricated results will

strengthen Russia's illegitimate claims to the parts of Ukraine it occupies, but this is nothing more than a propaganda exercise.

Russia's actions demonstrate its blatant disregard for UN Charter principles like respect for state sovereignty and territorial integrity, which underpin global security and stability. The United States will never recognize the Russian Federation's claims to any of Ukraine's sovereign territory, and we remind any individuals who may support Russia's sham elections in Ukraine, including by acting as so-called "international observers," that they may be subject to sanctions and visa restrictions.

On September 8, 2023, Ambassador Robert Wood, Alternative Representative for Special Political Affairs, delivered remarks at a UN Security Council briefing on peace and security in Ukraine. The remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-peace-and-security-in-ukraine/.

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The United States and Albania called this meeting today because of the Russian Federation's continued and flagrant violation of the UN Charter, through its assault on the sovereignty and territorial integrity of Ukraine, and violence against the Ukrainian people.

On August 31, Russia began holding sham elections in the areas of Ukraine it occupies – coinciding with annual regional elections being held throughout Russia. The Kremlin hopes these sham elections will demonstrate its control over these occupied territories, but they are nothing more than a propaganda stunt.

This is not a new tactic. These so-called "elections" in Russian occupied territories of Ukraine are taking place nearly one year after the Kremlin staged sham referenda, and purported to annex Ukraine's Kherson, Zaporizhzhia, Donetsk, and Luhansk oblasts – and over nine years after Russia purported efforts to annex Crimea.

The Kremlin uses these sham referenda and elections to try to lend a semblance of legitimacy to its attempts to unlawfully annex the sovereign territory of its neighbors. The Kremlin is rushing to fabricate electoral successes to hide its military losses in Ukraine from the Russian people. The Kremlin knows full well its elections in Ukraine are a complete fraud.

But some within the Russian government are concerned about the perceived legitimacy and voter turnout for the elections in the occupied areas. The outcome will – of course – be predetermined and manipulated. In fact, from media reports, we understand that Russian authorities already have established field polling stations, where Russia's armed forces began conducting early voting as of August 31 in frontline areas and elsewhere to manipulate and maximize the vote count. Essentially, Russia's armed soldiers are providing so-called "security" to voters in an intimidating combination of bullets and ballots.

These sham elections in no way represent a legitimate expression of the will of the people of Ukraine, who have consistently resisted and bravely fought Russia's efforts to change Ukraine's borders by force for nearly 19 months. These Potemkin elections are an affront to the

principles enshrined in the UN Charter. The Ukrainian people are fighting to expel Russia's forces from their territory.

The vast majority of the world is united in support of Ukraine and the UN Charter. Last year, 143 countries voted in the General Assembly to condemn Russia's purported annexation of Ukraine's sovereign territory.

The United States will never recognize Russia's claims to any of Ukraine's territory. We condemn Russia's continued occupation unequivocally, and we will continue to work with allies and partners to provide Ukraine with the military equipment it needs to defend itself.

We urge all UN Member States to refrain from actions that serve to lend credibility to Russia's sham elections on Ukraine's sovereign territory. We must all call out Russia's egregious violations of international law for what they are: A stain on our collective history as a body founded on maintaining world peace, and an assault on our rules-based international order.

The overwhelming majority of this Council has said that international conflicts must be resolved through dialogue and diplomacy. We agree. And Ukraine's democratically elected President Zelenskyy has put forth a plan for a just and lasting peace based on UN Charter principles.

But Russia has shown no interest in good faith dialogue to end the war. Just the opposite. Russia continues to wage its war of conquest, sending wave after wave of bombs and missiles into Ukraine, wreaking death and destruction on civilians and civilian infrastructure, with members of Russia's forces and other Russian officials committing unconscionable war crimes, crimes against humanity, and other atrocities and abuses.

Ukraine's fight is not only a fight for its own survival, but a fight in defense of the rules-based international order and its foundational principles. That is why it is imperative that we all stand unequivocally with Ukraine.

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2. Georgia

On August 7, 2023, Secretary Blinken delivered a press statement on the anniversary of the Russian invasion of Georgia. The statement is available at https://www.state.gov/marking-fifteen-years-since-russias-invasion-and-occupation-of-georgia/ and included below.

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Fifteen years ago, Russia invaded the sovereign nation of Georgia and occupied 20 percent of its territory. The United States remains steadfast in our support for Georgia's sovereignty and territorial integrity within its internationally recognized borders. The lives of the conflict-affected populations have forever been altered by Russia's actions. With deepest respect and heartfelt sympathy, we remember those killed, injured, and displaced by Russia's forces.

Russia's actions during its occupation, including the Kremlin's malign disinformation campaigns, so-called "borderization," and mass displacement still cause untold hardships. As in

Ukraine, the people of Georgia have suffered the consequences of Russia's contempt for international law and desire to dominate its neighbors.

The United States remains determined to hold Russia accountable for its obligation under the 2008 six-point ceasefire agreement to withdraw its forces to pre-conflict positions and allow unimpeded access for the delivery of humanitarian assistance. Russia must also reverse its recognition of the so-called independence of Georgia's Abkhazia and South Ossetia regions. These actions are essential for hundreds of thousands of internally displaced people to be able to return to their homes safely and live with dignity.

After fifteen years, the United States remains unwavering in our support for the people of Georgia and for their overwhelming desire for Euro-Atlantic integration, as they defend their sovereignty and territorial integrity, and seek a peaceful solution to the conflict.

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3. European Union

On December 14, 2023, the State Department released a press statement welcoming the European Council decisions on EU enlargement. The statement is available at https://www.state.gov/welcoming-the-european-council-decisions-on-eu-enlargement/, and included below.

> The United States welcomes the European Council's December 14 decisions on EU enlargement as a powerful affirmation of the EU candidates' and prospective candidates' European future. Today's decisions to open EU accession negotiations with Ukraine and Moldova, grant EU candidate status to Georgia, and open accession negotiations with Bosnia and Herzegovina, once it has met the necessary criteria, offer hope and incentive to these countries and their people to continue reforms needed to advance their EU ambitions. This is a historic moment for Europe and for the transatlantic partnership.
>
> The United States continues to strongly support the EU's enlargement process, and we look forward to supporting EU candidate and prospective candidate countries as they continue critical reforms on the path to EU membership. At this pivotal moment for the transatlantic community, we encourage them to seize the momentum to realize their full democratic and economic potential and secure their future in Europe.

Cross References

Asylum, refugee, and migrant issues, **Ch. 1.C**
Law Enforcement Dialogue with Cuba, **Ch. 3.A.1**
ICC and Russia, **Ch. 3.C.2.c**
Negotiations related to the Compacts of Free Association, **Ch. 5.C**
UN resolutions related to Russia's aggression against Ukraine, **Ch. 7.A.2**
Russia sanctions, **Ch. 16.A.4**
Ukraine, **Ch. 17.B.3**
Atrocities in Ukraine, **Ch. 17.C.4**

CHAPTER 10

Privileges and Immunities

A. FOREIGN SOVEREIGN IMMUNITIES ACT

The Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1441, 1602–1611, governs civil actions against foreign states in U.S. courts. The FSIA's various statutory exceptions to a foreign state's immunity from the jurisdiction of U.S. courts, set forth at 28 U.S.C. §§ 1605(a)(1)–(6), 1605A, 1605B, and 1607, have been the subject of significant judicial interpretation in cases brought by private litigants against foreign states. Accordingly, much of U.S. practice in the field of sovereign immunity is developed by U.S. courts in litigation to which the U.S. government is not a party. The following section discusses a selection of the significant proceedings that occurred during 2023 in which the United States filed a statement of interest or participated as amicus curiae.

1. Scope of Application: Civil not Criminal Proceedings

The FSIA provides for jurisdiction of U.S. courts over foreign States and sovereign immunity from the jurisdiction of the U.S. courts unless an exception applies:

> The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

28 U.S.C. 1330(a)

> Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. 1604.

On April 19, 2023, consistent with the positions taken by the United States, the U.S. Supreme Court held in *Türkiye Halk Bankasi A.S., aka Halkbank v. United States* that as a matter of first impression, the FSIA does not grant immunity to foreign states or their instrumentalities in criminal proceedings. 598 U.S. 264, 143 S. Ct. 940 (2023). *Halkbank* concerns the sovereign immunity claim of Halkbank, a Turkish instrumentality, in a criminal proceeding for U.S. sanctions violations. See *Digest 2022* at 390-98. The Supreme Court remanded the case to the Second Circuit on the question of sovereign immunity in criminal proceedings under common law. Excerpts from the Court's opinion follow (footnotes omitted).

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To begin with, the text of the FSIA indicates that the statute exclusively addresses civil suits against foreign states and their instrumentalities. The first provision of the FSIA grants district courts original jurisdiction over "any nonjury *civil* action against a foreign state" as to "any claim for relief in personam with respect to which the foreign state is not entitled to immunity." 28 U.S.C. § 1330(a) (emphasis added); 90 Stat. 2891.

The FSIA then sets forth a carefully calibrated scheme that relates only to civil cases. For instance, the sole FSIA venue provision exclusively addresses venue in a "civil action" against a foreign state. § 1391(f). The Act similarly provides for removal to federal court of a "civil action" brought in state court. § 1441(d). The Act prescribes detailed rules—including those governing service of "the summons and complaint," § 1608(a)(1), along with "an answer or other responsive pleading to the complaint," § 1608(d), as well as for any judgment of default, § 1608(e)—that relate to civil cases alone. So, too, the Act's provision regarding counterclaims concerns only civil proceedings. § 1607. Finally, the Act renders a non-immune foreign state "liable in the same manner and to the same extent as a private individual," except that a foreign state (but not an agency or instrumentality thereof) "shall not be liable for punitive damages." § 1606. Each of those terms characterizes civil, not criminal, litigation.

Other parts of the statute underscore the FSIA's exclusively civil focus. Congress codified its finding that authorizing federal courts to determine claims of foreign sovereign immunity "would protect the rights of both foreign states and *litigants* in United States courts." § 1602 (emphasis added). The statutory term "litigants" does not ordinarily sweep in governments acting in a prosecutorial capacity. See Black's Law Dictionary 1119 (11th ed. 2019) (defining "litigant" as "A party to a lawsuit; the plaintiff or defendant in a court action"). What is more, Congress described the FSIA as defining "the circumstances in which foreign states are immune *from suit*," not from criminal investigation or prosecution. 90 Stat. 2891 (emphasis added).

In stark contrast to those many provisions concerning civil actions, the FSIA is silent as to criminal matters. The Act says not a word about criminal proceedings against foreign states or their instrumentalities. If Halkbank were correct that the FSIA immunizes foreign states and their instrumentalities from criminal prosecution, the subject undoubtedly would have surfaced somewhere in the Act's text. Congress typically does not "hide elephants in

mouseholes." *Whitman v. American Trucking Assns.*, Inc., 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001).

Context reinforces text. Although the vast majority of litigation involving foreign states and their instrumentalities at the time of the FSIA's enactment in 1976 was civil, the Executive Branch occasionally attempted to subject foreign-government-owned entities to federal criminal investigation. See *In re Grand Jury Investigation of Shipping Industry*, 186 F.Supp. 298, 318–320 (D.C. 1960); *In re Investigation of World Arrangements*, 13 F.R.D. 280, 288–291 (D.C. 1952). Given that history, it becomes even more unlikely that Congress sought to codify foreign sovereign immunity from criminal proceedings without saying a word about such proceedings.

Congress's determination about the FSIA's precise location within the U. S. Code bolsters that inference. Congress expressly decided to house each provision of the FSIA within Title 28, which mostly concerns civil procedure. See 90 Stat. 2891. But the FSIA did not alter Title 18, which addresses crimes and criminal procedure.

Finally, this Court's decision in *Samantar* supports the conclusion that the FSIA does not apply to criminal proceedings. In *Samantar*, we considered whether the FSIA's immunity provisions applied to a suit against an individual foreign official based on actions taken in his official capacity. 560 U.S. at 308, 130 S.Ct. 2278. Analyzing the Act's "text, purpose, and history," the Court determined that the FSIA's "comprehensive solution for suits against states" does not "exten[d] to suits against individual officials." *Id.*, at 323, 325, 130 S.Ct. 2278.

As in *Samantar*, we conclude here that the FSIA's provisions concerning suits against foreign states and their instrumentalities do not extend to a discrete context—in this case, criminal proceedings. The Act's "careful calibration" of jurisdiction, procedures, and remedies for civil litigation confirms that Congress did not "cover" criminal proceedings. *Id.*, at 319, 130 S.Ct. 2278. Put simply, immunity in criminal proceedings "was not the particular problem to which Congress was responding." *Id.*, at 323, 130 S.Ct. 2278.

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IV

Although the FSIA does not immunize Halkbank from criminal prosecution, Halkbank advances one other plea for immunity. In the context of a civil proceeding, this Court has recognized that a suit not governed by the FSIA "may still be barred by foreign sovereign immunity under the common law." *Samantar v. Yousuf*, 560 U.S. 305, 324, 130 S.Ct. 2278, 176 L.Ed.2d 1047 (2010). Halkbank maintains that principles of common-law immunity preclude this criminal prosecution even if the FSIA does not. To that end, Halkbank contends that common-law-immunity principles operate differently in criminal cases than in civil cases. See Brief for Petitioner 34–35, 44. And Halkbank argues that the Executive Branch cannot unilaterally abrogate common-law immunity by initiating prosecution. *Id.,* at 44.

The Government disagrees. Reasoning from pre-FSIA history and precedent, the Government asserts that the common law does not provide for foreign sovereign immunity when, as here, the Executive Branch has commenced a federal criminal prosecution of a commercial entity like Halkbank. See Brief for **United States** 21. In the alternative, the Government contends that any common-law immunity in criminal cases would not extend to commercial activities such as those undertaken by Halkbank. *Id.*, at 16–21.

The Court of Appeals did not fully consider the various arguments regarding common-law immunity that the parties press in this Court. See 16 F.4th at 350–351. Nor did the Court of Appeals address whether and to what extent foreign states and their instrumentalities are

differently situated for purposes of common-law immunity in the criminal context. We express no view on those issues and leave them for the Court of Appeals to consider on remand. Cf. *Samantar*, 560 U.S. at 325–326, 130 S.Ct. 2278.

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2. Scope of Application: Agency or Instrumentality of a Foreign State

Section 1603(a) and (b) of the FSIA define "foreign state" as follows:

> (a) A "foreign state" . . . includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).
> (b) An "agency or instrumentality of a foreign state" means any entity—
> (1) which is a separate legal person, corporate or otherwise, and
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
> (3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title nor created under the laws of any third country.

On June 20, 2023, the United States filed an amicus brief in *Bartlett v. Baasiri, et al.*, No. 21-2019 (2d Cir.), on the question of whether the "time of filing" rule precludes a post-filing claim of sovereign immunity under the FSIA when the defendant, sued as a private party, goes into liquidation while the suit is pending in a process governed by a foreign central bank pursuant to foreign law. The United States amicus brief is excerpted below (footnotes omitted).

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3. As the Supreme Court has recognized, "the principal purpose of foreign sovereign immunity … [is] to give foreign states and their instrumentalities some *present* 'protection from the inconvenience of suit as a gesture of comity.'" *Altmann*, 541 U.S. at 696 (quoting *Dole Food Co. v. Patrickson*, 538 U.S. 468, 479 (2003)). Foreign sovereign immunity is thus unlike the immunities applicable to domestic officials in the United States, such as qualified immunity, in that foreign sovereign immunity "is not meant to avoid chilling foreign states or their instrumentalities in the conduct of their business" and hence is not based on the status of the entity at the time of the conduct giving rise to the suit. *Dole Food*, 538 U.S. at 479. Instead, "[foreign sovereign] immunity reflects current political realities and relationships," *Altmann*, 541 U.S. at 696, and so is concerned with the existing sovereign status of a defendant to a suit.

The Supreme Court's decision in *Dole Food* makes clear that the FSIA incorporates foreign sovereign immunity's focus on the present status of a defendant at the time the FSIA is applied. *Dole Food* involved corporations that professed to be agencies or instrumentalities of a

foreign state at the time of the conduct giving rise to the claim but not at the time the plaintiff filed suit. 538 U.S. at 471-72. In light of that history, the question the Court considered was "whether a corporation's instrumentality status is defined as of the time an alleged tort or other actionable wrong occurred or, on the other hand, at the time suit is filed." *Id.* at 471.

In answering that question, the Court interpreted 28 U.S.C. § 1603(b), the provision of the FSIA defining the phrase "agency or instrumentality of a foreign state." *Dole Food*, 538 U.S. at 473. At issue was the statutory requirement that an agency or instrumentality be an entity "a majority of whose shares or other ownership interest is owned by a foreign state." *Id.* at 478 (quoting 28 U.S.C. § 1603(b)(2)). The Supreme Court explained that the provision's use of "the present tense has real significance." *Id.* Because "[a]ny relationship recognized under the FSIA between the [corporations] and [the foreign state] had been severed before suit was commenced," giving legal effect to any instrumentality status the corporations once had would be inconsistent with the statute's use of the present tense and would not further the FSIA's purpose of giving foreign states present protection from suit. *Id.* at 479, 480.

Accordingly, the Court held that the corporations' "instrumentality status [is to] be determined at the time suit is filed." *Dole Food*, 538 U.S. at 478. The Court found that conclusion "consistent with the longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought." *Id.* (quotation marks omitted).

4. Dole Food 's central interpretive holding is that courts must give effect to § 1603(b)'s use of the present tense. When an entity acquires instrumentality status during a suit against it, giving the present tense real significance requires recognizing the entity's claim to foreign sovereign immunity under the FSIA.

The FSIA's immunity provision states that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States" unless a claim comes within a statutory exception. 28 U.S.C. § 1604. The statute defines "foreign state" as including "an agency or instrumentality of a foreign state." *Id*. § 1603(a). And it defines "agency or instrumentality of a foreign state" as "any entity—"

> (1) which is a separate legal person, corporate or otherwise, and
>
> (2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
>
> (3) which is neither a citizen of a State of the United States …, nor created under the laws of any third country.

Id. § 1603(b) (emphases added). That definition expresses Congress' intent that an entity qualifies as an "agency or instrumentality" based on its current relationship with the foreign state.

The definition permits an entity that satisfies the conditions at the outset of litigation to claim immunity at that time, subject to the exceptions, and it denies an entitlement to immunity to any entity that fails to possess the required relationship at the time of suit. *See Dole Food*, 538 U.S. at 480. To give the present tense real significance, the definition also permits an entity that acquires instrumentality status during the pendency of litigation to claim immunity. At that time, the entity "is a separate legal person," "is an organ of a foreign state" or an entity that "is" majority- owned by the state, and "is" not a U.S. citizen or the citizen of a third country.

Recognizing such an entity's entitlement to claim immunity, subject to the exceptions, implements the text's requirement that the immunity of an entity turn on the entity's present relationship with the foreign state. And it is congruent with the Supreme Court's recognition that "the principal purpose of foreign sovereign immunity … [is] to give foreign states and their instrumentalities some *present* 'protection from the inconvenience of suit.'" *Altmann*, 541 U.S. at 696 (quoting *Dole Food*, 538 U.S. at 479).

This interpretation of the FSIA also is consistent with the foreign sovereign immunity provision of the Antiterrorism Act. That statute provides in relevant part that "[n]o action shall be *maintained* under [18 U.S.C. § 2333] against[] … a foreign state[or] an agency of a foreign state." 18 U.S.C. § 2337(2) (emphasis added). The plain text of that provision strongly supports the proposition that courts should consider the current status of an entity asserting foreign sovereign immunity rather than the entity's status at the time suit was brought. Courts have construed an assertion of immunity under § 2337(2) as "functionally equivalent" to an assertion of immunity under the FSIA. *Ungar v. Palestine Liberation Org.*, 402 F.3d 274, 283 (1st Cir. 2005). Section 2337(2) therefore supports a construction of the FSIA that entitles an entity that acquires instrumentality status during litigation to assert immunity.

Dole Food's holding that "instrumentality status [is to] be determined at the time suit is filed," 538 U.S. at 478, is not to the contrary. That holding must be understood in context. In light of the history of the corporations' alleged sovereign status, the Court considered only two options: whether instrumentality status should be determined at the time of the alleged tort or at the time the suit was brought. *Id.* at 471. The Court had no occasion in *Dole Food* or in subsequent cases to consider whether instrumentality status may appropriately be found during the pendency of a suit if the entity becomes an agency or instrumentality of the state after the complaint is filed. *Dole Food* should not be read to resolve the latter question. *See Turkiye Halk Bankasi*, 143 S. Ct. at 950 ("This Court has often admonished that general language in judicial opinions should be read as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not then considering." (quotation marks omitted)).

Nor is there any tension between the present-tense interpretation of the FSIA and *Dole Food*'s reliance on "the longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought." 538 U.S. at 478 (quotation marks omitted); *see also* Brief for the United States as Amicus Curiae Supporting Respondents at 23-24, *Dole Food Co. v. Patrickson*, 538 U.S. 468, Nos. 01-593, 01-594, 2002 WL 31261045 (Oct. 3, 2022) (highlighting that jurisdictional principle). Because the FSIA's substantive foreign sovereign immunity principles apply independently of the statute's grant of jurisdiction, an entity that acquires instrumentality status during litigation is entitled to claim immunity under the FSIA even if the district court's subject-matter jurisdiction is established under some other statute at the outset of litigation.

5. Interpreting the FSIA's immunity provisions to give effect to the emergence of sovereign status that occurs during the pendency of a suit is in keeping with foreign sovereign immunity principles as they existed under the preexisting immunity regime. In *Oliver*, this Court rejected the plaintiff's contention that Mexico could not claim foreign sovereign immunity because "the jurisdiction of the [district] court fully attached prior to the recognition of Mexico." 5 F.2d at 661. Once the United States recognized the Mexican government, this Court held,

Mexico and its national railroad were entitled to claim foreign sovereign immunity and the plaintiff had no right to have its claims resolved by courts in the United States. *Id.* at 666-67; *see Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 11 (2015) ("Legal consequences follow formal recognition. Recognized sovereigns may sue in United States courts and may benefit from sovereign immunity when they are sued." (citations omitted)). Because the FSIA codified the preexisting principles of foreign sovereign immunity, *Stephens*, 69 F.3d at 1234, this Court's decision in *Oliver* supports a construction of the statute that extends immunity to entities that become foreign-state agencies or instrumentalities during litigation.

Interpreting the FSIA's immunity provisions to apply to entities that acquire instrumentality status during litigation is also consistent with customary international law. Foreign sovereign immunity "ha[s] been adopted as a general rule of customary international law solidly rooted in the current practice of States." Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, 2012 I.C.J. Rep. 99, ¶ 56 (Feb. 3) (quotation marks omitted). In light of that rule, "States generally proceed on the basis that there is a right to immunity under international law, together with a corresponding obligation on the part of other States to respect and give effect to that immunity." *Id.*

There is no customary international law rule of which the United States is aware that permits one state to decline to afford a foreign state an opportunity to assert foreign sovereign immunity due to a change in status since the suit was filed. Construing the FSIA to have that result with respect to agencies or instrumentalities would appear to require a similar application to foreign states themselves and would thus risk a determination that the United States has violated its obligation under customary international law to recognize the immunity of a foreign state. *Cf. Oliver*, 5 F.2d 659. It could also result in the adverse treatment of the United States or agencies and instrumentalities of the United States in foreign courts. *See Garb v. Republic of Poland*, 440 F.3d 579, 597 n.24 (2d Cir. 2006) (noting that foreign sovereign immunity is "a reciprocal norm that significantly insulates the United States from suits in foreign countries").

The principles of foreign sovereign immunity that the FSIA codified were based on customary international law. *See Samantar*, 560 U.S. at 319-20; *Stephens*, 69 F.3d at 1234. The absence of any customary international law rule that would permit a state to decline to recognize the sovereign status of an entity that became an agency or instrumentality during litigation, entitled to claim immunity on that basis, is therefore a further reason to construe the FSIA's immunity provisions to apply to such an entity.

* * * *

On August 24, 2023, the Second Circuit adopted the reasoning of the United States that the "time of filing" rule does not preclude an agency or instrumentality from claiming sovereign immunity when it obtains such status during the course of litigation. *Bartlett v. Baasiri*, 81 F.4th 28 (2d Cir.). Excerpts from the Court's opinion follow (footnotes omitted).

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* * * *

The decisive issue in this appeal is whether JTB may raise a defense of immunity under the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1602–1611, when it alleges that immunity arose after suit was filed. We review the district court's resolution of this question of law *de novo*. *A&B Alternative Mktg. Inc. v. Int'l Quality Fruit Inc.*, 35 F.4th 913, 915 (2d Cir. 2022); *Rukoro v. Fed. Republic of Germany*, 976 F.3d 218, 223 (2d Cir. 2020).

To determine the effect of the FSIA, one must know something of the system that came before it. We begin, therefore, as almost all modern discussions of foreign sovereign immunity do, with *The Schooner Exchange v. McFaddon*, 7 Cranch 116, 3 L.Ed. 287 (1812). In that case, Chief Justice John Marshall explained that foreign sovereigns have no inherent exemption from the power of American courts, since the "jurisdiction of the nation within its own territory is necessarily exclusive and absolute." *Id.* at 136. Still, he wrote, it would "degrade the dignity" of a sovereign state to have its rights adjudicated in the courts of another country, so, most countries had agreed to waive jurisdiction over foreign sovereigns. *Id.* at 137–40. The young United States, the Chief Justice announced, would do the same. *Id.* at 147.

This was a matter of "grace and comity," not power, and of "common law," not statute. *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486, 103 S.Ct. 1962, 76 L.Ed.2d 81 (1983); *Samantar v. Yousuf*, 560 U.S. 305, 311, 130 S.Ct. 2278, 176 L.Ed.2d 1047 (2010). Although district courts had subject-matter jurisdiction over suits against foreign states under the Constitution and the diversity statute, they elected not to exercise it when a defendant was entitled to immunity. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 437 n.5, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989).

For many years, that entitlement was determined by the executive branch, not the judiciary. *See Verlinden*, 461 U.S. at 486–87, 103 S.Ct. 1962. In "nearly every action brought against a foreign sovereign," the State Department would submit a "suggestion of immunity" and the receiving court would surrender its jurisdiction over the case. *Beierwaltes v. L'Office Federale De La Culture De La Confederation Suisse*, 999 F.3d 808, 818 (2d Cir. 2021) (cleaned up).

Things started to change in 1952, when the State Department announced that it would follow the more modern "restrictive" theory of foreign sovereign immunity. *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 143 S. Ct. 940, 946, 215 L.Ed.2d 242 (2023). In what came to be known as the Tate Letter, the State Department explained that "the immunity of the sovereign [would be] recognized with regard to sovereign or public acts *(jure imperii*) of a state, but not with respect to private acts (*jure gestionis*)." Letter of Jack B. Tate, Acting Legal Adviser, Department of State, to Acting Attorney General Philip B. Perlman (May 19, 1952), *reprinted in* 26 Dep't of State Bull. 984, 984–85 (1952), *and in Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 711–12, 96 S.Ct. 1854, 48 L.Ed.2d 301 (1976) (Appendix 2 to opinion of the Court).

The Tate Letter threw immunity doctrine "into some disarray." *Republic of Austria v. Altmann*, 541 U.S. 677, 690, 124 S.Ct. 2240, 159 L.Ed.2d 1 (2004). Although the State Department continued to file suggestions of immunity, and the courts continued to respect them, "political considerations" sometimes led the State Department to support immunity when a straightforward reading of the restrictive theory would have led it to oppose. *Id.* Confusing things still more, if the State Department did not step in, courts made immunity determinations by themselves, "generally by reference to prior State Department decisions." *Verlinden*, 461 U.S. at 487, 103 S.Ct. 1962. With two branches, having different institutional considerations, deciding

who should be immune and who should not, "the governing standards were," unsurprisingly, "neither clear nor uniformly applied." *Id.* at 488, 103 S.Ct. 1962.

Twenty-four years after the Tate Letter, Congress brought order to the chaos. It replaced the old ad hoc system with the Foreign Sovereign Immunities Act of 1976, Pub. L. No. 94–583, 90 Stat. 2891, which provided a "comprehensive set of legal standards governing claims of immunity in every civil action against a foreign state." *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 141, 134 S.Ct. 2250, 189 L.Ed.2d 234 (2014) (internal quotation marks omitted). In doing so, it intended to "codify the restrictive theory of sovereign immunity" laid out in the Tate Letter, "which Congress recognized as consistent with extant international law." *Samantar*, 560 U.S. at 319–20, 130 S.Ct. 2278; *see Garb v. Republic of Poland*, 440 F.3d 579, 586 (2d Cir. 2006) ("Congress ... intended to codify the Tate Letter.").

The FSIA provides that "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided" in the Act. 28 U.S.C. § 1604; *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S.Ct. 1471, 123 L.Ed.2d 47 (1993). Any "agency or instrumentality" of a foreign state is similarly immune. 28 U.S.C. §§ 1603(a), 1604. The FSIA defines "agency or instrumentality," in relevant part, as an entity "which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof." 28 U.S.C. § 1603(b)(2).

The crucial word there—which goes a long way toward resolving this case—is *is*. The statute uses the present tense, and we, in the words of the Supreme Court, must give that choice "real significance." *Dole Food*, 538 U.S. at 478, 123 S.Ct. 1655. The parties, however, disagree on that significance. The plaintiffs argue that a "statute's use of the present tense ordinarily refers to the time the suit is filed, not the time the court rules." Appellees' Br. 46–47 (quoting *TIG Ins. Co. v. Republic of Argentina*, 967 F.3d 778, 783 (D.C. Cir. 2020)). JTB counters that a time-of-filing rule would violate the purposes of the FSIA. The State Department argues that here, the present tense reflects the FSIA's concern with "current political realities and relationships" and its aim that "foreign states and their instrumentalities" be given "some *present* protection from the inconvenience of suit as a gesture of comity." Br. of *Amicus Curiae* U.S. Department of State 11 (quoting *Republic of Austria v. Altmann*, 541 U.S. 677, 696, 124 S.Ct. 2240, 159 L.Ed.2d 1 (2004)). We think the State Department has the better of it: The most natural reading of the statute is one that gives foreign sovereigns immunity even when they gain their sovereign status mid-suit. We therefore hold that immunity under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604, may attach when a defendant becomes an instrumentality of a foreign sovereign after a suit is filed.

To see why, look first to the structure of the FSIA. The act gives foreign states immunity not only from judgments, but from process, too. It shields them from the "expense, intrusiveness, and hassle of litigation altogether." *Beierwaltes*, 999 F.3d at 817 (internal quotation marks omitted). We see no reason why that protection should apply only if the defendant had sovereign status from the beginning of the suit. The fact that a defendant acquired instrumentality status after the suit began will not ordinarily justify subjecting a foreign sovereign to the "inconvenience of suit." *Altmann*, 541 U.S. at 696, 124 S.Ct. 2240; *cf. Zuza v. Off. of the High Representative*, 857 F.3d 935, 938 (D.C. Cir. 2017) (concluding that foreign official immunity under the International Organizations Immunities Act, 22 U.S.C. § 288d(b), "compels prompt dismissal even when it attaches mid-litigation").

This reading is consistent with other authority and dovetails with the purposes of foreign sovereign immunity. Such immunity exists for different reasons than "other status-based

immunities," including the qualified immunity accorded to many state actors. *Dole Food*, 538 U.S. at 478–79, 123 S.Ct. 1655. Immunity for government officers prevents "the threat of suit from crippling the proper and effective administration of public affairs." *Id.* at 479, 123 S.Ct. 1655 (cleaned up). "Foreign sovereign immunity, by contrast, is not meant to avoid chilling foreign states ... in the conduct of their business but to give [them] some protection from the inconvenience of suit as a gesture of comity between the United States and other sovereigns." *Id.* The immunity therefore focuses on "current political realities." *Altmann*, 541 U.S. at 696, 124 S.Ct. 2240; *see Republic of Iraq v. Beaty*, 556 U.S. 848, 864, 129 S.Ct. 2183, 173 L.Ed.2d 1193 (2009) (same). What matters is whether a foreign sovereign is subject to the burdens of suit at any point before judgment.

The pre-FSIA history of foreign sovereign immunity likewise suggests that immunity may kick in after a lawsuit has been filed. Take the Supreme Court's decision in *Oliver American Trading Co. v. United States of Mexico*, 264 U.S. 440, 44 S.Ct. 390, 68 L.Ed. 778 (1924), which illustrates the need for immunity to reflect the latest political developments. *Oliver* involved a breach of contract suit brought by a Delaware corporation against the government of Mexico. At the time the company filed suit, the United States did not recognize the *de facto* Mexican government as legitimate, but the United States established diplomatic relations while the suit was pending. *Id.* at 442, 44 S.Ct. 390. Once that happened, the district court held that Mexico was entitled to immunity. *Id.* The corporation sought review in the Supreme Court, under a statute authorizing such direct review of decisions that "present the question of jurisdiction of the District Court as a federal court." *Id.* The Supreme Court, however, concluded that the question of foreign sovereign immunity did not implicate "the power of the court" and transferred the appeal to this Court to proceed in the ordinary course. *Id.* at 442–43, 44 S.Ct. 390. We affirmed. *Oliver Am. Trading Co. v. Gov't of the United States of Mexico*, 5 F.2d 659, 667 (2d Cir. 1924). The upshot: In the pre-FSIA world, a defendant who gained foreign sovereign immunity after a suit was filed had to be dismissed from the case. The FSIA, as we have seen, codified the pre-existing common law. *Samantar*, 560 U.S. at 319–20, 130 S.Ct. 2278.

More recently, courts have reached the same conclusion in other immunity cases. In 2009, the Supreme Court held that when a 2003 presidential designation made an FSIA exception inapplicable to Iraq, "immunity kicked back in" and then-pending cases had to be dismissed. *Beaty*, 556 U.S. at 865, 129 S.Ct. 2183. Six years ago, the D.C. Circuit held that officers of international organizations entitled to immunity under the International Organizations Immunities Act (IOIA), 22 U.S.C. §§ 288 *et seq.*, could invoke that immunity, and compel dismissal, even when they gained their status only after the suit was filed. *Zuza*, 857 F.3d at 938. The IOIA, we note, provides that international organizations enjoy "the same immunity from suit ... as is enjoyed by foreign governments." 22 U.S.C. § 288a(b). And in a case involving claims against members of the Saudi ruling family, the Eleventh Circuit held that diplomatic immunity requires dismissal even when the defendant becomes a diplomat after the action commences. *See Abdulaziz v. Metro. Dade County*, 741 F.2d 1328, 1330 (11th Cir. 1984).

With structure, purpose, and history arrayed against them, the plaintiffs argue that Supreme Court precedent is nevertheless on their side. They contend that the Court's statement in *Dole Food* that "instrumentality status is determined at the time of the filing of the complaint" forecloses changes in status after filing. *Dole Food*, 538 U.S. at 480, 123 S.Ct. 1655. We disagree. In *Dole Food*, a group of farm workers from Costa Rica, Ecuador, Guatemala, and Panama sued the Dole Food Company (and several others) over alleged injuries from exposure to a chemical used as an agricultural pesticide. *Id.* at 471, 123 S.Ct. 1655. Some of the defendants

moved to dismiss, arguing that they were instrumentalities of Israel when the alleged conduct took place, although not at the time the suit was brought. *Id.* at 471–72, 123 S.Ct. 1655. The Supreme Court granted certiorari to decide "whether a corporation's instrumentality status is defined as of the time an alleged tort or other actionable wrong occurred or, on the other hand, at the time suit is filed." *Id.* at 471, 123 S.Ct. 1655.

The answer, the Court held, is that "instrumentality status is determined at the time of the filing of the complaint," not at the time the wrong occurred. *Id.* at 480, 123 S.Ct. 1655. The Court reasoned that "the plain text" of § 1603(b)(2) is "expressed in the present tense," *id.* at 478, 123 S.Ct. 1655. It also invoked "the longstanding principle that the jurisdiction of the Court depends upon the state of things at the time of the action brought." *Id.* (internal quotation marks omitted). Giving the companies immunity for a status they no longer held would, the Court concluded, do nothing to advance the purpose of foreign sovereign immunity—protecting sovereigns from "the inconvenience of suit as a gesture of comity"—because, once the defendants had ceased to be instrumentalities of a foreign state, no foreign sovereign was involved. *Id.* at 479, 123 S.Ct. 1655.

The situation here is flipped: The defendant claims to have gained sovereign status after filing, rather than losing it before. The logic of *Dole Food*, applied to these facts, supports the mirror-image outcome: Although pre-suit sovereign immunity cannot be retained by a no-longer-sovereign defendant, sovereign status acquired post-filing can confer immunity. That result gives the FSIA's use of the present tense "real significance," as *Dole Food* instructed. 538 U.S. at 478, 123 S.Ct. 1655. It also accords with *Dole Food*'s explanation of the purposes behind foreign sovereign immunity, which exists to protect foreign sovereigns from "the inconvenience of suit," and not, as with qualified immunity, to shape conduct ex ante. *Id.* at 479, 123 S.Ct. 1655.

* * * *

3. Expropriation Exception to Sovereign Immunity

The expropriation exception to sovereign immunity in the FSIA provides that a foreign state is not immune from any suit "in which rights in property taken in violation of international law are in issue" and a specified commercial-activity nexus to the United States is present. 28 U.S.C. § 1605(a)(3).

See *Digest 2022* at 398-402, *Digest 2021* at 385-91, and *Digest 2020* at 384-92 for discussion of the prior decisions in *Germany v. Philipp* and *Hungary v. Simon*, which analyze the expropriation exception under the FSIA. *Germany v. Philipp* involves claims arising out of the taking of a collection of medieval relics known as the "Welfenschatz" by the German government after World War II, which the heirs of its original Jewish owners sought to recover. On July 14, 2023, the United States Court of Appeals for the D.C. Circuit affirmed the district court decision to dismiss for lack of subject matter jurisdiction based on foreign sovereign immunity. See *Philipp v. Stiftung Preussischer Kulturbesitz*, 77 F.4th 707 (D.C. Cir. 2023). Excerpts from the opinion follow (with footnotes omitted).

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The Supreme Court, in a unanimous opinion, noted that the Foreign Sovereign Immunities Act, 28 U.S.C. § 1604 *et seq.*, created a presumption of immunity from suit for foreign states, *see Philipp III*, 141 S. Ct. at 709. The Court held that "the phrase 'rights in property taken in violation of international law,' as used in the [Act's] expropriation exception, refers to violations of the international law of expropriation and thereby incorporates the domestic takings rule." *Id.* at 715. Under that rule, foreign states and their agencies remain immune in cases dealing with "a foreign sovereign's taking of its own nationals' property." *Id.* at 709. To avoid this bar, plaintiffs had for the first time in the litigation suggested to the Supreme Court that their ancestor art firm owners were not really German nationals at the time of the 1935 sale. In vacating and remanding the case, the Supreme Court instructed our court to "direct the District Court to consider this argument, including whether it was adequately preserved below." *Id.* at 716.

The district court, Kollar-Kotelly, J., determined in a thorough opinion that plaintiffs had not preserved their not-German-nationals claim because they failed to raise it in their original complaint, or in their amended complaint, or at any point in the lengthy proceedings in the district court, or in their brief or oral argument the first time this case went on appeal to this court. *See Philipp V*, 628 F. Supp. 3d at 22. Judge Kollar-Kotelly also denied plaintiffs leave to amend their complaint to add additional allegations regarding the nationality of the art firm owners. *See Philipp IV*, 2021 WL 3144958, at *8. We agree with both rulings.

To preserve a claim, a party must raise it "squarely and distinctly." *Bronner on Behalf of Am. Stud. Ass'n v. Duggan*, 962 F.3d 596, 611 (D.C. Cir. 2020) (quoting *Schneider v. Kissinger*, 412 F.3d 190, 200 n.1 (D.C. Cir. 2005)). Plaintiffs had every opportunity to claim in their first set of district court and appellate proceedings that the owners of the art firms were not German nationals at the time of the 1935 transaction. They did not do so, even though the defendants moved to dismiss their complaint on the ground that domestic takings do not come within the Act's immunity exception. *See Philipp I*, 248 F. Supp. 3d at 72. Plaintiffs' position was that SPK lacked immunity in view of a separate doctrine derived from this Court's decision in *Simon v. Republic of Hungary*, 812 F.3d 127 (D.C. Cir. 2016), *see Philipp II*, 894 F.3d at 411, a doctrine the Supreme Court rejected in *Philipp III*, *see* 141 S. Ct. at 715.

* * * *

In *Simon, et al. v. Hungary, et al.,* two cases consolidated on appeal, Jewish survivors of the Holocaust and their heirs asserted a claim based on Hungary's collaboration with the Nazis to exterminate Hungarian Jews and expropriate their property, and asserted that the Hungarian railway (MÁV) assisted by transporting Hungarian Jews to death camps and by taking their property. 77 F.4th 1077 (D.C. Cir. 2023). Following the Supreme Court's 2021 holding in *Germany v. Philipp* that "a country's alleged taking of property from its own nationals" falls outside the scope of the FSIA's expropriation exception, see *Germany v. Philipp*, 592 U.S. 169, 173, 141 S.Ct. 703, 708 (2021), plaintiffs in *Simon v. Hungary* asserted that they were not Hungarian nationals at the time of the alleged takings. Plaintiffs claimed they were either *de facto* stateless or Czechoslovakian nationals. On August 8, 2023, the D.C. Circuit concluded, *inter alia*, that plaintiffs claiming statelessness at the time of takings did not make a recognized claim within the FSIA expropriation exception but concluded that most of the plaintiffs asserting

Czechoslovakian nationality could proceed. Excerpts from the Court's opinion follow (footnotes omitted).

* * * *

The Foreign Sovereign Immunities Act (FSIA) provides "the sole basis for obtaining jurisdiction over a foreign state in our courts." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434, 109 S.Ct. 683, 102 L.Ed.2d 818 (1989); *see* 28 U.S.C. § 1602 *et seq.* Absent a pre-existing agreement with the United States affecting the scope of sovereign immunity, a foreign sovereign is generally immune, unless one of the FSIA's enumerated exceptions applies. *See* 28 U.S.C. §§ 1604, 1605-1605B, 1607; *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 31, 136 S.Ct. 390, 193 L.Ed.2d 269 (2015).

This case concerns the FSIA's expropriation exception, codified at Title 28, Section 1605(a)(3). That exception waives foreign sovereign immunity in any case in which:

> [1] rights in property taken in violation of international law are in issue and [2.A.] that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or [2.B.] that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.

28 U.S.C. § 1605(a)(3). Generally speaking, the exception has two requirements: (1) the claim must put in issue "rights in property taken in violation of international law," and (2) there must be an adequate connection between the defendant and both the expropriated property and some form of commercial activity in the United States. *Id.* We refer to the latter as the commercial-activity nexus requirement.

With respect to the first requirement, the Supreme Court in *Philipp* held that "the phrase 'rights in property taken in violation of international law,' as used in the FSIA's expropriation exception, refers to violations of the international law of expropriation, and thereby incorporates the domestic takings rule." 141 S. Ct. at 715. Under the domestic takings rule, a foreign sovereign's taking of its own nationals' property is not a violation of the international law of expropriation. *Id.* at 709. *Philipp* thus generally bars plaintiffs who were nationals of the expropriating state at the time of the alleged taking from invoking the expropriation exception. *See id.* at 715.

* * * *

A.

We first address the parties' dispute over the implications of *Philipp*, 141 S. Ct. 703. The Hungarian defendants argue that the Survivors' takings theory is "the same one that the Supreme Court already rejected" in *Philipp*: "[t]hat expropriations violate international law when they are accompanied by egregious human-rights violations." Hungary Resp. & Reply Br. 27. In defendants' view, *Philipp* precludes the Survivors from relying on "the egregiousness of the human rights abuses" inflicted by a foreign sovereign to claim statelessness and thereby escape the limitation of the domestic takings rule. *Id.* at 28; *see also Simon-2021*, 579 F. Supp. 3d at 115-19; *Heller*, 2022 WL 2802351, at *7-9. Defendants miss the key distinction between

the *Simon I* theory the Supreme Court rejected in *Philipp* and the Trianon Survivors' position on remand that is now before us.

The Trianon Survivors' theory does not conflict with *Philipp*, but heeds its guidance. *Philipp* holds that "the phrase 'rights in property taken in violation of international law,' as used in the FSIA's expropriation exception, refers to violations of the international law of expropriation." 141 S. Ct. at 715 (quoting 28 U.S.C. § 1605(a)(3)). Here is the relevant framework as we understand it post-*Philipp*: The international law of expropriation incorporates the domestic takings rule, which treats a state's taking of its own national's property as a domestic legal matter not governed by international law. *See id.* at 709, 715. That rule is grounded in the traditional view that "international law customarily concerns relations among sovereign states, not relations between states and individuals." *Id.* at 709-10. Because "[a] domestic taking ... d[oes] not interfere with relations among states," it does not "implicate[ ] the international legal system" under that traditional view. *Id.* at 710; *see also Mezerhane v. República Bolivariana de Venezuela*, 785 F.3d 545, 551 (11th Cir. 2015). In the wake of World War II, even as "international law increasingly came to be seen as constraining how states interacted not just with other states but also with individuals, including their own citizens," the "domestic takings rule endured" within the sphere of the international law of expropriation. *Philipp*, 141 S. Ct. at 710. Accordingly, in determining whether the expropriation exception applies post-*Philipp*, courts generally must identify a plaintiff's nationality for purposes of the domestic takings rule. Absent any superseding principle or rule encompassed in the international law of expropriation, the threshold question is: Was the victim of the alleged taking a national of the foreign-state defendant at the time of the taking? If yes, the domestic takings rule bars application of the FSIA's expropriation exception; if no, that bar is inapplicable. *See id.* at 715.

The Trianon Survivors have attempted to advance a viable theory within the framework established by *Philipp*—that is, based on an argument about their nationality at the time of the alleged takings. They acknowledge that they were Hungarian nationals before the war and do not claim that Hungary had formally denationalized its Jewish population *de jure* by the time of the alleged takings. They nonetheless contend the domestic takings rule is inapplicable because Hungary had rendered them *de facto* stateless for purposes of international law before it took their property.

To that end, the Survivors draw on a 1955 decision of the Permanent International Court of Justice that a nation may not, consistent with international law, *confer* nationality upon an individual (at least for purposes of exercising diplomatic protection in an international tribunal) where there is no "genuine connection" between that individual and the state. *Nottebohm Case* (*Liech. v. Guat.*), Judgment, 1955 I.C.J. Rep. 4, 23, 26 (Apr. 6). The Survivors claim that the inverse principle must also be true: A state *deprives* an individual of their nationality when it severs the "genuine connection" between itself and the individual. And, according to the Survivors, Hungary severed that requisite connection by subjecting Hungarian Jews to systematic persecution during the Holocaust, thus rendering the Trianon Survivors *de facto* stateless for purposes of international law. *See* Survivors' Reply Br. 8-12; Survivors' Br. 18-25. Such *de facto* stateless persons, they claim, are properly treated as "aliens" for purposes of the domestic takings rule. Survivors' Br. 18. That theory conforms to the analytic framework established by *Philipp*: It draws on international law governing nationality to argue that the Trianon Survivors were not Hungarian nationals at the time of the alleged takings. The Trianon

Survivors' argument faces other obstacles, as discussed below, but it does not conflict with *Philipp* itself.

The Hungarian defendants' contrary reading of *Philipp*, while not without some logical appeal, breaks down on closer scrutiny. It is true, as the Hungarian defendants note, that the *Philipp* Court rejected the plaintiffs' attempt to rely on international human rights law to satisfy the expropriation exception's "violation of international law" requirement. 141 S. Ct. at 712, 715. It follows, they reason, that expropriations that violate international law "because of the 'egregiousness of the human rights abuses' " involved cannot give rise to a viable takings claim for purposes of the FSIA's expropriation exception. Hungary Resp. & Reply Br. 28 (quoting Survivors' Br. 23). Because the Trianon Survivors rely on Hungary's genocidal acts during the Holocaust (*i.e.*, violations of international human rights law) as the basis for their loss of nationality, the Hungarian defendants contend that *Philipp* forecloses their theory. *See id.* at 27-28; *see also Simon-2021*, 579 F. Supp. 3d at 118.

That reading of *Philipp* suffers from two principal flaws. First, it is irreconcilable with the remand in *Philipp*. The Supreme Court expressly reserved judgment on the plaintiffs' alternative theory that Germany's alleged taking was "not subject to the domestic takings rule because the [plaintiffs] were not German nationals at the time of the transaction," and remanded for the district court to consider that argument in the first instance. *Philipp*, 141 S. Ct. at 715-16. Critically, the *Philipp* plaintiffs' only theory as to why they were not German nationals at the time of the alleged takings was materially identical to the Trianon Survivors' nationality argument here: They argued that "Jews may be deemed aliens of their respective countries during the Holocaust because they were not treated as citizens." Resp. Br. 15 n.5, *Philipp*, 141 S. Ct. 703 (No. 19-351); *see also id.* at 27-28. As counsel for the *Philipp* plaintiffs stated during oral argument, their theory was that "German governmental treatment of German Jews in the 1930s," *i.e.*, the same treatment that they argued amounted to genocide, "transgress[ed] th[e] nationality line." Oral Arg. Tr. 68:1-4, *Philipp*, 141 S. Ct. 703 (2021) (No. 19-351). When the Supreme Court chose to remand the *Philipp* plaintiffs' claims, it knew that the relevant conduct that could divest the plaintiffs of their nationality was part and parcel of the genocidal acts that they had claimed violated international human rights law. If the Court's reasoning in *Philipp* foreclosed that argument, there would have been no reason to remand.

Second, the Hungarian defendants' reasoning errs in treating the limits *Philipp* imposed on the legal basis of an expropriation actionable under the FSIA as also circumscribing the historical facts germane to a claim under the expropriation exception. *Philipp* clarified that "the expropriation exception is best read as referencing the international law of expropriation rather than of human rights." 141 S. Ct. at 712. Accordingly, "[w]e do not look to the law of genocide to determine if we have jurisdiction over [a plaintiff's] property claims. We look to the law of property." *Id.* That ruling barred the plaintiffs from relying on the law of genocide to avoid the domestic takings rule, which the Court viewed as an integral principle of the international law of expropriation. *See id.* at 709-13, 715. What *Philipp* did not do, however, is limit the underlying facts a court may consider in identifying whether the expropriation exception applies or the domestic takings rule is a bar. *Philipp* did not opine on, let alone foreclose, the possibility that conduct that could give rise to a claim of genocide might also bear on the nationality inquiry for purposes of the expropriation exception or the domestic takings rule. Rather, *Philipp* left open for lower courts to resolve what conduct is relevant to the nationality inquiry. *See id.* at 716. We thus reject the view that *Philipp* preempts the Trianon Survivors' takings theory.

B.

The Trianon Survivors' invocation of the expropriation exception nevertheless fails for an independent reason: Even assuming the Trianon Survivors were *de facto* stateless at the time of the alleged takings, the Survivors have not mustered adequate support for their contention that a state's taking of a *de facto* stateless person's property violates the international law of expropriation.

Our inquiry regarding the rights of *de facto* stateless persons is governed by the customary international law of expropriation. That body of law determines whether an alleged taking violates "international law" within the meaning of the FSIA's expropriation exception where, as here, the plaintiffs do not rely on an express international agreement. *See, e.g.*, *Helmerich & Payne Int'l Drilling Co. v. Bolivarian Republic of Venezuela (Helmerich II)*, 743 F. App'x 442, 449 (D.C. Cir. 2018) (citing Restatement (Third) of Foreign Relations Law § 102(1) (Am. L. Inst. 1987) (Third Restatement)); *Beierwaltes v. L'Office Federale de la Culture de la Confederation Suisse*, 999 F.3d 808, 821 (2d Cir. 2021). Customary international law is the "general and consistent practice of states followed by them from a sense of legal obligation." Third Restatement § 102(2). To demonstrate a taking in violation of international law for purposes of the FSIA's expropriation exception, the Survivors must show that their legal theory "has in fact crystallized into an international norm that bears the heft of customary law." *Helmerich II*, 743 F. App'x at 449.

To support their theory that a state's taking of a *de facto* stateless person's property violates the international law of expropriation, the Survivors principally rely on the Second Restatement of Foreign Relations Law. As the Restatement in effect when Congress enacted the FSIA, that source bears authoritative weight in interpreting the Act. *See Philipp*, 141 S. Ct. at 712 (recognizing "the [Court's] consistent practice of interpreting the FSIA in keeping with 'international law at the time of the FSIA's enactment' and looking to the contemporary Restatement for guidance" (quoting *Permanent Mission of India to United Nations v. City of New York*, 551 U.S. 193, 199-200, 127 S.Ct. 2352, 168 L.Ed.2d 85 (2007))). The Survivors point to Section 185 of the Second Restatement, which identifies a "taking by a state of property of an alien" as "wrongful under international law" when certain conditions are met. Restatement (Second) of Foreign Relations Law § 185 (Am. L. Inst. 1965) (Second Restatement). And they emphasize that Section 171 establishes that the term "alien" encompasses both foreign nationals and stateless persons "for purposes of the responsibility of a state for injury" to an individual. *Id.* § 171.

Notably, however, Section 175 of the Second Restatement makes clear that stateless persons are "without remedy" under international law for takings claims against an expropriating state, with certain exceptions. *See id.* § 175 & cmt. d. Section 175 provides:

> The responsibility of [a] state under international law for an injury to an alien cannot be invoked directly by the alien against the state except as provided by
>
> (a) the law of the state,
>
> (b) international agreement, or
>
> (c) agreement between the state and the alien.

Id. § 175. And the lack of any remedy under customary international law for a stateless alien is spelled out in Comment (d) to that section:

> *d. Stateless aliens.* Under traditional principles of international law, a state, being responsible only to other states, could not be responsible to anyone for an injury to a stateless alien. Under the rule stated in this Section, a stateless alien may himself assert the responsibility of a state in those situations where an alien who is a national of another

> state may do so. However, in those situations not covered by the rule stated in this Section or by an international agreement providing some other remedy, a stateless alien is without remedy, since there is no state with standing to espouse his claim.

Id. § 175 cmt. d; *see also id.* § 174 cmt. b ("[P]rocedures allowing persons to proceed against states ... are unavailable except under the limited conditions specified in § 175, and, espousal by the state of nationality continues to be generally necessary for the effective assertion of an international claim."). In their briefing, the Survivors identify no Hungarian law, international agreement, or agreement between Hungary and the Trianon Survivors relevant to section 175 of the Second Restatement. Tellingly, after the Hungarian defendants pointed out the limits set forth in section 175 on when a stateless person has a remedy, *see* Hungary Resp. & Reply Br. 26-27, the Survivors abandoned reliance on that section in their reply and failed to explain why the defendants' point was not fatal to their theory, *see* Survivors' Reply Br. 2-12.

The secondary sources that the Survivors cite likewise fail to address that issue. To the extent those sources are helpful, they merely accord with the view that stateless persons are generally treated as aliens or non-nationals under state domestic laws. *See* Marc Vishniak, *The Legal Status of Stateless Persons*, *in* 6 Jews and the Post-War World 37 (Abraham G. Duker ed., 1945); Eric Fripp, Nationality and Statelessness in the International Law of Refugee Status § 5.105 (2016).

The Survivors have thus failed to persuade us that a state's taking of a *de facto* stateless person's property violates the customary international law of expropriation. To be clear, we do not foreclose the possibility that such support exists in sources of international law not before us in this case or based on arguments not advanced here. We note that the Survivors nowhere argue in their briefing that a state's taking of a stateless person's property may *violate* the international law of expropriation even if stateless persons are "without remedy" under international law for such violation, Second Restatement § 175 cmt. d. At oral argument, the Survivors for the first time implied as much when, in response to probing from the bench on the point, they contended that the FSIA's expropriation exception itself provides the necessary remedy for expropriations from stateless persons in violation of international law. *See* Oral Arg. 37:30-38:50, 41:58-42:25, 42:40-43:40. Generally, however, "arguments raised for the first time at oral argument are forfeited." *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 647 (D.C. Cir. 2020) (quoting *United States ex rel. Davis v. District of Columbia*, 793 F.3d 120, 127 (D.C. Cir. 2015)). We accordingly decline to reach that late-raised argument and take no position here on its potential merit.

Our holding is more limited: On this record, the Survivors have not demonstrated that their legal theory—that a state's taking of a *de facto* stateless person's property violates the international law of expropriation—has jelled into a binding rule of customary international law. Because the Survivors have therefore failed to show that the alleged seizure of the Trianon Survivors' property amounts to a "violation of international law" for purposes of the FSIA's expropriation exception, 28 U.S.C. § 1605(a)(3), we affirm the district court's dismissal of their claims.

* * * *

4. Terrorism Exception to Sovereign Immunity

The terrorism exception applies, *inter alia*, to cases in which money damages are sought for "personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act … engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency." 28 U.S.C. § 1605A(a)(1). The provision further specifies that "[t]he court shall hear a claim under this section if" certain additional requirements are met, *id*. § 1605A(a)(2), including that "the foreign state was designated as a state sponsor of terrorism at the time the act [at issue] occurred, or was so designated as a result of such act, and … either remains so designated when the claim is filed … or was so designated within the 6-month period before the claim is filed . . . ." *Id*. § 1605A(a)(2)(A)(i). The provision provides a private right of action for U.S. nationals, members of the armed forces, and employees and contractors of the U.S. government to seek damages for personal injury or death resulting from the acts described above. *Id.* § 1605A(c). While the FSIA generally precludes foreign states from liability for punitive damages, 28 U.S.C. § 1606, the terrorism exception specifically permits punitive damages for actions brought under 1605A(c).

In 2023, the United States filed two amicus briefs in *Bochorov, et al. v. Iran, et al.* in the United States Court of Appeals for the District of Columbia Circuit in a request for United States views on the application of the terrorism exception to the FSIA in the context of elements of extrajudicial killings. No. 22-7058. The United States argues, *inter alia*, that the exception to sovereign immunity, including for material support for terrorism, requires that the underlying enumerated act of terrorism, here, an extrajudicial killing, to have actually occurred. An attempted extrajudicial killing is insufficient to trigger an exception to sovereign immunity. The first amicus brief, filed on June 26, 2023, is excerpted below (footnotes omitted).[*]

* * * *

I. Section 1605A(a)(1) Does Not Create an Exception to Immunity for Attempted Extrajudicial Killings

Section 1605A(a)(1) of the FSIA creates an exception to the presumption of foreign state immunity for damages suits against state sponsors of terrorism "for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act." 28 U.S.C. § 1605A(a)(1).

This exception is inapplicable when a state carries out an act that constitutes an *attempted* extrajudicial killing. Section 1605A(a)(1) incorporates the definition of

[*] Editor's note: On March 8, 2024, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion adopting the government's view that the district court lacked subject-matter jurisdiction over the plaintiffs' claims.

"extrajudicial killing" from the Torture Victim Protection Act of 1991 (TVPA), defining the term as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Pub. L. No. 102-256, § 3(a), 106 Stat. 73, 73 (1992) (28 U.S.C. § 1350 note); 28 U.S.C. § 1605A(h)(7).

The district court correctly held that "an attack cannot be a 'killing[]' … if nobody dies." A587; *Mamani v. Sanchez Bustamante*, 968 F.3d 1216, 1233 (11th Cir. 2020) (definition requires "a considered, purposeful act that takes another's life"); *Owens v. Republic of Sudan*, 864 F.3d 751, 770 (D.C. Cir. 2017) (describing "a killing" as an "element[]" of the definition), *vacated and remanded on other grounds sub nom. Opati v. Republic of Sudan*, 140 S. Ct. 1601 (2020). Notably, the TVPA definition of "extrajudicial killing" is employed under a statute that authorizes civil suits for wrongful death, which requires a fatality. *See* TVPA § 2(a)(2), 106 Stat. at 73; *Force v. Islamic Republic of Iran*, 610 F. Supp. 3d 216, 223 (D.D.C. 2022). By contrast, where Congress intends to create liability for attempts, it generally says so expressly. *See, e.g.*, 18 U.S.C. § 1113 (attempted murder or manslaughter); *id.* § 2441 (including "attempts to kill" in definition of "murder" in part of war crimes statute).

Plaintiffs suggest (Suppl. Br. 4) that the phrase "act of … extrajudicial killing" could encompass "the process of committing an extrajudicial killing" even if no killing actually results. Plaintiffs cite no other circumstance where similarly oblique language has been held to encompass attempts, and "[t]he primary, and most intuitive, understanding of the word 'act' is '[s]omething done or performed' or 'a deed.'" Memorandum Op. at 20, *Burks v. Islamic Republic of Iran*, No. 1:16-cv-01102-CRC (D.D.C. Sept. 30, 2022) (citation omitted). In this context, the phrase simply identifies the particular completed killing that meets the statutory definition, just as one refers to "an act of terrorism" or "an act of war" to identify a completed act of that type. *See, e.g.*, Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, § 14(1), 110 Stat. 1541, 1549 (50 U.S.C. § 1701 note) (defining "act of international terrorism" as including completed acts); *id.* § 2(1), 110 Stat. at 1541 (noting Iran's "support of acts of international terrorism"); 18 U.S.C. § 2331(4) (defining "act of war" to encompass completed acts). The remainder of § 1605A reinforces that view, repeatedly referring to "the act" or "acts" that provide jurisdiction in ways difficult to square with reading "act" as referring to a process rather than a completed action. 28 U.S.C. § 1605A(a)(2)(A)(i)(I), (a)(2)(A)(ii)-(iii), (a)(2)(B), (c), (d).

Because an attempted extrajudicial killing is not a killing, § 1605A(a)(1) does not create an exception to a state's immunity to suits seeking damages for attempted extrajudicial killings.

II. Section 1605A(a)(1) Does Not Create an Exception to Immunity for Material Support for Attempted Extrajudicial Killings

The same result follows when a state is sued for its alleged provision of material support for an attempted extrajudicial killing. Section 1605A(a)(1) creates an exception to immunity for a state that provides material support "for such an act." That phrase refers back to the enumerated acts to which the exception applies: "an act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking." That is the function of "such," which is generally used to denote "something that has already been 'described' or that is 'implied or intelligible from the context or circumstances.'" *Slack Techs., LLC v. Pirani*, 143 S. Ct. 1433, 1439-40 (2023) (citation omitted); *see, e.g.*, Such, *Webster's New Int'l Dictionary* (2d ed. 1958). The term "for," in turn,

connects the predicate act and the material support, indicating that the support must ultimately aid such an act to be within the exception. The exception thus applies where a state provides material support for an act of extrajudicial killing; if there is no killing that meets that definition, the material support was not "provided for 'such an act.'" *Force*, 610 F.

Supp. 3d at 225.

The district court here reached the opposite conclusion. Because the word "for" can sometimes "'indicate the object or purpose of an action or activity,'" the district court held that suit is authorized if the state provides material support with the "intention or objective" that an extrajudicial killing occur. A589 (alteration omitted) (quoting For*, American Heritage Dictionary* (3d ed. 1994)); *see* Plaintiffs' Suppl. Br. 3- 4; Court-Appointed Amicus Br. 1-2, 4. The result would be that a state is liable for furnishing material support for an attempted extrajudicial killing by others but not liable if it directly committed the same act.

This Court, however, has already rejected the premise that "the use of 'for' with reference to 'the provision of material support' indicates that the FSIA 'requires a showing of intent' on the part of the foreign sovereign to achieve the predicate act," explaining that "[n]othing in the FSIA[] … requires a greater showing of intent than proximate cause." *Owens*, 864 F.3d at 798. Just as plaintiffs need not prove that a state intended to support a particular terrorist act, plaintiffs need not show that the state intended its material support to make possible an act of extrajudicial killing. Instead, the statute examines whether a predicate act causing death or injury occurred, and if so, whether the state's material support proximately caused that death or injury. Congress easily could have employed language requiring examination of the state's intent, but did not. *Compare* 18 U.S.C. § 2339A(a) (criminalizing providing "material support or resources … knowing or intending that they are to be used" to aid certain acts). Imposing this sort of intent requirement in § 1605A(a)(1) would create unwarranted difficulties in tracing inherently fungible material support and proving liability, as support can easily be applied to other predicate acts or provided with no particular act in mind. *See Owens*, 864 F.3d at 799.

The district court mistakenly invoked this Court's statement that "ambiguities" in § 1605A should be interpreted "flexibly and capaciously." *Van Beneden v. Al-Sanusi*, 709 F.3d 1165, 1167 (D.C. Cir. 2013); A589. The text and structure make plain that an exception based on extrajudicial killing requires a killing. In any event, the Supreme Court has emphasized that foreign sovereigns are "presumptively immune" from suit except in "specific" enumerated statutory circumstances, and has warned about the need "to avoid, where possible, 'producing friction in our relations with [other] nations and leading some to reciprocate by granting their courts permission to embroil the United States in expensive and difficult litigation'" by adopting broad interpretations of FSIA exceptions. *Federal Republic of Germany v. Philipp*, 141 S. Ct. 703, 707, 714 (2021) (citation omitted).

Plaintiffs' policy arguments (Suppl. Br. 4-6) do not alter the result. "Each prong of the state-sponsored terrorism exception to the FSIA requires line-drawing and will inevitably exclude some cases that involve horrific conduct and grievous injuries." *Force*, 610 F. Supp. 3d at 228. Moreover, plaintiffs are rarely able to enforce judgments against state sponsors of terror. They are instead generally compensated on a pro rata basis from a fund created by Congress and largely derived from "proceeds from penalties paid by companies and individuals that violate sanctions imposed on state sponsors of terrorism." *Braun v. United States*, 31 F.4th

793, 795 (D.C. Cir. 2022); *see* 34 U.S.C. § 20144(b)(2), (d)(3). "[E]xpanding the pool of eligible claimants will inevitably affect the ability of other claimants to receive prompt compensation," and "[t]he question of how best to balance these competing interests in a limited fund is best left to Congress." *Force*, 610 F. Supp. 3d at 224-25.

* * * *

On September 1, 2023, the United States filed a second amicus brief as requested by the Court. Excerpts follow (footnotes omitted).

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* * * *

SECTION 1605A(A)(1) CREATES AN EXCEPTION TO IMMUNITY ONLY WHERE A PREDICATE ACT ACTUALLY OCCURS

28 U.S.C. § 1605A(a)(1) provides a limited exception to the presumption of foreign state immunity "for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act." As we explained in answer to the Court's first question, an attempted extrajudicial killing does not qualify as an "extrajudicial killing," and a plaintiff injured in an attempt cannot demonstrate that their injury was "caused by an act of … extrajudicial killing." Br. 2-4. The district court correctly held as much. A587; *accord* Ct.-App't. Amicus Suppl. Resp. Br. 2. Plaintiffs offer no apparent response, aside from the uncontroversial assertion that the exception applies to both the state's own direct acts and the state's material support for the acts of others. Suppl. Resp. Br. 1-2. But plaintiffs provide no textual basis for applying the exception to an attempted extrajudicial killing the state carries out directly.

The same principle applies to the Court's second question: Section 1605A(a)(1)'s exception to immunity does not become applicable because an attempted extrajudicial killing is carried out by a non-state actor making use of the state's material support. As we explained, providing material support "for such an act" refers back to the enumerated acts to which the exception applies: "an act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking." 28 U.S.C. § 1605A(a)(1); Br. 5. Moreover, this Court has held that the requirement that an injury be "caused by … the provision of material support or resources for such an act" requires a showing that the state's material support was a "proximate cause" of the predicate act that injured the plaintiff. *Owens v. Republic of Sudan*, 864 F.3d 751, 794 (D.C. Cir. 2017) (quotation omitted), *vacated and remanded on other grounds sub nom. Opati v. Republic of Sudan*, 140 S. Ct. 1601 (2020). If the predicate act never occurs, then the state's material support could not have proximately caused such act.

Plaintiffs and court-appointed amicus resist the conclusion that a victim's injury or death must result from a predicate act for the exception to immunity to apply. Plaintiffs, court-appointed amicus, and the district court all rely on a dictionary definition that equates the term "for" with "object or purpose." A589 (quoting *For*, American Heritage Dictionary (3d ed. 1994)). From this definition, the district court concluded that the exception applies if the state

provides material support with the "intention or objective" that an extrajudicial killing (or other predicate act) occur, regardless of whether a predicate act actually occurs. A589.

That reading cannot be squared with the remainder of the statute or this Court's precedents. The meaning of the term "for" is context-dependent and need not indicate intent or purpose; the same dictionary observes that the word can be "[u]sed to indicate the recipient or beneficiary of an action." *For*, American Heritage Dictionary (3d ed. 1996); *cf. Sissel v. U.S. Dep't of Health & Human Servs.*, 799 F.3d 1035, 1043 (D.C. Cir. 2015) (en banc) (Rogers, Pillard, and Wilkins, JJ., concurring) (addressing the meaning of "[t]he word 'for' *in this context*" (emphasis added)). The term thus relates to the beneficiary of the state's material support: the enumerated "act" that provides jurisdiction. Without an extrajudicial killing or other predicate act, the material support was not provided "for such an act."

That reading also follows from *Owens*, where this Court specifically rejected the argument "that the use of 'for' with reference to 'the provision of material support' indicates that the FSIA 'requires a showing of intent' on the part of the foreign sovereign to achieve the predicate act," explaining that "[n]othing in the FSIA … requires a greater showing of intent than proximate cause." 864 F.3d at 798. The response briefs emphasize that the state defendant in *Owens* argued that plaintiffs were required to demonstrate that the state intended to support the specific predicate acts at issue (there, the 1998 bombings of two U.S. embassies in East Africa), rather than requiring a showing that the state had the intention or objective that its material support would lead to (unspecified) predicate acts. Ct.-App't Amicus Suppl. Resp. Br. 4-5; Pls.' Suppl. Resp. Br. 2-3. But *Owens* addressed the appropriate jurisdictional standard, and was emphatic that no inquiry into a state's intent to support the predicate act that caused the victim's ultimate injury or death was necessary under the exception. Had the Court believed that the term "for" imposed some obligation to inquire into a state's "object or purpose" in providing the support, it would have had every reason to say so.

As this Court recognized, requiring examination of a state's intent or purpose would prevent suits by some individuals who *were* the victims of extrajudicial killings (not just attempts). For example, if a state provided only general support to a terrorist group, with no "intention or objective" that the terrorist group carry out any predicate acts, the material support would not qualify as "for" the extrajudicial killings on this intent-based approach. *See Owens*, 864 F.3d at 799 ("[R]equiring more than proximate cause 'could absolve' a state from liability when its actions significantly and foreseeably contributed to the predicate act." (quoting *Kilburn v. Socialist People's Libyan Arab Jamahiriya*, 376 F.3d 1123, 1129 (D.C. Cir. 2004))). Or a state could provide support with the "intention or objective" that a terrorist group engage in acts not covered by the exception, such as non-lethal attacks against infrastructure or social welfare programs or charitable projects that the group undertakes concurrently with its terrorist activities. Here, too, if a terrorist group used the material support to instead engage in an extrajudicial killing, the victim would be unable to invoke the exception. But as this Court observed, "material support 'is fungible' and 'terrorist organizations can hardly be counted on to keep careful bookkeeping records,'" and "[t]o require proof that [a defendant] *intended* that his contribution be used for terrorism ... would as a practical matter eliminate ... liability except in cases in which the [defendant] was foolish enough to admit his true intent." *Id.* (first quoting *Kilburn*, 376 F.3d at 1130; and then quoting *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 698-99 (7th Cir. 2008) (en banc)).

These concerns are manifested in plaintiffs' assertion that victims could demonstrate a state's purpose by pointing to "[t]he specific nature of the support" provided, such as "evidence that Iran paid Hamas for bombings" or that Iran provided weapons capable of deadly force. Suppl. Resp. Br. 4; *see* A589-90; Ct.-App't Amicus Suppl. Resp. Br. 3 & n.1. That only underscores the difficulties that would confront plaintiffs invoking the exception where the material support takes far more general—and more fungible—forms. *See, e.g.*, *Owens*, 864 F.3d at 782- 84 (outlining support such as partnering on "major infrastructure projects," granting "'customs exemptions' and 'tax privileges,'" allowing use "of [the state's] banking system" for "laundering money" and other transactions, aiding travel, transferring weapons, and providing passports and domestic security).

On a slightly different tack, plaintiffs suggest that the term "for" could be understood to require examining "the objective features" of the state's conduct to ascertain the state's purpose, without considering the state's "intent." Suppl. Resp. Br. 3 (quoting *Owens*, 864 F.3d at 798). Plaintiffs make little effort to explain how a state's "object or purpose" in providing material support could be different from its "intent" in this context. Even on its own terms, however, this approach fails. Plaintiffs propose that purpose can be inferred where the state "knowingly provided" material support "to a terrorist organization notorious for committing acts of terrorism that often cause deaths." Suppl. Resp. Br. 3-4. But that inquiry would simply parallel the proximate cause standard, which already requires that the predicate act be "reasonably foreseeable or anticipated as a natural consequence of the defendant's conduct," *Owens*, 864 F.3d at 794 (quotation omitted), and thus considers whether the defendant state provided the support through a group whose "terrorist aims were foreseeable," *id.* at 797-98.

On that view, "for" would serve only to decouple the material support from the predicate acts identified in the statute, converting § 1605A(a)(1) into a general-purpose tort statute for the torts of terrorist organizations. If a state provided support for a terrorist group that it knew sometimes committed predicate acts, *any* foreseeable injury caused by that group would fall within the exception, regardless of whether that injury was related to a predicate act. *Force v. Islamic Republic of Iran*, 610 F. Supp. 3d 216, 225 (D.D.C. 2022). But § 1605A(a)(1) creates an exception to immunity for "the provision of material support or resources for *such an act*" (emphasis added), not "the provision of material support to a terrorist organization," *Force*, 610 F. Supp. 3d at 225.

* * * *

5. Service of Process

On June 16, 2023, in response to a request for views on service of process under the FSIA in *Estate of Judah Herzel Henkin, et al. v. Bank of Saderat Iran, et al.*, the United States filed a statement of interest on how to serve an agency or instrumentality under the FSIA and the role of the State Department under the framework of the FSIA. See No. 21-cv-02345 (D.D.C.). Excerpts from the statement of interest follow (footnotes omitted).

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* * * *

I. Agencies and Instrumentalities of a Foreign State Must Be Served in Accordance with § 1608(b)'s Requirements.

The Foreign Sovereign Immunities Act (FSIA) provides the exclusive "basis for obtaining jurisdiction over a foreign state in federal court." *Samantar v. Yousuf*, 560 U.S. 305, 314 (2010) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989)); *see Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 141 (2014). It sets out the narrow circumstances in which sovereign immunity does not apply in civil proceedings and, thus, the circumstances in which the federal courts may exercise subject matter jurisdiction over foreign states. *See* 28 U.S.C. §§ 1330, 1605-1605B. The statute further permits the federal courts to exercise personal jurisdiction over a foreign state when subject matter jurisdiction exists and service has been made in accordance with § 1608. *Id.* § 1330(b); *see* Fed. R. Civ. P. 4(j) ("A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.").

Section 1608 "provides two avenues to serve a foreign sovereign, depending on the entity to be served." *Howe v. Embassy of Italy*, 68 F. Supp. 3d 26, 31 (D.D.C. 2014); *accord Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 151 (D.C. Cir. 1994). Foreign states and their political subdivisions must be served in accordance with subsection (a)'s hierarchy of four service methods. *Opati v. Republic of Sudan*, 978 F. Supp. 2d 65, 67 (D.D.C. 2013). Agencies and instrumentalities must be served under subsection (b)'s "less rigorous" hierarchy of three service methods. *Howe*, 68 F. Supp. 3d at 32. "If a plaintiff fails to perfect service as required under the applicable provision of § 1608, the court lacks personal jurisdiction over the foreign entity pursuant to 28 U.S.C. § 1330(b), regardless of whether the foreign sovereign would otherwise be amenable to suit under one of the delineated exceptions to the FSIA." *Id.*

The D.C. Circuit has adopted a categorical test for determining whether a defendant with separate legal personality should be served under subsection (a) or subsection (b): if the entity's "core functions" are "sovereign," as opposed to "commercial," subsection (a) applies; if the core functions are "commercial" in nature, subsection (b) applies. *Transaero*, 30 F.3d at 153; *see also* Dep't of State, Bureau of Consular Affairs, *Foreign Sovereign Immunities Act* (providing general examples of the types of entities that may qualify as political subdivisions, agencies, and instrumentalities) (June 1, 2023) (FSIA FAQs), https://perma.cc/V79M-C9MV. These paths to effect service are mutually exclusive: if an entity must be served under subsection (a), plaintiffs cannot satisfy their obligation by following subsection (b), and vice versa. It is plaintiffs' responsibility to "ensure an entity is properly characterized otherwise they risk efforts to serve the defendant, including transmission through diplomatic channels, will be ineffective." *Id.* ("What is the difference between a foreign state, political subdivision, agency or instrumentality?").

If the defendant is a foreign state or political subdivision, subsection (a) "prescribes four methods for serving legal process …, in descending order of preference—meaning that a plaintiff must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on." *Opati*, 978 F. Supp. 2d at 67:

- The plaintiff must first try to deliver "a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision." 28 U.S.C. § 1608(a)(1).
- "[I]f no special arrangement exists," the plaintiff must try to serve the defendant "in

accordance with an applicable international convention on service of judicial documents." *Id.* § 1608(a)(2).

- If those methods are not available, then the plaintiff can send the summons, the complaint, and a notice of suit, "together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." *Id.* § 1608(a)(3).
- Finally, if service by mail cannot be accomplished in 30 days, the plaintiff may "request that the clerk of the court dispatch two copies of the summons, complaint, and notice of suit (together with a translation of each into the foreign state's official language) to the Secretary of State, who then 'shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.'" Opati, 978 F. Supp. 2d at 67 (quoting 28 U.S.C. § 1608(a)(4)).For agencies and instrumentalities of a foreign state, subsection (b) "outlines three hierarchical methods of service." *Howe*, 68 F. Supp. 3d at 32:

- As with subsection (a), the plaintiff must first try to deliver a copy of the summons and complaint "in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality." 28 U.S.C. § 1608(b)(1).
- If no special arrangement exists, the plaintiff may perfect service by delivering a copy of the summons and complaint to an officer or agent authorized to receive service in the United States or by following "an applicable international convention on service of judicial documents." Id. § 1608(b)(2).
- If those methods are not available, the statute then gives the plaintiff three other means of serving an agency or instrumentality. Id. § 1608(b)(3):
    - By delivering a copy of the summons and complaint, along with translated copies, "as directed by an authority of the foreign state or political subdivision in response to a letter rogatory." Id. § 1608(b)(3)(A).
    - By having the clerk of court send the summons and complaint, along with translated copies, "by any form of mail requiring signed receipt" to the agency or instrumentality. Id. § 1608(b)(3)(B).
    - By other means "as directed by order of the court consistent with the law of the place where service is to be made." Id. § 1608(b)(3)(C).

So long as the chosen course is "reasonably calculated to give actual notice," the statute does not prioritize one of these three means over another. *Id.* § 1608(b)(3).

The first of these three additional options, letters rogatory in accordance with § 1608(b)(3)(A), requires a "formal request from a court in which an action is pending" to a foreign court or authority to serve the defendant. 22 C.F.R. § 92.54. That request is then transmitted by the Department of State to the foreign state for delivery to the appropriate foreign court or other entity for execution. And for purposes of the FSIA, service is completed when the foreign court or other entity executes the letter rogatory; confirmation of the executed letter is returned to the Department of State, which then transmits a certificate of service to the court. 28 U.S.C. § 1608(c)(2).

Service in accordance with § 1608(b)(3)(B) functions similarly to service by mail under § 1608(a)(3). But the former permits service by mail on the agency or instrumentality rather than on the head of the foreign ministry.

The parameters for service under § 1608(b)(3)(C) are less well established. On its face, this provision requires district courts to analyze foreign law to determine how service may be accomplished under those laws, but then affords the courts significant discretion to choose between any viable means. Those options may include a district court directing the parties or clerk to request service through diplomatic channels where such a process is (1) "reasonably calculated to give actual notice" to the defendant and (2) consistent with the law of the foreign state. The court's analysis, however, would need to be conducted on a case-by-case and defendant-by-defendant basis.

II. The Department of State Has Only a Ministerial Role in Service of Foreign States and Their Agencies and Instrumentalities.

Congress enacted the FSIA, in part, "to transfer primary responsibility for deciding 'claims of foreign states to immunity' from the State Department to the courts." *Samantar*, 560 U.S. at 313. To that end, the FSIA places primary responsibility on plaintiffs to determine the appropriate means of serving the foreign defendant and gives the courts authority to judge whether that determination was correct. *See Holladay v. Islamic Republic of Iran*, 523 F. Supp. 3d 100, 107 (D.D.C. 2021).

When the Department of State has a role in effecting service under the FSIA, it acts in a purely ministerial manner. Thus, for example, the Department of State will not effect service through diplomatic channels under 28 U.S.C. § 1608(a)(4) if there is "a clear indication the hierarchical methods of service set forth in [§] 1608 were not followed." FSIA FAQs ("What is the role of the Department of State to assist in effecting service on a foreign government?"). The Department of State is not the plaintiff's lawyer, and it does not provide legal guidance to a plaintiff concerning the propriety of the plaintiff's chosen method of service. *See, e.g., id.* ("Disclaimer") ("The U.S. Department of State does not intend by the contents of this circular to take a position on any aspect of any pending litigation.").

For that reason, the Department of State will ordinarily defer to a plaintiff's characterization of an entity's status (*e.g.*, a political subdivision or an instrumentality) and then review whether the relevant preconditions appear to have been met before assisting with service for the type of entity the plaintiff has specified. *See id.* ("What is the difference between a foreign state, political subdivision, agency or instrumentality?") ("[P]erformance by the Department of State of its statutory functions under 28 USC [§] 1608(a) and 28 USC [§] 1608(b) should not be construed as an indication in any way of the United States' position or views on the status or character of an entity, whether plaintiffs have properly complied with all statutory requirements of the FSIA, whether service was properly effected, or the merits of any claims or defenses"). For instance, if a plaintiff characterizes a defendant as a foreign state or political subdivision in its request—or in the underlying complaint—and seeks assistance with service through diplomatic channels, the relevant officials within the Department of State will "ascertain if the documents [sent from the clerk of court] include the required copies of the notice of suit and of the summons and complaint (or default judgment), and any required translations." 22 C.F.R. § 93.1(b). If so, the officials will cause copies to be delivered to the appropriate individuals or entities to effectuate service. *Id.* § 93.1(c). If not, the Department of State will "advise the clerk of the missing items." *Id.* § 93.1(b). The Department of State officials will generally not scrutinize whether the defendant qualifies as a foreign state or political subdivision under § 1608(a). The Department relies on plaintiffs—and ultimately, the courts—to ensure requests for service, once executed, properly effectuate service under the FSIA.

In this case, the Department of State was unable to assist with service on Defendants through diplomatic channels under § 1608(a)(4) because Plaintiffs labeled Defendants agencies and instrumentalities of the Islamic Republic of Iran in the complaint, *see* ECF No. 1 ¶¶ 3, 15-17; ECF No. 19 Ex. A, and there was no basis on this record for serving an agency or instrumentality through diplomatic channels. A mismatch, in other words, existed between how Plaintiffs characterized Defendants (as agencies and instrumentalities) and the assistance they sought from the Department (service under § 1608(a)(4)). As explained above, agencies and instrumentalities must be served under § 1608(b), not (a)(4). And while it may be possible in some circumstances to serve agencies and instrumentalities through diplomatic channels, where the Court has found such service would be reasonably calculated to provide notice to the defendants and consistent with the foreign state's law, Plaintiffs failed to secure such an order here, a prerequisite under § 1608(b)(3)(C).

* * * *

On June 29, 2023, the United States filed a statement of interest in *Hurtado v. Brazilian Financial Office, et al.* in the Superior Court of the State of California, County of San Francisco asserting the status of Brazilian consular premises as inviolable and so service was not perfected in the case under the FSIA. No. CGC- 22-598556. Excerpts of the statement of interest follow (footnotes omitted).

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* * * *

I. Plaintiff Failed to Effect Service Under the FSIA

The FSIA is "the sole basis for obtaining jurisdiction over a foreign state" in U.S. courts. *Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S 428, 434 (1989)). A lawsuit against a consular office is considered a suit against the foreign state itself for purposes of the FSIA. *See, e.g.*, *Gerritsen v. Consulado General de Mexico*, 989 F.2d 340, 345 (9th Cir. 1993); *Fagan v. Deutsche Bundesbank*, 438 F. Supp. 2d 376, 385 (S.D.N.Y. 2006). Personal jurisdiction over a foreign state exists under the FSIA only where there is both subject matter jurisdiction and proper service. *See* 28 U.S.C. § 1330(a)–(b); *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., Ltd.*, 241 F.3d 135, 151 (2d Cir. 2001) ("[S]ubject matter jurisdiction plus service of process equals personal jurisdiction under the FSIA.") (citation omitted).

Section 1608(a) of the FSIA provides the exclusive means for effecting service of process on a foreign state and its political subdivisions or organs. *See* 28 U.S.C. § 1608(a). "[T]he rule of law demands adherence to [those] strict requirements." *Harrison*, 139 S. Ct. at 1062; *see also Barot v. Embassy of the Republic of Zambia*, 785 F.3d 26, 27 (D.C. Cir. 2015) ("When serving a foreign sovereign, strict adherence to the terms of 1608(a) is required.") (citation omitted); *Magness v. Russian Fed'n*, 247 F.3d 609, 615 (5th Cir. 2001) (same). Unless a foreign sovereign is properly served under Section 1608, a court lacks personal jurisdiction over it. 28 U.S.C. § 1330(b); *see also Chettri v. Nepal Rastra Bank*, 834 F.3d 50, 55 (2d Cir. 2016).

Section 1608(a) "sets out in hierarchical order . . . four methods by which '[s]ervice . . . shall be made.'" *Harrison*, 139 S. Ct. at 1054 (quoting 28 U.S.C. § 1608(a)). A party "must

attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on." *Ben-Rafael v. Islamic Republic of Iran*, 540 F. Supp. 2d 39, 52 (D.D.C. 2008). In order, these methods are:

> (1) a preexisting special arrangement for service between the parties;
> (2) an applicable international convention on service of judicial documents;
> (3) service sent to the head of state's foreign affairs ministry by mail requiring signed receipt, dispatched by the clerk of court, and accompanied by a translation of the summons, the complaint, and a notice of suit into the official language of the defendant; or
> (4) service provided by the Department of State via diplomatic channels to the foreign state.

See 28 U.S.C. § 1608(a).

None of these options encompasses delivery of a summons and complaint to a foreign state's consulate in the United States, as Plaintiff attempted to do in this case. Because "adherence to [the] strict requirements" of the FSIA is required when attempting service on a foreign state, *Harrison*, 139 S. Ct. at 1062, Plaintiff's attempted service upon the Brazilian Consulate General and the Brazilian Financial Office was improper, and did not establish personal jurisdiction over Brazil under the FSIA.

II. Plaintiff's Attempts to Effect Service Were Inconsistent with the Vienna Convention

Under Article 31 of the Vienna Convention, the "[c]onsular premises" of Brazil are "inviolable" and, as such, process cannot be served upon them. Article 1(j) of the Convention defines "consular premises" to mean "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post." And Article 5(b) further defines "consular functions" to include, among other things, "furthering the development of commercial, economic, cultural and scientific relations between the sending state and the receiving state." The Consulate General of Brazil is a consular premises of Brazil under the Vienna Convention, and the Brazilian Financial Office is notified to the United States as forming part of Brazil's Consulate General under Article 31 of the Vienna Convention.

Courts have repeatedly held that service of process on consular premises is contrary to the Vienna Convention's guarantee of inviolability. *See, e.g.*, *Kumar v. Republic of Sudan*, 880 F.3d 144, 158 (4th Cir. 2018) (finding the United States' "longstanding policy and interpretation of these provisions" that service on consular premises is impermissible "authoritative, reasoned, and entitled to great weight"); *Autotech Techs. LP v. Integral Rsch. & Dev. Corp.*, 499 F.3d 737, 748 (7th Cir. 2007) ("[S]ervice through an embassy is expressly banned both by an international treaty to which the United States is a party and by U.S. statutory law."); *Sikhs for Just. v. Nath*, 850 F. Supp. 2d 435, 441 (S.D.N.Y. 2012); *Swezey v. Merrill Lynch*, 997 N.Y.S.2d 45, 47 (N.Y. App. Div. 2014); Restatement (Third) of Foreign Relations Law § 466, note 2 (1987) ("Service of process at diplomatic or consular premises is prohibited."); *see also Tachiona v. United States*, 386 F.3d 205, 222, 224 (2d Cir. 2004) (holding analogously that the Vienna Convention on Diplomatic Relations precludes service of process on inviolable persons entitled to diplomatic immunity); *Hellenic Lines, Ltd. v. Moore*, 345 F.2d 978, 979–81 (D.C. Cir. 1965) (same). Thus, Plaintiff's attempt to serve the Brazilian Consulate General and the Brazilian Financial Office by delivering legal documents on consular premises was without legal effect.

Finally, the United States has strong reciprocity interests at stake in ensuring proper service upon foreign sovereigns and persons in U.S. courts that comports with the requirements of the FSIA and the Vienna Convention. The United States consistently rejects attempted service

via direct delivery to its diplomatic missions and consulates abroad, including when a foreign court or litigant purports to serve a U.S. resident or national through an embassy or consulate, and has long maintained that it must be served through diplomatic channels or in accordance with an applicable international convention or other agreed-upon method. As the United States Supreme Court recognized in *Harrison*, permitting service on consular premises risks the "potential international implications" of undermining the government's longstanding interpretation of those legal instruments and exposing U.S. diplomatic and consular premises to similar treatment. 139 S. Ct. at 1060–61; *see also Medellin v. Texas*, 552 U.S. 491, 524 (2008) (noting that the United States' interests, including "ensuring the reciprocal observance of the Vienna Convention [on Consular Relations]" are "plainly compelling"). The Court should instead insist on strict adherence to the FSIA and service that respects the privileges and immunities to which Brazil's consulate is entitled to under the Vienna Convention.

* * * *

B. STATE IMMUNITY AT COMMON LAW

Scope of Criminal Immunity for Foreign State Agencies and Instrumentalities

On July 21, 2023, the United States filed a brief in *United States v. Pangang Group Co. Ltd.,* No. 22-10058 (9th Cir.) on sovereign immunity of State agencies and instrumentalities under the common law. See *Digest 2022* at 383-90, *Digest 2021* at 378-85, and *Digest 2020* at 392-98 for background. The case was stayed in late 2022 pending the Supreme Court's decision in *Türkiye Halk Bankasi A.S., aka Halkbank v. United States,* 598 U.S. 264, 143 S. Ct. 940 (2023), which determined that the common law, rather than the FSIA, governs the immunity of a State agency or instrumentality in a criminal proceeding. After the stay was lifted in 2023, the United States argued in its brief that the conduct at issue in *Pangang* was commercial in character and therefore not entitled to sovereign immunity under the common law and that the Executive Branch is entitled to deference on its determinations of sovereign immunity. Excerpts from the United States' brief follows (footnotes omitted).[**]

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B. Foreign state-owned commercial entities like the Pangang Defendants lack common-law immunity.

1. This prosecution is of four affiliated corporate entities—not a foreign state. While the defendants spend much of their brief urging that the common law provides absolute immunity for foreign states, *see* AOB 30–38, their brief fails to grapple meaningfully with the distinction between foreign *states* and foreign state- owned *entities*. Foreign states qua states have traditionally not been subjected to criminal prosecutions. *See* Hazel Fox, The Law of State

[**] Editor's note: The Ninth Circuit held oral argument in *United States v. Pangang Group Co. Ltd.*, No. 22-10058 (9th Cir.) on January 26, 2024.

Immunity 91 (3d ed. 2013) (international law bars applying "criminal law to regulate the public governmental activity of the foreign State"); *id.* at 91 n.65 (states shielded from claims "related to the exercise of governmental powers"). But foreign state-owned enterprises, as separate legal persons, may be subjected to criminal prosecution. *See* Chimene Keitner, *Prosecuting Foreign States*, Va. J. Int'l Law Vol. 61, No. 2 (2021) at 6 ("Although foreign states themselves are not generally subject to prosecution in domestic courts, there is no categorical bar to criminal proceedings against foreign state-owned enterprises in either domestic or international law."); *see also id.* 25–34 (collecting authorities). Just as this Court found it "compelling" that "neither the State Department nor any court has ever applied foreign official immunity to a foreign private corporation under the common law," it should find equally compelling the dearth of authority supporting a common-law bar to an Executive Branch prosecution of a foreign state-owned corporation. *WhatsApp Inc. v. NSO Grp. Techs. Ltd.*, 17 F.4th 930, 940 & n.8 (9th Cir. 2021).

The divergent rules for foreign states, on the one hand, and foreign state- owned entities, on the other, follows from bedrock principles of corporate separateness. As the Supreme Court has long explained, "government instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such." *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 626–27 (1983). At common law, corporations were "deemed persons" under both civil and criminal statutes, subject to legal liability. *United States v. Amedy*, 24 U.S. (11 Wheat.) 392, 412 (1826); *see Cook Cnty.* v. *United States ex rel. Chandler*, 538 U.S. 119, 125–27 (2003). And the baseline rule of corporate liability was not materially different when a sovereign government owned or controlled the relevant corporation.

2. Even though the foreign sovereign itself generally possessed immunity from suit, the government-owned entity generally lacked immunity, at least where the suit arose from its commercial activities.

In the domestic context, the Supreme Court has long recognized that a commercial enterprise owned or controlled by a sovereign generally lacks immunity from suit. As Chief Justice Marshall explained for the Court, "[i]t is, we think, a sound principle, that when a government becomes a partner in any trading company, it devests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen." *Bank of the United States v. Planters' Bank of Georgia*, 22 U.S. (9 Wheat.) 904, 907 (1824). An opinion for the Court by Justice Holmes similarly rejected the "notion" that a government-owned corporation would "share the immunity of the sovereign from suit," calling it "a very dangerous departure from one of the first principles of our system of law." *Sloan Shipyards Corp. v. United States Shipping Bd. Emergency Fleet Corp.*, 258 U.S. 549, 566 (1922). Judge Learned Hand similarly observed "that, in entering upon industrial and commercial ventures, the governmental agencies used should, whenever it can fairly be drawn from the statutes, be subject to the same liabilities and to the same tribunals as other persons or corporations similarly employed." *Gould Coupler Co. v. United States Shipping Bd. Emergency Fleet Corp.*, 261 F. 716, 718 (S.D.N.Y. 1919).

Courts have long applied the same principle to foreign-government-owned corporations. *See, e.g.*, *Coale v. Société Coop. Suisse des Charbons*, 21 F.2d 180, 181 (S.D.N.Y. 1921) (denying immunity to a corporation created, owned, and partially controlled by Swiss government); *Molina v. Comision Reguladora del Mercado de Henequen*, 103 A. 397, 398–99 (N.J. 1918) (denying immunity to corporate "governmental agency of the state of Yucatan" and

noting "that no authority can be found in the books for the proposition that foreign corporations which happen to be governmental agencies are immune from judicial process").

That principle accords with the British rule that had applied to the East India Company, which functioned largely as an instrumentality of the British government. *See* Ingrid Wuerth, *The Due Process and Other Constitutional Rights of Foreign Nations*, 88 Fordham L. Rev. 633, 687 (2019). While the East India Company received immunity for its sovereign acts like treatymaking, see *Nabob of the Carnatic v. East India Company*, (1793) 30 Eng. Rep. 521, 523 (Ch.), it received no immunity for its commercial acts, *see Moodalay v. Morton*, (1785) 28 Eng. Rep. 1245, 1246 (Ch.). As the English Court of Chancery explained, if the company "enter[s] into bonds in India, the sums secured may be recovered" because "as a private Company, [it] ha[s] entered into a private contract, to which [it] must be liable." *Id.* (emphasis added); *see The Swift*, (1813) 1 Dod. 320, 339 (articulating similar rule); *The Case of Thomas Skinner, Merchant v. The East- India Company*, (1666) 6 State Trials 710, 724 (H.L.) (awarding damages against East India Company); Danny Abir, *Foreign Sovereign Immunities Act: The Right to a Jury Trial in Suits Against Foreign Government-Owned Corporations*, 32 Stan. J. Int'l L. 159, 178–79 (1996); *see also* Hazel Fox & Philippa Webb, The Law of State Immunity 179 (rev. 3d ed. 2015) (noting that, under English law, "[s]eparate entities are generally to be treated as private parties").

Indeed, state-owned commercial enterprises are simply "not considered part of the state for foreign sovereign immunity purposes by the international community generally." *Foreign Sovereign Immunities Act: Hearing on H.R. 1149, H.R. 1689, and H.R. 1888 Before the Subcomm. on Admin. L & Govt'l Rels. of the H. Comm. of the Judiciary*, 100th Cong. 26–27 (1987) (testimony of State Department Deputy Legal Advisor Elizabeth G. Verville); *see also id.* at 26 ("Even absolute immunity states generally agree that state-owned commercial entities may be sued abroad."). For example, Canada's immunity statute does not apply to agencies and instrumentalities at all. *See* State Immunity Act, R.S.C., 1985, c. S- 18, § 2. The United Kingdom's State Immunity Act provides immunity to such entities only when the claim arises from conduct done "in the exercise of sovereign authority." State Immunity Act, 1978, ch.33, § 14. In passing the State Immunity Act, "Parliament enacted a provision strikingly similar to the 'old' American rule turning on incorporation" and this approach "has been followed elsewhere." William C. Hoffman, *The Separate Entity Rule in International Perspective: Should State Ownership of Corporate Shares Confer Sovereign Status for Immunity Purposes*, 65 Tul. L. Rev. 535, 553–54 (1991) (citing statutes from Pakistan, Singapore, and South Africa); *see also id.* at 554–65 (discussing caselaw from Switzerland, Germany, France, and Belgium, and ultimately concluding that, aside from the FSIA in the United States "[n]o other country in the world has adopted state ownership as a basis for conferring sovereign legal status on commercial corporations"); *see also* G.A. Res. 59/38, annex, United Nations Convention on Jurisdictional Immunities of States and Their Property (Dec. 2, 2004) (not yet in force) (providing immunity to instrumentalities only with regard to acts performed "in the exercise of the sovereign authority of the State").

The Pangang Defendants highlight (AOB 45) the one case, *Berizzi Bros. Co. v. Steamship Pesaro*, 271 U.S. 562 (1926), in which the Supreme Court "allowed the immunity, for the first time, to a *merchant* vessel owned by a foreign government and in its possession and service," *Hoffman*, 324 U.S. at 35 n.1 (emphasis added). But the Court later recognized that decision as a poorly reasoned aberration, in which "[t]he propriety of . . . extending the immunity" in the absence of an endorsement from the Executive Branch "was not considered." *Id.* In recognizing

that, at the least, the Executive Branch's refusal of immunity should have made a difference, the Court necessarily rejected the proposition that *Berrizi Brothers* stood for any bedrock principle of law that the judgment of the Executive Branch could not overcome. *See id.* at 39-40 (Frankfurter, J., concurring) ("heartily welcom[ing]" the Court's "implied recession from the decision in *Berizzi Bros.*," which rested on "considerations [that] have steadily lost whatever validity they may then have had"); *accord Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682, 699 (1976) (plurality opinion) (observing that *Berizzi Brothers* was "severely diminished by later cases").

Accordingly, the longstanding distinction between a foreign state and a separate entity owned by a foreign state dooms the Pangang Defendants' appeal. They are not a foreign state. They are separate legal persons. *See Pangang*, 6 F.4th at 955 ("[T]here is no dispute that the Pangang Companies are separate corporate persons . . . ."). And as a result, they are subject to criminal prosecution.

3. While foreign state-owned enterprises may be eligible for immunity for their *governmental* acts, they plainly lack immunity for their *commercial* acts. Indeed, not even foreign states qua states receive immunity for their commercial acts in the civil context. *See*, *e.g.*, *Alfred Dunhill*, 425 U.S. at 701–02. And as the district court correctly found, the Pangang Defendants allegedly engaged in such commercial acts here.

Commercial activity occurs when a foreign state or foreign state-owned enterprise "acts in the manner of a private player within the market." *Saudi Arabia v. Nelson*, 507 U.S. 349, 360 (1993) (internal quotation marks and citation omitted). The key inquiry focuses on "whether the particular actions that the [entity] performs . . . are the type of actions by which a private party engages in trade and traffic or commerce," *Embassy of the Arab Rep. of Egypt v. Lasheen*, 603 F.3d 1166, 1170 (9th Cir. 2010) (internal quotation marks and citation omitted), or whether the powers being exercised are those "peculiar to sovereigns," *Nelson*, 507 U.S. at 360; *see Park v. Shin*, 313 F.3d 1138, 1145 (9th Cir. 2002) ("[A]n activity is commercial unless it is one that only a sovereign state could perform."). Significantly, in engaging in this analysis, courts look not to the purpose or motive behind the relevant state or entity's actions, but rather to whether those actions "are the *type* of actions by which a private party engages in" commerce. *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 614 (1992) (citations omitted). "Whether a state [or entity] acts in the manner of a private party is a question of behavior, not motivation." *Broidy Cap. Mgmt., LLC v. State of Qatar*, 982 F.3d 582, 594 (9th Cir. 2020) (internal quotation marks, citation, and brackets omitted).

Applying these principles, the district court correctly found, 1-ER-20–22, 33–37, that the Pangang Defendants' charged conduct "is commercial in nature." 1-ER-22. The charges here—conspiracy and attempt to steal DuPont's trade secrets—arise from a contractual relationship between the Pangang Defendants, on the one hand, and co-defendant Walter Liew and his company USAPTI, on the other. Specifically, the Third Superseding Indictment alleges $27 million in contracts between those parties, located in the United States. 2-ER-88–101. Those contracts involved agreeing to engage in the production of titanium dioxide in China at a manufacturing plant. *Id.* Furthermore, the defendants allegedly attempted to build a titanium dioxide plant and manufacturing of titanium dioxide in China. *Id.* They did so by, among other things, putting out a request for proposal, hiring design consultants, and holding meetings in San Francisco. *Id.* Contracts and construction of a manufacturing plant are the "*type* of actions by which a private party engages in" commerce, regardless of the Pangang Defendants' motivations. *Weltover*, 504 U.S. at 614. These are not acts "peculiar to sovereigns," *Nelson*,

507 U.S. at 360, but instead fall well within the realm of commercial acts that courts have traditionally identified as not bearing the same sovereign immunities as state acts. *See Alfred Dunhill of London, Inc. v. Cuba*, 425 U.S. 682, 695–96 (1976) (collecting examples).

C. Common law foreign sovereign immunity does not extend to cases where the Executive Branch determines that immunity does not apply.

The Pangang Defendants' immunity claim also fails because the common law does not recognize immunity where, as here, the Executive Branch determines that immunity is unwarranted. Under the common law, foreign sovereign immunity is "a matter of grace and comity on the part of the United States, and not a restriction imposed by the Constitution." *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 486 (1983). And out of respect for the separation of powers, courts have "traditionally deferred to the decisions of the political branches . . . on whether to take jurisdiction over actions against foreign sovereigns." *Rubin v. Islamic Republic of Iran*, 138 S. Ct. 816, 821 (2018) (citation and internal quotation marks omitted). Here, the Executive Branch has determined that immunity is unwarranted by instituting a federal criminal case against the Pangang Defendants.[7] Granting those Defendants' demand for immunity here—where the federal government is the very party prosecuting them—would be unprecedented and erroneous.

Starting with *The Schooner Exchange v. McFaddon*, courts have long deferred to the Executive Branch's foreign sovereign immunity determinations. In that case, the Court "accept[ed] a suggestion from the Executive Branch" to extend immunity to a foreign-government-owned vessel. *Opati v. Republic of Sudan*, 140 S. Ct. 1601, 1605 (2020). In so doing, *Schooner Exchange* recognized that the implication, *see* 11 U.S. (7 Cranch) 116, 146 (1812), of immunity for foreign states upon which the Pangang Defendants rely, *see* AOB 31, applies only where "the sovereign power has impliedly consented to wa[i]ve its jurisdiction"—and not where it has "destroy[ed] this implication" by "subjecting [the foreign sovereign] to the ordinary tribunals." 11 U.S. (7 Cranch) at 146. "[A]s Chief Justice Marshall explained in the *Schooner Exchange,* 'exemptions from territorial jurisdiction . . . must be derived from the consent of the sovereign of the territory' and are 'rather questions of policy than of law, that they are for diplomatic, rather than legal discussion.'" *Munaf v. Geren*, 553 U.S. 674, 701 (2008) (quoting *Schooner Exchange*, 11 U.S. (7 Cranch) at 143, 146).

Deference to the Executive Branch continued in the ensuing years. *See Bank Markazi v. Peterson*, 578 U.S. 212, 235 (2016) (describing the practice). Before passage of the FSIA, "the granting or denial" of foreign sovereign immunity was "the case-by-case prerogative of the Executive Branch." *Republic of Iraq v. Beaty*, 556 U.S. 848, 857 (2009). In civil suits against foreign-government-owned instrumentalities such as "seized vessels," the "diplomatic representative of the sovereign could request a 'suggestion of immunity' from the State Department," to which the court would defer. *Samantar*, 560 U.S. at 311. "[I]n the absence of recognition of the immunity by the Department of State, a district court had authority to decide for itself whether all the requisites for such immunity existed." *Id.* (citation and internal quotation marks omitted). But even in exercising that authority, a court still followed the Executive's lead, inquiring "whether the ground of immunity is one which it is the established policy of the State Department to recognize." *Id.* at 312 (citation and internal quotation marks omitted).

The Supreme Court has also made clear that just as courts must not "deny an immunity which our government has seen fit to allow," they also must not "allow an immunity on new grounds which the government has not seen fit to recognize." *Hoffman*, 324 U.S. at 35. As the Court has explained, "recognition by the courts of an immunity upon principles which the

political department of government has not sanctioned may be equally embarrassing to it in securing the protection of our national interests and their recognition by other nations." *Id.* at 36.

Nothing could embarrass the Executive Branch more than a judge-made principle that would vitiate a federal criminal prosecution. In "electing to bring [a] prosecution, the Executive has" had the opportunity to "assess[] th[e] prosecution's impact on this Nation's relationship with" other countries, *Pasquantino v. United States*, 544 U.S. 349, 369 (2005), and to determine that the prosecution is in the national interest. *See, e.g.*, *United States v. Noriega*, 117 F.3d 1206, 1212 (11th Cir. 1997). The Executive Branch, which "possess[es] significant diplomatic tools and leverage the judiciary lacks," is better positioned than courts to make that determination. *Munaf*, 553 U.S. at 703 (citation omitted). This is why countless courts have deferred to the Executive's immunity determination under the common law. *See, e.g.*, *Matar v. Dichter*, 563, F.3d 9, 15 (2d Cir. 2009) ("[I]n the common- law context, we defer to the Executive's determination of the scope of immunity."); *Ye v. Zemin*, 383 F.3d 620, 627 (7th Cir. 2004) ("Pursuant to their respective authorities, Congress or the Executive Branch can create exceptions to blanket immunity. In such cases the courts would be obliged to respect such exceptions."); *see also Doğan*, 932 F.3d at 893 (declining to decide in circumstances of case whether Executive's immunity determination is afforded "substantial weight" or "absolute deference," because either way defendant was entitled to immunity as suggested by Executive); *see generally Peterson v. Iran*, 627 F.3d 1117, 1126 (9th Cir. 2010) (summarizing history of authoritative Executive suggestions regarding immunity under common law).

In accord with the separation of powers, Chief Justice Marshall observed in *Schooner Exchange* that a foreign official's "crimes" may "render him amenable to the local jurisdiction" if they "violat[e] the conditions under which he was received as the representative of a foreign sovereign." 11 U.S. (7 Cranch) at 139. That observation is reflected in the Founding-era federal government's criminal prosecutions of non-diplomatic foreign officials in certain cases. *See* Chimène I. Keitner, *The Forgotten History of Foreign Official Immunity*, 87 N.Y.U. L. Rev. 704, 710 n.23 (2012). In 1794, for instance, the United States prosecuted the consul from the Republic of Genoa for extortion, and the circuit court held "that the offence was indictable, and that the defendant was not privileged from prosecution in virtue of his consular appointment." *United States v. Ravara*, 27 F. Cas. 714, 715 (C.C.D. Pa. 1794). The same year, the United States prosecuted the Chancellor of the French Consulate at Boston on a charge of arming a privateer. *See* Letter from Edmund Randolph, Sec'y of State, to Christopher Gore, Att'y of the U.S. for the Mass. Dist. (May 21, 1794), in *American State Papers: Foreign Relations Vol. VI* at 60 (1998).

The 20th century saw a dramatic expansion in the activities of foreign- government-owned entities, such as corporations, particularly after World War I. *See First Nat'l City Bank*, 462 U.S. at 624; Theodore R. Giuttari, *The American Law of Sovereign Immunity: An Analysis of Legal Interpretation* 63 (1970). During that same period, the government increased its prosecutions of private domestic corporations. *See New York Cent. & Hudson River R.R. v. United States*, 212 U.S. 481, 494–95 (1909); William S. Laufer, *Corporate Liability, Risk Shifting, and the Paradox of Compliance*, 52 Vand. L. Rev. 1343, 1356 (1999). Similar federal proceedings against corporations partly or wholly owned by a foreign government, while appropriately rare given the weighty concerns that may attach to them, were commenced as well, with courts almost invariably allowing them.

In *United States v. Deutsches Kalisyndikat Gesellschaft*, 31 F.2d 199 (S.D.N.Y. 1929), for instance, the United States sought injunctive relief, under a statute providing for criminal and

civil penalties, against a corporation that was majority-owned and controlled by the French government. *Id.* at 200. France argued that immunity should attach because the suit was "in effect, a suit against the Republic of France." *Id.* In response, the State Department informed the court that "it has long been the view of the Department of State that agencies of foreign governments engaged in ordinary commercial transactions in the United States enjoy no privileges or immunities not appertaining to other foreign corporations, agencies, or individuals doing business here, and that they should conform to the laws of this country." *Id.* The court accordingly held that "[n]either principle nor precedent requires that th[e] immunity, which, as a matter of comity, is extended to a foreign sovereign and his ambassador, should be extended to a foreign corporation merely because some of its stock is held by a foreign state, or because it is carrying on a commercial pursuit, which the foreign government regards governmental." *Id.* at 203.

Indeed, for at least the past 70 years, the federal government has been applying federal criminal jurisdiction (often through subpoenas) to foreign- government-owned corporations, without any indication that these entities would be immune. *See In re Investigation of World Arrangements*, 13 F.R.D. 280, 288– 91 (D.D.C. 1952); *In re Grand Jury Investigation of the Shipping Industry*, 186 F. Supp. 298, 318–20 (D.D.C. 1960); *In re Sealed Case*, 825 F.2d 494, 495 (D.C. Cir. 1987) (per curiam); *United States v. Eireann*, No. 89-cr-647, D. Ct. Doc. 12 (S.D. Fla. Oct. 6, 1989); *United States v. Jasin*, No. 91-cr-602, 1993 WL 259436, at *1 (E.D. Pa. July 7, 1993); *United States v. Statoil, ASA*, No. 06-cr-960, D. Ct. Doc. 2 (S.D.N.Y. Oct. 13, 2006); *In re Grand Jury Proceeding Related to M/V Deltuva*, 752 F. Supp. 2d 173, 176–80 (D.P.R. 2010); *United States v. Ho*, No. 16-cr-46, 2016 WL 5875005, at *6 (E.D. Tenn. Oct. 7, 2016); *In re Grand Jury Subpoena*, 912 F.3d at 626; *Halkbank*, 140 S. Ct. at 933–34.

Out of this entire history, a court has granted immunity in only one of those cases—but did so on the ground that the entity was engaging in "a fundamental government function serving a public purpose," not a "commercial venture." *In re Investigation of World Arrangements*, 13 F.R.D. at 290–91. This unbroken line of cases belies the Pangang Defendants' repeated assertions that there "never were any" federal criminal cases involving foreign sovereign-owned entities. AOB 18. Immunity from prosecution would presumably mean immunity from compulsory process, and the Pangang Defendants do nothing to explain this historical practice that contradicts their asserted novelty. In short, the Pangang Defendants' approach would invite an unprecedented judicial override of the Executive Branch's constitutionally rooted authority and discretion over prosecutorial and foreign- policy decision making.

That approach would greatly impede our national security. Under the Pangang Defendants' theory, a corporation that is 50.1% owned by a foreign government could engage in rampant criminal misconduct affecting U.S. citizens—from hacking computer systems, to advancing a foreign adversary's nuclear program, to providing material support to terrorists—while facing no criminal accountability at all. Wuerth, 88 Fordham L. Rev. at 641 (citing real-world examples of such misconduct). This case is a prime illustration: a commercial entity allegedly stole trade secrets from a U.S. company and yet would face no criminal consequences if this Court adopted the Pangang Defendants' position. The Executive Branch would be left to resort to diplomacy alone, but as shown by this case, diplomatic pressure is often not a reliable method through which to ensure compliance with U.S. law. *See In re Pangang Grp. Co.*, 901 F.3d at 1050, 1053 (Chinese government refused to serve summonses on Pangang Defendants in 2012 and 2016). In this case and others, the Executive Branch has sometimes determined that

criminal prosecution is the best way to protect national security. Nothing in the common law of foreign sovereign immunity prevents the Executive Branch from making that determination.

* * * *

On November 20, 2023, the United States filed a brief in *Halkbank* in the Second Circuit on sovereign immunity from criminal prosecution under the common law. See *United States v. Türkiye Halk Bankasi A.S., aka Halkbank*, No. 20-3499 (2d Cir.). The United States argued that the common law does not provide for foreign sovereign immunity when the Executive Branch has commenced a federal criminal prosecution of a commercial entity like Halkbank. Excerpts from the United States' brief follow (footnotes omitted).

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B. Discussion

1. Under the Common Law, Courts Defer to the Executive's Views on Whether to Extend Foreign Sovereign Immunity

This Court need not determine the outer boundaries of common-law foreign sovereign immunity in this case because, as this Court has recognized in this case and others, the common law does not recognize such immunity where, as here, the Executive determines that immunity is unwarranted. *See Halkbank I*, 16 F.4th at 350-51; *Matar v. Dichter*, 563 F.3d 9, 15 (2d Cir. 2009) (deferring to Executive's suggestion that civil suit be dismissed on immunity grounds); *Doe v. De Leon*, 555 F. App'x 84, 85 (2d Cir. 2014) (same).

"[B]y electing to bring this prosecution, the Executive has assessed this prosecution's impact" on foreign relations. *Pasquantino*, 544 U.S. at 369. The determination to prosecute thus necessarily implies the decision not to grant Halkbank foreign sovereign immunity. . . . [T]he District Court properly "accept[ed] and follow[ed]" the Executive Branch's determination that Halkbank was not entitled to immunity in this case. *Hoffman*, 324 U.S. at 36.

The history of deference to the Executive Branch's immunity determinations dates back to the case on which Halkbank principally relies, *The Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812). In *Schooner Exchange*, the Supreme Court recognized a background "principle of public law that national ships of war, entering the port of a friendly power open for their reception, are to be considered as exempted *by the consent of that power* from its jurisdiction." 11 U.S. at 145-46 (emphasis added). At the same time, the Court emphasized that "[w]ithout doubt, the sovereign of the place is capable of destroying this implication" of immunity, by "claim[ing] and exercis[ing] jurisdiction. . . by subjecting such vessels to the ordinary tribunals." *Id.* The Court made clear that this "right to demand redress" from foreign sovereigns "belongs to the executive department, which alone represents the sovereignty of the nation in its intercourse with other nations." *Id.* at 132.

In the two centuries since *Schooner Exchange*, the Supreme Court has continued to defer to Executive Branch determinations of when foreign sovereign immunity applies or does not apply. In 1819, the Supreme Court emphasized the Executive's power to "claim and exercise jurisdiction" over foreign sovereigns, explaining that the presumption against jurisdiction

over foreign sovereigns lasts only "until such power be expressly exerted." *The Divina Pastora*, 17 U.S. 52, 71 n.3. In 1882, the Supreme Court made clear that in foreign sovereign immunity cases, "the judicial department of this government follows the action of the political branch, and will not embarrass the latter by assuming an antagonistic jurisdiction." *United States v. Lee*, 106 U.S. 196, 209. In 1945, the Supreme Court explained that just as courts must not "deny an immunity which our government has seen fit to allow," they also must not "allow an immunity on new grounds which the government has not seen fit to recognize" because doing so "may be equally embarrassing" to "the political department of government." *Hoffman*, 324 U.S. at 35-36; *see also Baker v. Carr*, 369 U.S. 186, 213 (1962) (noting that "judicial action . . . occurs in cases involving the immunity from seizure of vessels owned by friendly foreign governments" only "in the absence of a recognizedly authoritative executive declaration").

More recently, the Supreme Court has frequently cited *Schooner Exchange* for the principle of deference to Executive Branch immunity determinations. *See, e.g.*, *Opati v. Republic of Sudan*, 140 S. Ct. 1601, 1605 (2020); *Republic of Austria*, 541 U.S. at 688-89; *Verlinden*, 461 U.S. at 486. This Court, too, has explicitly recognized that "in the common-law context, we defer to the Executive's determination of the scope of [foreign sovereign] immunity." *Matar*, 563 F.3d at 15; *see also Doe*, 555 F. App'x at 85 (" '[U]nder our traditional rule of deference to such Executive determinations,' the United States' submission is dispositive" as to common-law foreign sovereign immunity of former President of Mexico) (quoting *Matar*, 563 F.3d at 13).

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C. HEAD OF STATE AND OTHER FOREIGN OFFICIAL IMMUNITY

See Chapter 7 for discussion of immunity of State officials from foreign criminal jurisdiction.

D. DIPLOMATIC, CONSULAR, AND OTHER PRIVILEGES AND IMMUNITIES

1. Vienna Convention on Consular Relations ("VCCR")

See discussion of *Hurtado v. Brazilian Financial Office, et al.* in section A.5, *supra*, involving service of process on consular premises as contrary to the FSIA and VCCR.

2. Vienna Convention on Diplomatic Relations ("VCDR")

Archival Inviolability

On March 10, 2023, the United States Court of Appeals for the D.C. Circuit dismissed the appeal of Qatar, as a non-party, in *Broidy Capital Management LLC v. Muzin*, 61 F.4th 984 (D.C. Cir. 2023), and remanded the case to allow Qatar to intervene or become a party to the litigation to assert its rights under the VCDR. On August 25, 2023, the United States filed a statement of interest in the U.S. District Court of the District of Columbia, at the court's invitation, regarding the proper legal standard for assessing documents held by outside parties where a claim of archival inviolability under the

Article 24 of the VCDR has been asserted. No. 19-cv-00150 (D.D.C.) The U.S. submission, excerpted below, reiterated the framework proposed by the United States for assessing the inviolability of documents held by third parties, as introduced in its filing the prior year in the D.C. Court of Appeals. No. 22-7082; *see Digest 2022* at 449-455 for a discussion of the 2022 amicus brief filed by the United States at the request of the DC Circuit. The U.S. framework for assessing whether an embassy document held by a third party enjoys archival immunity asks the court to consider whether the document is "of the mission," taking into account the nature of the relationship between the outside party and the mission, whether the mission had a reasonable expectation of continued confidentiality, and whether the document was provided for the purpose of carrying out mission functions. On October 13, 2023, the district court adopted the framework proposed by the United States' statement of interest. *Broidy Cap. Mgmt. LLC v. Muzin*, No. 19-cv-00150 (D.D.C. Oct. 13, 2023). The court noted that the parties agreed to the framework and that "the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight." *Id.* (quoting *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184–85 (1982); accord Kolovrat v. Oregon, 366 U.S. 187, 194 (1961)).

* * * *

The basis for the Government's interest in this case on appeal was the proper legal standard for Article 24 protections and the general analysis courts should follow in assessing documents where a claim of archival inviolability under the Vienna Convention has been asserted. The Government's views regarding the framework applicable to that analysis are set out in its August 2022 filing in the Court of Appeals. The Government is not a party to this case, and, as in the court of appeals, it opines only on that framework. As outlined in that filing, the proper inquiry for each document or category of documents is to perform a two-step inquiry. The first step is to consider is whether the document (or document category) was a document "of the mission" because (A) the Qatari mission provided the documents to the Defendants, or (B) the Qatari mission both solicited the creation of those particular documents and provided information from inviolable documents or archives that is included in those documents. *See* United States Br. 31, *Broidy Cap. Mgmt. LLC v. Muzin*, 61 F.4th 984 (D.C. Cir. 2022) (attached hereto).

For any documents that are documents "of the mission" under the first step, the Court should proceed to the second step, asking whether Qatar lacked sufficient objectively reasonable expectations of those documents' confidentiality and whether the documents were provided or created for the purpose of carrying out the functions of the mission. *See id.* at 20, 23, and 31-32. In assessing Qatar's expectations of confidentiality, the Court should examine the nature of the relationship between the mission and the outside party, the nature of the documents, and any other relevant indicia of confidentiality. *See id.* at 31–32. As part of its analysis, the Court should also consider whether any of the documents are subject to inspection under the Foreign Agents Registration Act and the contractual language in any agreements between the parties. *See id.* at 32–33.

The Court may choose to perform the analysis in either order, asking either whether the

documents are those of the mission or whether Qatar had reasonable expectations of confidentiality in the documents. If the answer at either step is "no," the documents are not protected.

The Court would make these determinations with presentations by the parties under the appropriate legal framework and subject to the Federal Rules of Civil Procedure. *See, e.g*., Fed. R. Civ. P. 37 (motion to compel); Fed. R. Civ. P. 26 (motion for protective order); Fed. R. Civ. P. 52 (special masters). The Government is not a party to this case, and, as noted above, its interest is in the legal standard to be applied. The Government accordingly addresses only the applicable legal framework, and does not address whether any or all of the particular documents that are the subject of the dispute between the parties in this case are protected from discovery by the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

* * * *

3. Special Missions Immunity

U.S. v. Saab Moran arises out of a criminal complaint against Saab Moran in the U.S. District Court for the Southern District of Florida, who moved to dismiss the complaint claiming to be a "special envoy" of Venezuela in transit to Iran when he was detained in, and ultimately extradited from, Cabo Verde. See No. 19-cr-20450. See also *Digest 2022* at 455-65. In 2022, the district court denied Saab Moran's motion to dismiss. In 2023, Saab Moran petitioned the U.S. Court of Appeals for the Eleventh Circuit for an interlocutory appeal on the question of immunity. The United States supported the request. See *U.S. v. Saab Moran*, No. 23-10066. The court noted probable jurisdiction over the appeal, leading to further proceedings on the immunity question. On October 4, 2023, the United States filed its answering brief. On December 21, 2023, Saab Moran was released from custody and granted clemency. The Government's October 4, 2023, answering brief is excerpted below (footnotes omitted).[***]

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II. The District Court Did Not Clearly Err When It Determined that Saab Was Not Traveling as a "Special Envoy" at the Time of His Detention in Cabo Verde.

In its order denying Saab's motion to dismiss, the district court made detailed findings of fact and concluded, as a factual matter, "that the Maduro regime has, in a post hoc manner, done its best to imprint upon Saab Moran a diplomatic status that he did not factually possess" on the date he was detained in Cabo Verde. DE 197 at 6. Specifically, the court held that the evidence before it "suggests that the Maduro regime and its accomplices have fabricated documents to cloak Saab Moran in a diplomatic dress that does not befit him, all in an effort to exploit the law of diplomatic immunities and prevent his extradition to the United States." *Id*. Accordingly, it

[***] Editor's note: On February 21, 2024, the U.S. Court of Appeals for the Eleventh Circuit granted a joint motion to dismiss and dismissed Saab's appeal as moot.

found that Saab "truly was no diplomat at all." *Id*. at 7. On appeal, Saab has not shown that this factual finding is clearly erroneous and, therefore, this Court should affirm.

As this court has explained, "[t]he determination of whether a person is a foreign diplomatic officer 'is a mixed question of fact and law.'" *Ali*, 743 F. App'x at 358. The district court set forth detailed factual findings concerning the credibility and legitimacy of the evidence in the record before it as to Saab's claim of diplomatic immunity. DE 197 at 2-7. "Credibility determinations are typically the province of the fact finder because the fact finder personally observes the testimony and is thus in a better position than a reviewing court to assess the credibility of witnesses." *United States v. Ramirez- Chilel*, 289 F.3d 744, 749 (11th Cir. 2002). Accordingly, this Court "afford[s] substantial deference to the fact finder's explicit and implicit credibility determinations." *United States v. Grushko,* 50 F.4th 1, 11 (11th Cir. 2022), *cert. denied,* 143 S. Ct. 2594 (2023), *and cert. denied,* 143 S. Ct. 2680 (2023). Furthermore, "[i]f the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City,* 470 U.S. 564, 573-74 (1985). And this same rule applies "even when the district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts." *Id.* at 574.

Specifically, the district court found that Saab's theories of diplomatic immunity simply were not credible in light of the "the sum of evidentiary inconsistencies and indications of documentary manipulation" evinced throughout the two-day evidentiary hearing. DE 197 at 6. For example, the district court determined that "the Maduro regime doctored certain documents to make it appear that Saab Moran was traveling to Iran as a 'special envoy' when he was arrested," *id.* at 5, a determination based on its factual findings concerning various versions of the Venezuelan government's official gazette, one of which purportedly published a resolution naming Saab as a "special envoy." As the district court explained:

> According to a copy of the gazette that was obtained from the Venezuelan *Imprenta Nacional,* the resolution was included in the gazette's publication on April 26, 2018. However, the Government offered a copy of the April 26, 2018 gazette that was retained by the U.S. Library of Congress, and yet another copy of the same gazette as published on the Venezuelan Supreme Court's website. Identical in the relevant respects, neither of these two copies reflects the purported resolution announcing Saab Moran as a special envoy. Samuel Marple, an FBI computer scientist, testified that the version that does include the announcement—i.e., the one obtained from the Venezuelan *Imprenta Nacional*—showed traces of post-publication modifications whereas the other two versions did not.

Id. at 5 (citations omitted); *see also* DE 193-18, 193-19, 193-20, & 193-21 (Gov't Exs. 17, 17A, 18, & 19).

Saab criticizes the district court for failing to review the record "in its entirety." Br. at 26-31. But the district court's factual findings reflect a conclusion that the record, as a whole, did not support Saab's claim of "special envoy" status. As another example, the district court rejected Saab's reliance on other documents purporting to establish his diplomatic immunity as unsuccessful efforts by "the Maduro regime [] to devise ways of avoiding his extradition to the United States by exploiting the law of diplomatic immunities." *Id.* at 3; *see, e.g., id.* at 3-4 (rejecting as not credible Saab's "sudden naming in December 2020" to the African Union); *id*.

at 4-5 (rejecting Saab's reliance on his diplomatic passport). These additional credibility determinations, which are entitled to deference, reflect that the district court did indeed read the record "in its entirety" and wholly disbelieved Saab's claim of diplomatic immunity.

* * * *

IV. Saab Does Not Enjoy Immunity Under the Vienna Convention.

Saab claims that his status as a "special envoy" of Venezuela to Iran qualifies him as a diplomatic agent entitled to immunity under the Vienna Convention and the Diplomatic Relations Act. Br. at 31-35. But even assuming Saab was serving as a "special envoy," a factual premise which the district court rejected and to which this Court should defer, *see* Part II, *supra*, the Vienna Convention offers Saab no privileges or immunities because it covers only permanent missions, not temporary ones.

A. The Diplomatic Relations Act and the Vienna Convention.

Diplomatic immunity in the United States is governed by the Diplomatic Relations Act of 1978, 22 U.S.C. §§ 254a-254e, which implements the obligations of the United States under the Vienna Convention on Diplomatic Relations, April 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 ("Vienna Convention"), an international treaty that sets forth, *inter alia*, the privileges and immunities to be accorded to diplomatic agents and other diplomatic mission staff. *See Abdulaziz*, 741 F.2d at 1330. Relevant here, the Diplomatic Relations Act provides that "[a]ny action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding . . .shall be dismissed." 22 U.S.C. § 254d.

The principal diplomatic immunity provision of the Vienna Convention is set forth in Article 31, which provides that "[a] diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State." Vienna Convention, art. 31.1. As this language makes clear, the immunities afforded under this provision of the Vienna Convention are specific to the *receiving* state. *See* Vienna Convention, art. 31.1; *see also Tabion v. Mufti*, 73 F.3d 535, 537 (4th Cir. 1996) ("The Vienna Convention provides diplomats with absolute immunity from criminal prosecution and protection from most civil and administrative actions brought in the 'receiving State,' *i.e.*, the state where they are stationed."). Thus, for purposes of this case, even if Saab's status as a special envoy guaranteed him any protections under the Convention, which as explained below it does not, at most Article 31 would guarantee him immunity from criminal prosecution in the receiving state, Iran; his purported status would not entitle him to any immunity under this provision *in the United States*.

Saab is, of course, correct that in addition to providing for immunity from civil and criminal jurisdiction in the receiving state, another provision of the Vienna Convention provides for transit immunity in third states. *See* Vienna Convention, Art. 40.1 ("If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return."). This "transit immunity" provision provides for "inviolability" for accredited diplomatic agents taking up or returning to their "post," or when returning to their own country. It is this transit immunity provision that Saab claims entitles him to dismissal of the charges contained in the indictment pending against him in the United States. It does not.

B. Because the Vienna Convention applies only to representatives of permanent missions, Saab is not entitled to immunity under the Convention.

Because the transit immunity provision contained in Article 40 of the Vienna Convention provides immunity for a "diplomatic agent," the district court correctly proceeded to determine if Saab qualifies as such a "diplomatic agent" for purposes of the Diplomatic Relations Act. *See United States v. Bahel*, 662 F.3d 610, 623 (2d Cir. 2011) ("[T]he DRA applies only to diplomats, and not to other officials."). The Vienna Convention defines "diplomatic agent" as "the head of the mission or a member of the diplomatic staff of the mission." Vienna Convention, art. 1(e). And, as the district court recognized, "the [Vienna Convention's] use of the term makes clear that the types of diplomatic "missions" the [Vienna Convention] applies to are permanent representative missions, not special or temporary missions such as the one Saab Moran, at best, formed part of when arrested." DE 197 at 9. *See* Vienna Convention, art. 2 ("The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent."). Accordingly, the district court explained:

> Given this understanding of the [Vienna Convention], the Court returns to the question of whether Saab Moran may invoke the convention's protections and reiterates that the answer is no. As noted, the evidence shows that Saab Moran was, at best, traveling to perform a temporary undertaking on behalf of Maduro's regime in Iran. He was not traveling as a member or head of a permanent mission during the trip in question. Consequently, Saab Moran is not a "diplomatic agent" in the sense of the [Vienna Convention] and may not invoke any of the convention's provisions.

DE 197 at 10.

Saab contends, Br. at 35-38, that the district court's ruling "defied this Court's holding in *Abdulaziz* that a 'special envoy' is "afforded full protection pursuant to the Diplomatic Relations Act." But the district court carefully read *Abdulaziz*, and explained why this Court's decision in that case was consistent with its determination that the Vienna Convention does not apply to Saab. DE 197 at 10-13. Although both Saab and the diplomat in *Abdulaziz* used the label "envoy," they are situated quite differently. Most critically, in *Abdulaziz* the State Department certified the plaintiff's diplomatic status, a fact the Court relied upon as "generally . . . conclusive" with respect to diplomatic status. *See Abdulaziz*, 741 F.2d at 1331. A more apt comparison is *United States v. Sissoko*, 995 F. Supp. 1469 (S.D. Fla. 1997), where the district court concluded that a criminal defendant was not "entitled to full diplomatic immunity when such has not been conferred by the State Department" and found *Abdulaziz* not to be controlling because "[i]n that case the State Department certified the prince as a diplomat" but "no such certification [] occurred" in the case before it. *Sissoko*, 995 F. Supp. at 1471. Moreover, as a factual matter, the Court determined that the diplomat in *Abdaluziz* was an "envoy" under Article 14 of the Vienna Convention. *Abdaluziz*, 741 F.2d at 1331. As explained above, the Vienna Convention applies only to members of permanent diplomatic missions, not members of special or temporary missions, like Saab claims to be.

V. Saab Does Not Enjoy Transit Immunity Under Customary International Law.

Saab also argues that he is protected by the transit immunity provisions applicable to special missions under customary international law. Br. at 48-52. However, even assuming that Saab was traveling as a "special envoy" as part of a special mission when he was detained in Cabo Verde, Saab does not enjoy transit immunity under customary international law.

To the extent Saab relies on the transit immunity provisions the United Nations Convention on Special Missions, Dec. 8, 1969, 1400 U.N.T.S. 231, *available at*

https://legal.un.org/ilc/texts/instruments/english/conventions/9_3_1969.pdf ("Convention on Special Missions" or "New York Convention"), which covers short-term missions of diplomats, his argument fails because the Convention on Special Missions does not bind the United States and its transit immunity provisions do not "represent binding customary international law." DE 197 at 13. To the extent Saab relies on customary international law generally, his claim still fails because the transiting state, Cabo Verde, was not informed in advance of, and did not consent to, his transit as required by customary international law. In either instance, even if Saab had a valid claim to transit immunity in Cabo Verde, which he does not, such claim could only apply to the jurisdiction of Cabo Verdean courts and would not apply to the jurisdiction of the United States.

A. The transit immunity provisions of the Convention on Special Missions do not reflect customary international law.

Customary international law has been defined by this Court as "the 'general and consistent practice of states followed by them from a sense of legal obligation.'" *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1252 (11th Cir. 2012) (quoting Restatement (Third) of The Foreign Relations Law of the United States § 102(2)); *see also United States v. Macias*, 654 F. App'x 458, 460 n.3 (11th Cir. 2016) (per curiam) ("'Customary international law' is a term of art that refers to 'a general and consistent practice of states' that is followed out of 'a sense of legal obligation' pertaining to 'a matter of mutual legal concern.'"). "To qualify as customary international law, the practice must 'reflect wide acceptance among the states particularly involved in the relevant activity' and 'there must be a sense of legal obligation.'" *Mamani v. Sanchez Bustamante*, 968 F.3d 1216, 1237 (11th Cir. 2020). "But where the customs and practices of States demonstrate that they do not universally follow a particular practice out of a sense of legal obligation and mutual concern, that practice cannot give rise to a rule of customary international law." *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 252 (2d Cir. 2003).

In his motion to dismiss filed in the district court, Saab primarily relied on the provisions of the Convention on Special Missions in support of his argument that he is entitled to transit immunity under customary international law. DE 147 at 22-23. To be sure, the Convention on Special Missions does address the immunities afforded to representatives of "special missions," which it defines as "a temporary mission, representing the State, which is sent by one State to another State with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a specific task." Convention on Special Missions, Art. 1(a). And Article 42 of the Convention on Special Missions does address "[t]ransit through the territory of a third state." *Id*., Art. 42. The Convention on Special Missions conditions transit immunity on prior notice of, and a lack of objection to, transit by such third state. *Id.*

However, as the district court correctly found, DE 197 at 13-14, these provisions offer no protection to Saab for two reasons. *First*, as Saab himself acknowledged below, DE 147 at 23, the United States is not a party to the Convention on Special Missions; it is therefore not bound by its provisions. And *second*, not all the provisions of the Convention on Special Missions reflect customary international law. *See Sissoko*, 995 F. Supp. at 1471 ("The Court does not find that the U.N. Convention on Special Missions is 'customary international law' that binds this Court."). That is particularly true of the provision on transit immunity because, as the Government explained in the district court, that provision was subject to significant disagreement during negotiations of the Convention. *See* DE 153 at 14-15.

B. Because Cabo Verde did not consent to Saab's transit, Saab is not entitled to transit immunity under customary international law.

Perhaps recognizing that the Convention on Special Missions has no force of law in the United States, Saab now stresses that he is protected by the transit immunity protections reflected in customary international law generally. Br. at 48-52. But, at a minimum, transit immunity requires consent from the transiting state. *See* Restatement (Second) of The Foreign Relations Law of the United States § 78(1) ("A person entitled to immunity from the exercise of jurisdiction by the receiving state as indicated in §§ 73 and 74, *who has been permitted* to pass through the territory of another state . . . is entitled to [transit immunity]") (emphasis added); *see also* DE 153 at 13-15. And as the district court correctly concluded, Saab does not qualify for such protection under customary international law because Cabo Verde, the transiting state, did not consent to his transit. DE 197 at 14-15 (collecting authorities).

Saab claims that the district court erred because its "principal reason for denying immunity was that, in its view, customary international law does not embrace '*transit-based* immunity.'" Br. at 50. That is a misreading of the district court's opinion. In addressing Saab's argument based on customary international law, the district court first correctly rejected his claim that the Convention on Special Missions reflected customary international law. *See* DE 197 at 13-14; *see also* Part V.A., *supra*. It then noted that, aside from relying on one "intermediate appellate decision from the United Kingdom," in his motion Saab "[did] little to discuss the parameters of transit immunity and fail[ed] to point the Court to any binding authority that recognizes its existence in the case of diplomatic agents serving temporary undertakings." DE 197 at 14. Far from holding that customary international law does not provide for transit immunity at all, what the district court actually held was that *assuming* "customary international law—independent of the [Convention on Special Missions]—somehow *did* recognize some form transit- based immunity for diplomatic agents on temporary missions, the weight of authority suggests that it would require the transiting state to proactively afford that immunity by consenting to it." DE 197 at 14. Thus, contrary to Saab's claim on appeal, the "principal reason," Br. at 50, the district court rejected Saab's claim of transit-based immunity under customary international law was that he had failed to satisfy one of its essential elements by proving that the transiting state—Cabo Verde—consented to his transit. DE 197 at 14-15. That holding is correct and should be affirmed.

The district court's finding that Cabo Verde did not provide advance consent for Saab's transit was confirmed by Cabo Verde's own judicial process. In rejecting Saab's challenge to his extradition to the United States, the Cabo Verdean Supreme Court of Justice found that "there is no evidence in the record to date that the State of Cabo Verde has consented to the Appellant's transit through its territory with the status of special envoy," and did not "recognize the status of Special Envoy to the Appellant," DE 193-1 at 33 (Gov't Ex. 1), Judgment No. 28/2021; *see also* DE 197 at 15 ("[T]he Supreme Court of Cape Verde explicitly found no evidence of Cape Verde's ever having consented to Saab Moran's passage through its territory as a diplomatic agent."). The Cabo Verdean Constitutional Court found that the Supreme Court of Justice did not violate the Cabo Verdean Constitution in so ruling. DE 193-3 at 6 (Gov't Ex. 2); Ruling No. 39/2021.

Moreover, a finding that Saab was entitled to transit immunity in Cabo Verde would, in essence, seek to invalidate the determination by the government of Cabo Verde, which was affirmed by the Cabo Verde courts, that Cabo Verde had no obligation under international law to afford Saab any form of transit immunity when it decided to extradite

Saab. Under the act of state doctrine, U.S. courts are not permitted to second guess Cabo Verde's own determinations about whether Cabo Verde had any international obligations to afford immunity to Saab when it decided to extradite him. *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 401 (1964) ("The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory."); *see also United States v. Knowles*, 390 F. App'x 915, 928 (11th Cir. 2010) (per curiam) (holding that act of state doctrine prohibited the court "from evaluating the legitimacy of [the defendant's] extradition" because doing so would "hold[] that Bahamian authorities violated Bahamian law in authorizing [the defendant's] extradition").

Because transit immunity for a special mission under customary international law at a minimum requires the consent of the transiting state and because no such consent was given, Saab does not enjoy any transit immunity under customary international law.

* * * *

4. Determinations under the Foreign Missions Act

As set forth in an April 3, 2023, Federal Register Notice, the Embassy of Venezuela and its consular posts at Washington, DC and New York, NY, as well as the Permanent Mission of Venezuela to the Organization of the American States, formally ceased conducting their activities in the United States on January 5, 2023. Accordingly, pursuant to Section 205(c) of the Foreign Missions Act (22 U.S.C. 4305(c)), the Department of State's Office of Foreign Missions assumed sole responsibility for ensuring the protection and preservation of the property of these missions, including but not limited to all of their real and tangible property, furnishings, archives, and financial assets, effective at 12:00 p.m. on February 6, 2023. 88 Fed. Reg. 19,706 (April 3, 2023).

Cross References

Promoting Security and Justice for Victims of Terrorism Act, **Ch. 5.A.1**
Alien Tort Statute, **Ch. 5.B**
ILC Draft Articles on Criminal immunity of State officials, **Ch. 7.C.4**
Investor-State dispute resolution (including expropriation), **Ch. 11.B**

CHAPTER 11

Trade, Commercial Relations, Investment, and Transportation

A. TRANSPORTATION BY AIR

1. Air Transport Agreements

An air transport agreement ("ATA") is a bilateral, or occasionally multilateral, agreement allowing, and setting the terms for, international commercial air transportation services between or among signing States. Under the longstanding U.S. Open Skies policy, the United States generally seeks to conclude ATAs that allow airlines to make commercial decisions based on market demand, without intervention from government regulators. Air carriers can provide more affordable, convenient, and efficient air services to consumers and shippers, thereby promoting travel and trade. Information on U.S. ATAs is available at https://www.state.gov/subjects/air-transport-agreements/. In 2023, a U.S. air transport agreement with Ecuador entered into force. Memoranda of Consultations were signed, and new Air Transport Agreements were initialed with Mongolia, Angola, Mozambique, and Moldova. The agreement with Moldova also entered into force in 2023.

a. Mongolia

On January 24, 2023, the United States and Mongolia signed a Memorandum of Consultations ("MOC") finalizing an Air Transport Agreement ("ATA"). The MOC and the text of the ATA is available at https://www.state.gov/signed-memorandum-of-consultation-and-initialed-air-transport-agreement-between-the-u-s-and-mongolia-of-january-24-2023/ See January 24, 2023 State Department media note, available at https://www.state.gov/strengthening-u-s-open-skies-civil-aviation-partnerships-2/, which includes the following:

> The Agreement establishes a modern civil aviation relationship with Mongolia consistent with U.S. Open Skies international aviation policy. It includes

unrestricted capacity and frequency of services, open route rights, a liberal charter regime, and open code-sharing opportunities. After both countries complete their internal procedures, the Agreement will be signed and brought into force.

This Agreement with Mongolia will immediately expand our strong economic and commercial partnership, promote people-to-people ties, and create new opportunities for airlines, travel companies, and customers. Air carriers can provide more affordable, convenient, and efficient air services to travelers and shippers, promoting tourism and commerce. The Agreement also commits both governments to high standards of aviation safety and security.

The new Agreement will build on a framework of U.S. Open Skies agreements with over 130 other partners that enable U.S. air carriers to operate and expand flight networks far beyond America's borders and connect the U.S. economy to growing markets abroad.

b. Angola

On April 26, 2023, the United States and Angola signed a Memorandum of Consultations ("MOC") and initialed an Air Transport Agreement ("ATA"). The MOC and ATA is available at https://www.state.gov/signed-memorandum-of-consultations-and-initialed-air-transport-agreement-between-the-u-s-and-angola-of-april-26-2023/.

c. Moldova

On May 18, 2023, the United States and Moldova signed the U.S.-Moldova Air Transport Agreement (the ATA) at Chisinau. The ATA, which is the first bilateral air transport agreement between the two countries, entered into force September 6, 2023. The ATA is available at https://www.state.gov/moldova-23-906. The State Department announced the signing in a media note, available at https://www.state.gov/united-states-and-moldova-sign-open-skies-agreement/, and includes the following:

> The Agreement establishes a modern civil aviation relationship with Moldova. It includes unrestricted capacity and frequency of services, open route rights, a liberal charter regime, and open code-sharing opportunities. The Agreement will be applied provisionally once signed and will enter into force following an exchange of diplomatic notes confirming that all necessary internal procedures for entry into force of the Agreement have been completed.
>
> This Agreement with Moldova will expand our strong economic and commercial partnership, promote people-to-people ties, and create new opportunities for airlines, travel companies, and customers. Air carriers can provide more affordable, convenient, and efficient air services to travelers and shippers, promoting tourism and commerce. The Agreement also commits both governments to high standards of aviation safety and security.

> The new Agreement builds on a framework of U.S. Open Skies agreements with over 130 other partners that enable U.S. air carriers to operate and expand flight networks beyond America's borders and connect the U.S. economy to growing markets.

d. Ecuador

On July 19, 2023, the U.S.-Ecuador Air Transport Agreement, signed on November 16, 2022, entered into force. The November 16, 2022 agreement is available at https://www.state.gov/ecuador-23-719.

e. Mozambique

On December 6, 2023, the United States and Mozambique signed a Memorandum of Consultations ("MOC") and initialed an Air Transport Agreement ("ATA"). The MOC and the text of the ATA are available at https://www.state.gov/signed-memorandum-of-consultations-and-initialed-air-transport-agreement-between-the-u-s-and-the-republic-of-mozambique-of-december-06-2023/. The ATA is the first bilateral air transport agreement between the two countries. The December 7, 2023 State Department media note is available at https://www.state.gov/strengthening-u-s-open-skies-civil-aviation-partnerships-3/ and includes the following:

> U.S. delegates to the fifteenth International Civil Aviation Organization (ICAO) Air Services Negotiation Event (ICAN 2023) expanded the network of U.S. Open Skies partners by finalizing the text of a new agreement with the Republic of Mozambique. …
>
> The agreement with the Republic of Mozambique is the first Air Transport Agreement negotiated with this country. Pending signature and entry into force, the agreement is now being applied on the basis of comity and reciprocity, immediately creating new opportunities for U.S. and Mozambican air carriers and more choice for travelers. The bilateral Open Skies agreement will enable the expansion of passenger and cargo flights between Mozambique and the United States, thereby promoting increased travel and trade, and ultimately spurring high quality job opportunities and economic growth.

2. Higher Airspace Operations

On February 16, 2023, President Biden delivered remarks on the United States' response to the incursion of aerial objects in U.S. airspace. The remarks are available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/16/remarks-by-president-biden-on-the-united-states-response-to-recent-aerial-objects/, and excerpted below.

* * * *

THE PRESIDENT: Good afternoon. Last week, in the immediate aftermath of the incursion by China's high-altitude balloon, our military, through the North American Aerospace Defense Command — so-called NOR- — NORAD — closely scrutinized the — our airspace, including enhancing our radar to pick up more slow-moving objects above our country and around the world.

In doing so, they tracked three unidentified objects: one in Alaska, Canada, and over Lake Huron in the Midwest.

They acted in accordance with established parameters for determining how to deal with unidentified aerial objects in U.S. airspace.

At their recommendation, I gave the order to take down these three objects due to hazards to civilian commercial air traffic and because we could not rule out the surveillance risk of sensitive facilities.

We acted in consultation with the Canadian government. I spoke personally with Prime Minister Trudeau and Ca- — from Canada on Saturday.

And just as critically, we acted out of an abundance of caution and at an opportunity that allowed us to take down these — these objects safely.

Our military and the Canadian military are seeking to recover the debris so we can learn more about these three objects. Our intelligence community is still assessing all three incidences. They're reporting to me daily and will continue their urgent efforts to do so, and I will communicate that to the Congress.

We don't yet know exactly what these three objects were. But nothing — nothing right now suggests they were related to China's spy balloon program or that they were surveillance vehicles from other — any other country.

The intelligence community's current assessment is that these three objects were most likely balloons tied to private companies, recreation, or research institutions studying weather or conducting other scientific research.

When I came into office, I instructed our intelligence community to take a broad look at the phenomenon of unidentified aerial objects.

We know that a range of entities, including countries, companies, and research organizations operate objects at altitudes for purposes that are not nefarious, including legitimate scientific research.

I want to be clear: We don't have any evidence that there has been a sudden increase in the number of objects in the sky. We're now just seeing more of them, partially because the steps we've taken to increase our radars — to narrow our radars. And we have to keep adapting our approach to delaying — to dealing with these challenges.

That's why I've directed my team to come back to me with sharper rules for how we will deal with these unidentified objects moving forward, distinguishing — distinguishing between those that are likely to pose safety and security risks that necessitate action and those that do not.

But make no mistake, if any object presents a threat to the safety and security of the American people, I will take it down. I'll be sharing with Congress these classified policy parameters when they're completed, and they'll remain classified so we don't give our roadmap to our enemies to try to evade our defenses.

Going forward, these parameters will guide what actions we will take while responding to unmanned and unidentified aerial objects. We're going to keep adapting them as the challenges evolve, if it evolves.

In addition, we've derived — I've directly my National Security Advisor to lead a government-wide effort to make sure we are positioned to deal safely and effectively with the objects in our airspace.

First, we will establish a better inventory of unmanned airborne objects in space — above the United States' airspace and make sure that inventory is accessible and up to date.

Second, we'll implement further measures to improve our capacity to detect unmanned objecti- — objects in our airspace.

Third, we'll update the rules and regulations for launching and maintaining unmanned objects in the skies above the United States of America.

And fourth, my Secretary of State will lead an effort to help establish a global — a globa- — a common global norms in this largely unregulated space.

These steps will lead to safer and more secure skies for our air travelers, our military, our scientists, and for people on the ground as well. That's my job as your President and Commander-in-Chief.

As the events of the previous days have shown, we'll always act to protect the interest of the American people and the security of the American people.

Since I came into office, we've developed the ability to identify, track, and study high-altitude surveillance balloons connected with the Chinese military.

When one of these high-altitude surveillance balloons entered our airspace over the continental United States earlier in the month, I gave the order to shoot it down as soon as it would be safe to do so. The military advised against shooting it down over land because of the sheer size of it. It was the size of multiple school busses, and it posed a risk to people on the ground if it was shot down where people lived.

Instead, we tracked it closely, we analyzed its capabilities, and we learned more about how it operates.

And because we knew its path, we were able to protect sensitive sites against collection.

We waited until it was safely over water, which would not only protect civilians but also enable us to recover substantial components for further analys- — for further analytics.

And then we shot it down, sending a clear message — clear message: The violation of our sovereignty is unacceptable.

We will act to protect our country, and we did.

Now, this past Friday, we put restrictions on six firms that directly support the People's Republic Liberation Army — the People's Lib- — the People's Liberation Army aerospace program that includes airships and balloons, denying them access to U.S. technology.

We briefed our diplomatic partners and our allies around the world, and we know about China's program and where their balloons have flown.

Some of them have also raised their concerns directly with China. Our exports [experts] have lifted components of the Chinese balloon's payload off the ocean floor. We're analyzing them as I speak, and what we learn will strengthen our capabilities.

Now, we'll also continue to engage with China, as we have throughout the past two weeks. As I've said since the beginning of my administration, we seek competition, not conflict, with China. We're not looking for a new Cold War.

But I make no apologize — I make no apologies, and we will compete. And we'll be res-— we'll responsibly manage that competition so that it doesn't veer into conflict.

This episode underscores the importance of maintaining open lines of communication between our diplomats and our military professionals. Our diplomats will be engaging further, and I will remain in communication with President Xi.

I'm grateful for the work over the last several weeks of our intelligence, diplomatic, and military professionals who have proved once again to be the most capable in the world. And I want to thank you all.

Now, look, the other thing I want to point is that we are going to keep our allies and the Congress contemporaneously informed of all we know and all we learn. And I expect to be speaking with President Xi, and I hope we have a — we are going to get to the bottom of this. But I make no apologies for taking down that balloon.

* * * *

On December 18, 2023, the State Department issued a press statement on advancing global norms for higher airspace operations. The statement is available at https://www.state.gov/advancing-global-norms-for-higher-airspace-operations/, and follows.

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High airspace continues to be transformed by new innovations, with engineers now designing and building aerial vehicles that can operate persistently at altitudes higher than 60,000 feet. New systems capable of operating in low atmospheric density airspace, such as sophisticated high altitude, long endurance vehicles, airships, and supersonic/hypersonic aircraft, are already in operation around the world.

The growing availability of these kinds of aerial vehicles is matched by increasing demand to support a variety of civilian operations, including remote sensing to improve agricultural productivity; high altitude platforms to assist countries dealing with the impacts of climate change; supersonic and hypersonic aircraft to transport people and goods around the globe more quickly; and quasi-stationary airships that can deliver low-cost broadband internet services. These advances have created vast opportunities for technological innovation and rapid growth in higher airspace.

But the standards and practices that ensure safety and security at lower altitudes are not in place for activities in higher airspace. Expanding the existing aviation ecosystem to take full advantage of the opportunities in higher airspace requires new thinking. To address this, **President Biden** in February 2023 directed the State Department to lead an effort to help establish global norms for civil aviation operations in higher airspace. Together with our partners in the International Civil Aviation Organization we are taking concrete steps to address the challenges and opportunities in this burgeoning area.

Today, the United States, together with Canada, the European Union and its Member States, Japan, and the United Kingdom are calling upon ICAO to prioritize work on higher airspace operations, accelerate efforts to identify solutions for manned and unmanned aviation traffic in that airspace, and use the coming year to advance important technical work in this

area. Developing standards for higher airspace operations in this fast-paced, rapidly changing environment is a global priority. This is just the beginning. We look forward to working with ICAO partners on this effort.

* * * *

Also on December 18, 2023, the State Department the governments of the United States of America, Canada, the European Union and its Member States (Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden), Japan, and the United Kingdom issued a joint statement on higher airspace operations. The statement is available at https://www.state.gov/joint-statement-on-higher-airspace-operations-hao/, and follows.

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New technology and engineering breakthroughs are driving a growing need for common rules to support the safe, secure, and sustainable development of civil aviation operations taking place in higher airspace, typically above the level of today's regulated conventional aircraft operations.

Activity in higher airspace is poised to soar, with demand for applications as diverse as bringing 5G and 6G telecommunications to underserved communities, improving current Earth Observation capabilities, and enabling innovation in transportation of people and goods.

Systems that ensure safety and security for the millions of flights occurring at lower altitudes are simply not in place for activity in higher airspace. Aircraft operating in higher airspace have vastly different performance characteristics and unconventional operational needs.

Now is the time for a holistic vision of higher airspace operations. That vision should include harmonized rules for airworthiness, staff training and licensing, ground operations, identification, detection, communication, location, flight paths, and emergencies to ensure that aircraft operating in higher airspace do not undermine the safety, security, and sustainability of the existing aviation system while expanding the international aviation ecosystem in exciting ways.

We call upon ICAO to prioritize and expedite higher airspace operations in its work program and to accelerate the development and implementation of solutions for manned and unmanned aviation traffic in higher airspace, recalling ICAO Assembly Resolution A41-9, which recognizes ICAO's role in supporting the development and implementation of global concepts and guidance in higher airspace.

We further urge the ICAO Secretariat to organize discussions on higher airspace operations* during the next 14th Air Navigation Conference in order to reshape ICAO's technical work program to take onboard these new priorities and identify potential resources, consider progress and determine a way forward, taking into consideration the discussions on higher airspace operations at the recent Air Navigation World Event.

Finally, we call upon the Air Navigation Commission, the premier forum for studying, discussing, and advancing civil aviation standards, to support this vital work in ICAO.

**Space launch and re-entry operations are not higher airspace operations simply because they transit through higher airspace. Separation between launch and re-entry operations and aviation activities needs to be maintained throughout all airspace for the safety of the wider airspace network.*

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B. INVESTMENT DISPUTE RESOLUTION UNDER FREE TRADE AGREEMENTS

1. Non-Disputing Party Submissions under Chapter 11 of the North American Free Trade Agreement ("NAFTA")

Article 1128 of the North American Free Trade Agreement ("NAFTA") allows NAFTA Parties who are not parties to a particular dispute to make submissions to a Tribunal hearing that dispute on questions of interpretation of NAFTA. The Permanent Court of Arbitration ("PCA") and the International Centre for Settlement of Investment Disputes ("ICSID") frequently administer the settlement of investor state disputes.

a. Espiritu Santo, et al. v. Mexico

The United States made an Article 1128 submission in *Espiritu Santo Holdings, LP and Libre Holdings, LLC v. Mexico*, ICSID Case No. ARB/20/13, on March 21, 2023 regarding Legality of Investment (Article 1139); National Treatment (Article 1102); Minimum Standard of Treatment (Article 1105); and Expropriation and Compensation (Article 1110). The written submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C8453/DS18519_En.pdf and excerpted below (footnotes omitted).

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Minimum Standard of Treatment (Article 1105)

10. Article 1105(1) requires each Party to "accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security."

11. On July 31, 2001, the Free Trade Commission ("Commission"), comprising the NAFTA Parties' cabinet-level representatives, issued an interpretation reaffirming that "Article 1105(1) prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of another Party." The Commission clarified that the concepts of "fair and equitable treatment" and "full protection and security" do "not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens." The Commission also

confirmed that "a breach of another provision of the NAFTA, or of a separate international agreement, does not establish that there has been a breach of Article 1105(1)." The Commission's interpretation "shall be binding" on tribunals established under Chapter Eleven.

12. The Commission's interpretation thus confirms the NAFTA Parties' express intent to establish the customary international law minimum standard of treatment as the applicable standard in NAFTA Article 1105. The minimum standard of treatment is an umbrella concept reflecting a set of rules that, over time, has crystallized into customary international law in specific contexts. The standard establishes a minimum "floor below which treatment of foreign investors must not fall."

13. Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. This two-element approach—State practice and opinio juris—is the standard practice of States and international courts, including the International Court of Justice.

14. Relevant State practice must be widespread and consistent and be accepted as law, meaning that the practice must also be accompanied by a sense of legal obligation. "[T]he indispensable requirement for the identification of a rule of customary international law is that both a general practice and acceptance of such practice as law (opinio juris) be ascertained." A perfunctory reference to these requirements is not sufficient.

15. The International Court of Justice has articulated examples of the types of evidence that can be used to demonstrate, under this two-step approach, that a rule of customary international law exists. In its decision on Jurisdictional Immunities of the State (Germany v. Italy), the ICJ emphasized that "[i]t is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and opinio juris of States," and noted as examples of State practice relevant national court decisions or domestic legislation dealing with the particular issue alleged to be the norm of customary international law, as well as official declarations by relevant State actors on the subject.

16. States may decide expressly by treaty to make policy decisions to extend protections under the rubric of "fair and equitable treatment" and "full protection and security" beyond that required by customary international law. The practice of adopting such autonomous standards is not relevant to ascertaining the content of Article 1105 in which "fair and equitable treatment" and "full protection and security" are expressly tied to the customary international law minimum standard of treatment. Thus, arbitral decisions interpreting "autonomous" fair and equitable treatment and full protection and security provisions in other treaties, outside the context of customary international law, cannot constitute evidence of the content of the customary international law standard required by Article 1105(1).

17. Moreover, decisions of international courts and arbitral tribunals interpreting "fair and equitable treatment" as a concept of customary international law are not themselves instances of "State practice" for purposes of evidencing customary international law, although such decisions can be relevant as subsidiary means for determining State practice when they include an examination of such practice. While the NAFTA Parties consented to allow investor-State tribunals to decide issues in dispute in accordance with the Agreement and applicable rules of international law, they did not consent to delegate to Chapter 11 tribunals the authority to develop the content of customary international law, which must be determined solely through a thorough examination of State practice and opinio juris. Thus, a formulation of a purported rule of customary international law based entirely on arbitral awards that lack an examination of State

practice and opinio juris fails to establish a rule of customary international law as incorporated by Article 1105(1).

18. As all three NAFTA Parties agree, the burden is on the claimant to establish the existence and applicability of a relevant obligation under customary international law that meets the requirements of State practice and opinio juris. "The party which relies on a custom . . . must prove that this custom is established in such a manner that it has become binding on the other Party." Tribunals applying the minimum standard of treatment obligation in Article 1105 have confirmed that the party seeking to rely on a rule of customary international law must establish its existence. The tribunal in Cargill Inc. v. United Mexican States, for example, acknowledged that:

> [T]he proof of change in a custom is not an easy matter to establish. However, *the burden of doing so falls clearly on Claimant*. If Claimant does not provide the Tribunal with the proof of such evolution, it is not the place of the Tribunal to assume this task. Rather the Tribunal, in such an instance, should hold that Claimant fails to establish the particular standard asserted.

19. Once a rule of customary international law has been established, the claimant must then show that the respondent State has engaged in conduct that violates that rule. A determination of a breach of the minimum standard of treatment "must be made in the light of the high measure of deference that international law generally extends to the right of domestic authorities to regulate matters within their own borders." Chapter Eleven tribunals do not have an open- ended mandate to "second-guess government decision-making." A failure to satisfy requirements of domestic law does not necessarily violate international law. Rather, "something more than simple illegality or lack of authority under the domestic law of a state is necessary to render an act or measure inconsistent with the customary international law requirements. . . ." Accordingly, a departure from domestic law does not, in and of itself, sustain a violation of Article 1105.

* * * *

Expropriation and Compensation (Article 1110)

28. Article 1110(1) provides that "[n]o Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment" unless the conditions specified in subparagraphs (a) through (d) are satisfied. If an expropriation does not conform to each of the specified conditions, it constitutes a breach of Article 1110. Any such breach requires compensation in accordance with Article 1110(2)-(6).

29. As a threshold matter, and as the Glamis tribunal recognized, the term "expropriation" in Article 1110(1) "incorporates by reference the customary international law regarding that subject." In this connection, it is a principle of customary international law that in order for there to have been an expropriation, a property right or property interest must have been taken. As such, and given that Article 1110(1) protects "investments" from expropriation, the first step in any expropriation analysis must be an examination of whether there is an investment capable of being expropriated. It is necessary to look to the law of the host State for a determination of the definition and scope of the alleged property right or property interest at issue, including any applicable limitations. Assessing whether a license, permit, or similar

instrument gives rise to property rights or interests that are capable of being expropriated is a case-by-case inquiry, involving examination of the instrument at issue, as well as the nature and extent of rights, if any, conferred by the instrument under the host State's domestic law.

30. Article 1110 provides for protections from two types of expropriations, direct and indirect. A direct expropriation occurs "where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure."

31. An indirect expropriation occurs "where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure." Determining whether an indirect expropriation has occurred requires a case-by-case, fact-based inquiry that considers, among other factors: (i) the economic impact of the governmental action; (ii) the extent to which that action interferes with distinct, reasonable-investment-backed expectations; and (iii) the character of the government action.

32. With respect to the first factor, for an expropriation claim to succeed, the claimant must demonstrate that the government measure at issue destroyed all, or virtually all, of the economic value of its investment, or interfered with it to such a similar extent and so restrictively as "to support a conclusion that the property has been 'taken' from the owner."

33. The second factor requires an objective inquiry of the reasonableness of the claimant's investment-backed expectations. Whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.

34. The third factor considers the nature and character of the government action, including whether such action involves physical invasion by the government or whether it is more regulatory in nature (i.e., whether "it arises from some public program adjusting the benefits and burdens of economic life to promote the common good").

35. However, under international law, where an action is a bona fide, non-discriminatory regulation, it will not ordinarily be deemed expropriatory. This principle in public international law, referred to as the police powers doctrine, is not an exception that applies after an expropriation has been found but, rather, is a recognition that certain actions, by their nature, do not engage State responsibility. The United States is aware of no general and consistent State practice and opinio juris establishing that a State must show that the action at issue was proportionate, in addition to being a bona fide, non-discriminatory regulation. Accordingly, under public international law, the police powers doctrine has no proportionality requirement.

* * * *

b. Legacy Vulcan v. Mexico

Pursuant to Article 1128, the United States made a second submission in *Legacy Vulcan, LLC v. Mexico*, ICSID Case No. ARB/19/1 regarding questions of interpretation of the NAFTA and the United States-Mexico-Canada Agreement (USMCA). The second submission, filed on July 21, 2023, concerns Minimum Standard of Treatment (NAFTA Article 1105); Environmental Measures (NAFTA Article 1114); Contributory Fault; and USMCA Annex 14-C. See *Digest 2021* at 447-50 for discussion of the first written submission, dated June 7, 2021, and the oral submission delivered on July 26, 2021. The

second written submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C7613/DS19380_En.pdf and excerpted below (footnotes omitted).

* * * *

NAFTA Article 1105 (Minimum Standard of Treatment)

2. As the United States explained in its first written submission in this case, (a) the customary international law minimum standard of treatment is the applicable standard in NAFTA Article 1105; (b) customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation; and (c) the burden is on the claimant to establish the existence and applicability of a relevant obligation under customary international law that meets the requirements of State practice and opinio juris.

3. The United States is aware of no general and consistent State practice and opinio juris establishing that the customary international law minimum standard of treatment requires States to provide the same due process in administrative decision-making as in adjudicatory proceedings. To the contrary, any assessment of administrative decision-making under the minimum standard of treatment must acknowledge "the high measure of deference that international law generally extends to the right of domestic authorities to regulate matters within their own borders."

4. In addition, the principle that "every treaty in force is binding on the parties to it and must be performed by them in good faith" (i.e., pacta sunt servanda) is established in customary international law, not in Chapter Eleven of the NAFTA. The good faith principle applies as between the States Parties to the treaty, and does not extend to third parties outside of the treaty relationship. As such, it is not an obligation owed to investors, and claims alleging breach of the good faith principle in a Party's performance of its NAFTA obligations do not fall within the limited jurisdictional grant for investor-State disputes afforded in Section B.

5. Furthermore, it is well established in international law that good faith is "one of the basic principles governing the creation and performance of legal obligations," but "it is not in itself a source of obligation where none would otherwise exist." As such, customary international law does not impose a free-standing, substantive obligation of "good faith" that, if breached, can result in State liability. Accordingly, a claimant "may not justifiably rely upon the principle of good faith" to support a claim, absent a specific treaty obligation, and the NAFTA contains no such obligation, either in Article 1105 or otherwise.

NAFTA Article 1114 (Environmental Measures)

6. Article 1114 informs the interpretation of other provisions of NAFTA Chapter Eleven, and provides a forceful protection of the right of States Parties to adopt, maintain or enforce measures to ensure that investment is undertaken in a manner sensitive to environmental concerns. Chapter Eleven was not intended to undermine the ability of governments to take measures based upon environmental concerns, even when those measures may affect the value of an investment, if otherwise consistent with the Chapter.

Contributory Fault

7. It is well established that a claimant may not be awarded reparation for losses to the extent of its contribution to such losses, and nothing in the NAFTA indicates otherwise. This is reflected in Article 39 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, which provides: "In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought."

USMCA Annex 14-C

8. Paragraph 1 of Annex 14-C provides the USMCA Parties' consent, with respect to "legacy investments," to the submission of claims for breaches of certain NAFTA obligations that allegedly occurred after the NAFTA entered into force and before it was terminated. That paragraph states:

> Each Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA 1994 and this Annex alleging breach of an obligation under:
>
> (a) Section A of Chapter 11 (Investment) of NAFTA 1994;
> (b) Article 1503(2) (State Enterprises) of NAFTA 1994; and
> (c) Article 1502(3)(a) (Monopolies and State Enterprises) of NAFTA 1994 where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A of Chapter 11 (Investment) of NAFTA 1994.

Paragraph 3 of Annex 14-C provides an additional three years past the NAFTA's termination for the submission of such claims.

9. The USMCA Parties did not consent in Annex 14-C to the submission of claims for alleged breaches of NAFTA obligations that occurred after the NAFTA terminated. Indeed, there could be no breach of the NAFTA's obligations after it terminated because those obligations were no longer binding on the Parties. As explained in Article 13 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, "[a]n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs."

10. The NAFTA terminated and the USMCA entered into force on July 1, 2020. The default position in customary international law, reflected in Article 70(1)(a) of the Vienna Convention on the Law of Treaties, is that "[u]nless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention . . . releases the parties from any obligation further to perform the treaty[.]"

11. The NAFTA did not contain a survival provision binding the Parties to continue performing its obligations for a period post-termination. Nor did the USMCA Parties make such a commitment, explicitly or implicitly, with respect to the NAFTA's obligations in the USMCA. Thus, once the NAFTA terminated and the USMCA entered into force, the USMCA Parties ceased to be bound by the NAFTA's obligations, including the substantive investment obligations in Section A of NAFTA Chapter 11. Accordingly, there could be no breach of those obligations after the NAFTA's termination and no claim alleging such a post-termination breach could be submitted to arbitration under Paragraph 1 of Annex 14-C.

* * * *

c. Finley v. Mexico

The United States made a submission in *Finley Resources, Inc., et al. v. Mexico*, ICSID Case No. ARB/21/25, on August 31, 2023, pursuant to Article 1128 of the NAFTA, Article 14.5.7(2) of the USMCA, and Section 24 of Procedural order No. 1. The submission concerns regarding Delegation of Authority to State Enterprises (NAFTA Article 1503(2) and USMCA Article 22.3); Consent and Waiver (NAFTA Article 1121 and USMCA Annex 14-C(1); Limitations Period (NAFTA Articles 1116(2)/1117(2) and USMCA Annex 14-E(4)(b)); National Treatment (NAFTA Article 1102 and USMCA Article 14.4); and Minimum Standard of Treatment (NAFTA Article 1105 and USMCA Article 14.6). The written submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C9734/DS19001_En.pdf and excerpted below (footnotes omitted).

* * * *

Delegation of Authority to State Enterprises (NAFTA Article 1503(2) and USMCA Article 22.3)

2. Pursuant to NAFTA Article 1503(2) and USMCA Article 22.3, the conduct of a state enterprise can be attributed to a Party if (i) the conduct involves the exercise of regulatory, administrative, or other governmental authority; and (ii) such authority has been delegated to the state enterprise by the Party.

3. NAFTA Note 45 provides that a "delegation" for these purposes:

> includes a legislative grant, and a government order, directive or other act[,] *transferring* to the monopoly [or state enterprise], or *authorizing* the exercise by the monopoly [or state enterprise] of, governmental authority. (Emphases added.)

4. Similarly, footnote 5 of Chapter Fourteen of the USMCA provides that:

> For greater certainty, governmental authority is delegated to any person under the Party's law, including through a legislative grant or a government order, directive, or other act *transferring or authorizing* the exercise of governmental authority. (Emphases added.)

5. Accordingly, under the definitions set out in NAFTA Note 45 and footnote 5 of Chapter Fourteen of the USMCA, if a state enterprise is acting under authority that is not delegated (*i.e.*, if the authority is exercised without a transfer or authorization of governmental authority by the NAFTA or USMCA Party), such conduct is not the subject of a Party's obligations under Chapter Eleven of the NAFTA or Chapter Fourteen of the USMCA.

6. NAFTA Article 1503(2) and footnote 10 of USMCA Chapter 22 provide examples of "regulatory, administrative or other governmental authority" that may be delegated. These include "the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees[,] or other charges." These examples confirm that the term "regulatory,

administrative, or other governmental authority" means the authority of the NAFTA or USMCA Party in its sovereign capacity.

Consent and Waiver (NAFTA Article 1121 and USMCA Annex 14-C(1))

7. A State's consent to arbitration is paramount. Indeed, given that consent is the "cornerstone" of jurisdiction in investor-State arbitration, it is axiomatic that a tribunal lacks jurisdiction in the absence of a disputing party's consent to arbitrate.

8. USMCA Annex 14-C(1) provides that "[e]ach Party consents, with respect to a legacy investment, to the submission of a claim to arbitration in accordance with Section B of Chapter 11 (Investment) of NAFTA," for certain alleged breaches of the NAFTA that arose while that treaty was in force. An agreement to arbitrate is formed upon the investor's consent to arbitrate in accordance with the procedures provided in Section B of NAFTA Chapter 11. Thus, the USMCA Parties have explicitly conditioned their consent upon satisfaction of the relevant procedural requirements detailed in the NAFTA. All three USMCA Parties have expressed agreement on this point in relation to similar consent language included in NAFTA Article 1122.

9. The procedures required to engage the NAFTA Parties' consent and form the agreement to arbitrate are found principally in NAFTA Articles 1116-1121. Moreover, by conditioning their consent in USMCA Annex 14-C(1) on the procedures established in NAFTA Section B, the USMCA Parties explicitly made the satisfaction of these procedures jurisdictional (not admissibility) requirements.

10. NAFTA Article 1121, entitled "Conditions Precedent to Submission of a Claim to Arbitration" states in relevant part:

> 1. A disputing investor may submit a claim under Article 1116 only if:
>   (a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and
>   (b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.
> 2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:
>   (a) consent to arbitration in accordance with the procedures set out in this Agreement; and
>   (b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages,

> before an administrative tribunal or court under the law of the disputing Party.
>
> 3. A consent and waiver required by this Article shall be in writing, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

11. Because the waiver requirements under Article 1121 are among the requirements upon which the Parties have conditioned their consent, a valid and effective waiver is a precondition to the Parties' consent to arbitrate claims, and accordingly to a tribunal's jurisdiction, under USMCA Annex 14-C. The purpose of the waiver provision is to avoid the need for a respondent State to litigate concurrent and overlapping proceedings in multiple forums with respect to the same measure, and to minimize not only the risk of double recovery, but also the risk of "conflicting outcomes (and thus legal uncertainty)."

12. Similar to provisions found in many of the United States' other international investment agreements, NAFTA Article 1121 is a "no U-turn" waiver provision. As such, it permits claimants to elect to pursue any proceeding (including in domestic court) without relinquishing their right to assert a subsequent claim through arbitration. However, Article 1121 makes clear that as a condition precedent to the submission of a claim to arbitration, a claimant must submit an effective waiver together with its Notice of Arbitration. The date of the submission of an effective waiver is the date on which the claim has been submitted to arbitration for purposes of Articles 1120 and 1137, assuming all other relevant procedural requirements have been satisfied.

13. Compliance with the Article 1121 waiver obligation entails both formal and material requirements. Regarding the formal requirements, the waiver must be in writing and "clear, explicit and categorical." As the *Renco* tribunal stated, interpreting a waiver provision in the U.S.-Peru Trade Promotion Agreement similar to Article 1121 of the NAFTA, the waiver provision requires an investor to "definitively and irrevocably" waive all rights to pursue claims in another forum once claims are submitted to arbitration with respect to a measure alleged to have breached the Agreement. NAFTA Article 1121 is thus "intended to operate as a 'once and for all' renunciation of all rights to initiate claims in a domestic forum, whatever the outcome of the arbitration (including whether the claim is dismissed on jurisdictional or admissibility grounds or on the merits)." That is, the waiver requirement seeks to give the respondent State certainty, from the very start of arbitration, that the claimant is not pursuing and will not pursue proceedings in another forum with respect to the measures challenged in the arbitration. Accordingly, a waiver containing any conditions, qualifications or reservations will not meet the formal requirements and will be ineffective.

14. As to the material requirements, a claimant must act consistently and concurrently with the written waiver by abstaining from initiating or continuing proceedings with respect to the measures alleged to constitute a Chapter Eleven breach in another forum as of the date of the submission of the waiver and thereafter. As the *Waste Management I* tribunal held:

> the act of waiver involves a declaration of intent by the issuing party, which logically entails a certain conduct in line with the statement issued. . . . [I]t is clear that the waiver required under NAFTA Article 1121 calls for a show of intent by the issuing party vis-à-vis its waiver of the right to initiate or continue any proceedings whatsoever before other courts or tribunals with respect to the measure allegedly in breach of the NAFTA provisions. Moreover,

> such an abdication of rights ought to have been made effective as from the date of submission of the waiver . . . .

15. As the tribunal in *Commerce Group* explained in relation to a similar provision contained in CAFTA-DR Chapter Ten, "[a] waiver must be more than just words; it must accomplish its intended effect." Thus, if a claimant initiates or continues proceedings with respect to the measure in another forum despite meeting the formal requirements of filing a waiver, the claimant has not complied with the waiver requirement, and the tribunal lacks jurisdiction over the dispute.

16. Article 1121 also requires a claimant's waiver to encompass "any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to" in both Article 1116 and Article 1117, with certain limited, specified exceptions. The phrase "with respect to" should be interpreted broadly. This construction of the phrase is consistent with the purpose of this waiver provision: to avoid the need for a respondent State to litigate concurrent and overlapping proceedings in multiple forums, and to minimize not only the risk of double recovery, but also the risk of "conflicting outcomes (and thus legal uncertainty)." As the tribunal in *Commerce Group* observed, the waiver provision permits other concurrent or parallel domestic proceedings where claims relating to different measures at issue in such proceedings are "separate and distinct" and the measures can be "teased apart."

17. For a waiver to be and remain effective, any juridical person or persons that a claimant directly or indirectly owns or controls, or that directly or indirectly owns or controls the claimant, must likewise abstain from initiating or continuing proceedings in another forum as of the date of filing the waiver (and thereafter) with respect to the measures alleged to constitute a Chapter Eleven breach. To allow otherwise would permit a claimant to circumvent the formal and material requirements under Article 1121 through affiliated corporate entities, thereby rendering the waiver provision ineffective. This in turn would frustrate the purpose of this waiver provision mentioned in the preceding paragraph of this submission.

18. If all formal and material requirements under Article 1121 are not met, the waiver is ineffective and will not engage the respondent State's consent to arbitration or the tribunal's jurisdiction *ab initio*. A tribunal is required to determine whether a disputing investor has provided a waiver that complies with the formal and material requirements of Article 1121. However, the tribunal itself cannot remedy an ineffective waiver. The discretion whether to permit a claimant to either proceed under or remedy an ineffective waiver lies with the respondent State as a function of its general discretion to consent to arbitration.

19. Where an effective waiver is filed subsequent to the Notice of Arbitration but before constitution of the tribunal, the claim will be considered submitted to arbitration on the date on which the effective waiver was filed, assuming all other requirements have been satisfied, and not the date of the Notice of Arbitration. However, where a claimant files an effective waiver subsequent to the constitution of the tribunal, the only available relief (unless the respondent State agrees otherwise) is the dismissal of the arbitration, as the tribunal would have been constituted before the proper submission of the claim to arbitration, and thus without the consent of the respondent State as contemplated in Article 1122(1). Under such circumstances, the tribunal would lack jurisdiction *ab initio*.

* * * *

d. Windstream Energy, LLC v. Canada

The United States made an Article 1128 submission in *Windstream Energy LLC, v. Canada*, PCA Case No. 2021-26, on November 29, 2023 regarding Limitations Period (Articles 1116(2)/1117(2)); Minimum Standard of Treatment (Article 1105); Expropriation and Compensation (Article 1110); and Limitations on Claims for Loss or Damage (Articles 1116(1) & 1117(1)). The written submission is excerpted below (footnotes omitted).

* * * *

Limitations Period (Articles 1116(2)/1117(2))

2. NAFTA Articles 1116(2) and 1117(2) provide that an investor may not make a claim if "more than three years have elapsed from the date on which the [investor/enterprise] first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the [investor/enterprise] has incurred loss or damage."

3. NAFTA Articles 1116(2)/1117(2) impose a ratione temporis jurisdictional limitation on the authority of a tribunal to act on the merits of a dispute.1 As is made explicit by NAFTA Articles 1116(2)/1117(2), the Parties did not consent to arbitrate an investment dispute if "more than three years have elapsed from the date on which the [investor/enterprise] first acquired, or should have first acquired, knowledge of the . . . breach" alleged and "knowledge that the [investor/enterprise] has incurred loss or damage." Accordingly, a tribunal must find that a claim satisfies the requirements of, inter alia, NAFTA Articles 1116/1117 in order to establish a Party's consent to (and therefore the tribunal's jurisdiction over) an arbitration claim under such provision. Because the claimant bears the burden of proof with respect to the factual elements necessary to establish jurisdiction,2 the claimant must prove the necessary and relevant facts to establish that each of its claims falls within the three-year limitations period.

4. The limitations period is a "clear and rigid" requirement that is not subject to any "suspension," "prolongation," or "other qualification." An investor first acquires knowledge of an alleged breach and loss under NAFTA Articles 1116(2)/1117(2) as of a particular "date." Such knowledge cannot first be acquired at multiple points in time or on a recurring basis. As the Grand River tribunal recognized, subsequent transgressions by a Party arising from a continuing course of conduct do not renew the limitations period once an investor knows, or should have known, of the alleged breach and loss or damage incurred thereby.

5. Thus, where a "series of similar and related actions by a respondent state" is at issue, an investor cannot evade the limitations period by basing its claim on "the most recent transgression in that series." To allow an investor to do so would "render the limitations provisions ineffective[.]" An ineffective limitations period would fail to promote the goals of ensuring the availability of sufficient and reliable evidence, as well as providing legal stability and predictability for potential respondents and third parties. An ineffective limitations period would also undermine and in effect change the State Party's consent because, as noted above, the Parties did not consent to arbitrate an investment dispute if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach and knowledge that the claimant has incurred loss or damage.

6. With regard to knowledge of "incurred loss or damage" under NAFTA Articles 1116(2)/1117(2), a claimant may have knowledge of loss or damage even if the amount or extent of that loss or damage cannot be precisely quantified until some future date. Moreover, the term "incurred" broadly means "to become liable or subject to." Therefore, an investor may have "incurred" loss or damage even if the financial impact (whether in the form of a disbursement of funds, reduction in profits, or otherwise) of that loss or damage is not immediate.

7. As noted, NAFTA Articles 1116(2)/1117(2) require a claimant to submit a claim to arbitration within three years of the "date on which the [investor/enterprise] first acquired, or should have first acquired, knowledge" of (i) the alleged breach, and (ii) loss or damage incurred by the investor/enterprise. (Emphasis added). For purposes of assessing what a claimant should have known, the United States agrees with the reasoning of the Grand River tribunal: "a fact is imputed to [sic] person if by exercise of reasonable care or diligence, the person would have known of that fact." As that tribunal further explained, it is appropriate to "consider in this connection what a reasonably prudent investor should have done in connection with extensive investments and efforts such as those described to the Tribunal." Similarly, as the Berkowitz tribunal held, endorsing the reasoning in Grand River with respect to the identically worded limitations provision in the CAFTA-DR , "the 'should have first acquired knowledge' test . . . is an objective standard; what a prudent claimant should have known or must reasonably be deemed to have known."

* * * *

2. Non-Disputing Party Submissions under other Trade Agreements

a. U.S.-Peru Trade Promotion Agreement

Freeport McMoRan

Article 10.20.2 of the United States-Peru Trade Promotion Agreement ("U.S.-Peru TPA" or "Agreement") allows submissions by non-disputing Parties on questions of interpretation of the Agreement. On February 24, 2023, the United States made the a written submission to the tribunal in *Freeport McMoRan, Inc., et al. v. Peru*, ICSID Case No. ARB/20/8 regarding Non-Retroactivity (Article 10.1.3); Submission of a Claim to Arbitration (Article 10.16); Limitations Period (Article 10.18.1); Minimum Standard of Treatment (Articles 10.5); and Taxation (Article 22.3.1). The submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C8353/DS18443_En.pdf and excerpted below (footnotes omitted).

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Article 10.1.3 (Non-Retroactivity)

2. Article 10.1.3 states: "[f]or greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement." Whereas a host State's conduct prior to the entry into force of an obligation may be relevant to determining whether the State subsequently breached that obligation, under the rule against retroactivity, there must exist "conduct of the State after that date which is itself a breach." To that effect, the Carrizosa v. Colombia tribunal recently observed with respect to the identical provision of the U.S.-Colombia TPA, "unless the post-treaty conduct . . . is itself capable of constituting a breach of the [treaty], independently from the question of (un)lawfulness of the pre-treaty conduct, claims arising out of such post-treaty conduct would also fall outside the Tribunal's jurisdiction." This echoes the Berkowitz v. Costa Rica tribunal's earlier holding under the Dominican Republic-Central America FTA (CAFTA-DR) that "pre-entry into force conduct cannot be relied upon to establish the breach in circumstances in which the post-entry into force conduct would not otherwise constitute an actionable breach in its own right. Pre-entry into force acts and facts cannot . . . constitute a cause of action."

Article 10.16 (Submission of a Claim to Arbitration)

3. As the United States has previously explained with respect to substantively identical language in NAFTA Articles 1116 and 1117, each claim by an investor must fall within either Article 10.16.1(a) or Article 10.16.1(b) and is limited to the type of loss or damage available under the Article invoked. Article 10.16.1(a) permits an investor to present a claim for loss or damage incurred by the investor itself:

> [T]he *claimant, on its own behalf*, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A, (B) an investment authorization, or (C) an investment agreement; and (ii) that the *claimant* has incurred loss or damage by reason of, or arising out of, that breach[.]

(Emphases added.)

4. Article 10.16.1(b), in contrast, permits a claimant to present a claim on behalf of an enterprise of the other Party that it owns or controls for loss or damage incurred by that enterprise:

> [T]he *claimant*, *on behalf of an enterprise of the respondent* that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A, (B) an investment authorization, or (C) an investment agreement; and (ii) that the *enterprise* has incurred loss or damage by reason of, or arising out of, that breach[.]

(Emphases added.)

5. Article 10.16 further provides that with respect to claims that the respondent has breached an investment agreement:

> [A] *claimant* may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought *to be established or acquired, in reliance on the relevant investment agreement.*

(Emphases added.)

6. Article 10.16.1 of the U.S.-Peru TPA thereby imposes an additional condition on a claimant's claims of breach of an investment agreement, regardless of whether the claim is direct under 10.16.1(a) or on behalf of an enterprise under 10.16.1(b): "the subject matter of the claim and the claimed damages [must] directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement." For claims of breach of an investment agreement, therefore, a claimant must show a direct relation between the claim and the covered investment that was established or acquired in reliance on the relevant investment agreement. The U.S.-Peru TPA forecloses recovery for injuries that fall outside the scope of Article 10.16.1, including where the covered investment that is the subject of the claim was not established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

* * * *

Article 10.5 (Minimum Standard of Treatment)

13. Article 10.5.1 provides that "[e]ach party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security."21 "[F]or greater certainty," this provision "prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments." Specifically, "'fair and equitable treatment' includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world."

14. The above provisions demonstrate the Parties' express intent to establish the customary international law minimum standard of treatment as the applicable standard in Article 10.5. The minimum standard of treatment is an umbrella concept reflecting a set of rules that, over time, has crystallized into customary international law in specific contexts. The standard establishes a minimum "floor below which treatment of foreign investors must not fall."

Methodology for determining the content of customary international law

15. Annex 10-A to the Agreement addresses the methodology for determining whether a customary international law rule covered by Article 10.5.1 has crystalized. The Annex expresses the Parties' "shared understanding that 'customary international law' generally and as specifically referenced in Article 10.5 . . . results from a general and consistent practice of States that they follow from a sense of legal obligation." Thus, in Annex 10-A the Parties confirmed their understanding and application of this two-element approach—State practice and opinio juris—which is the standard practice of States and international courts, including the International Court of Justice.

16. The International Court of Justice has articulated examples of the types of evidence that can be used to demonstrate, under this two-element approach, that a rule of customary

international law exists. In its decision *on Jurisdictional Immunities of the State (Germany v. Italy)*, the ICJ emphasized that "[i]t is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States," and noted as examples of State practice relevant national court decisions or domestic legislation dealing with the particular issue alleged to be the norm of customary international law, as well as official declarations by relevant State actors on the subject.

17. States may decide expressly by treaty to make policy decisions to extend protections under the rubric of "fair and equitable treatment" and "full protection and security" beyond that required by customary international law. The practice of adopting such autonomous standards is not relevant to ascertaining the content of Article 10.5 in which "fair and equitable treatment" and "full protection and security" are expressly tied to the customary international law minimum standard of treatment. Thus, arbitral decisions interpreting "autonomous" fair and equitable treatment and full protection and security provisions in other treaties, outside the context of customary international law, cannot constitute evidence of the content of the customary international law standard required by Article 10.5.

18. Moreover, decisions of international courts and arbitral tribunals interpreting "fair and equitable treatment" as a concept of customary international law are not themselves instances of "State practice" for purposes of evidencing customary international law, although such decisions can be relevant for determining State practice when they include an examination of such practice. A formulation of a purported rule of customary international law based entirely on arbitral awards that lack an examination of State practice and *opinio juris* fails to establish a rule of customary international law as incorporated by Article 10.5.

19. The burden is on the claimant to establish the existence and applicability of a relevant obligation under customary international law that meets the requirements of State practice and *opinio juris*. "The party which relies on a custom," therefore, "must prove that this custom is established in such a manner that it has become binding on the other Party."33 Tribunals applying the minimum standard of treatment obligation in Article 1105 of NAFTA Chapter 11, which likewise affixes the standard to customary international law,34 have confirmed that the party seeking to rely on a rule of customary international law must establish its existence. The tribunal in *Cargill, Inc. v. Mexico*, for example, acknowledged that:

> the proof of change in a custom is not an easy matter to establish. However, the burden of doing so falls clearly on Claimant. If Claimant does not provide the Tribunal with the proof of such evolution, it is not the place of the Tribunal to assume this task. Rather, the Tribunal, in such an instance, should hold that Claimant fails to establish the particular standard asserted.

20. Once a rule of customary international law has been established, a claimant must then show that the respondent State has engaged in conduct that violates that rule.

Obligations that have crystallized into the minimum standard of treatment

21. Currently, customary international law has crystallized to establish a minimum standard of treatment in only a few areas. One such area, expressly addressed in Article 10.5.2(a), concerns the obligation to provide "fair and equitable treatment," which includes "the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world." This obligation is discussed in more detail below.

22. Other areas included within the minimum standard of treatment concern the obligation not to expropriate covered investments except under the conditions specified in Article 10.7 and the obligation to provide "full protection and security," which, as expressly stated in Article 10.5.2(b), "requires each Party to provide the level of police protection required under customary international law."

Claims for judicial measures

23. As expressly addressed in Article 10.5.2(a), "fair and equitable treatment," includes "the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world." Denial of justice in its historical and "customary sense" denotes "misconduct or inaction of the judicial branch of the government" and involves "some violation of rights in the administration of justice, or a wrong perpetrated by the abuse of judicial process." A domestic system of law that conforms to "a reasonable standard of civilized justice" and is fairly administered cannot give rise to a complaint by an alien under international law.39 "Civilized justice" has been described as requiring "[f]air courts, readily open to aliens, administering justice honestly, impartially, [and] without bias or political control."

24. A denial of justice may occur in instances such as when the final act of a State's judiciary constitutes a "notoriously unjust" or "egregious" administration of justice "which offends a sense of judicial propriety." More specifically, a denial of justice exists where there is, for example, an "obstruction of access to courts," "failure to provide those guarantees which are generally considered indispensable to the proper administration of justice, or a manifestly unjust judgment." Instances of denial of justice also have included corruption in judicial proceedings, discrimination or "ill-will" against aliens, and executive or legislative interference with the freedom of impartiality of the judicial process. At the same time, erroneous domestic court decisions, or misapplications or misinterpretation of domestic law, do not in themselves constitute a denial of justice under customary international law. Similarly, neither the evolution nor development of "new" judge-made law that departs from previous jurisprudence within the confines of common law adjudication implicates a denial of justice.

25. The high threshold required for judicial measures to rise to the level of a denial of justice in customary international law gives due regard to the principle of judicial independence, the particular nature of judicial action, and the unique status of the judiciary in both international and municipal legal systems. As a result, the actions of domestic courts are accorded a greater presumption of regularity under international law than are legislative or administrative acts. Indeed, as a matter of customary international law, international tribunals will defer to domestic courts interpreting matters of domestic law unless there is a denial of justice.

26. In this connection, it is well-established that international arbitral tribunals, such as those established by disputing parties under U.S.-Peru TPA Chapter 10, are not empowered to be supranational courts of appeal on a court's application of domestic law. Thus, an investor's claim challenging judicial measures under Article 10.5.1 is limited to a claim for denial of justice under the customary international law minimum standard of treatment. *A fortiori*, domestic courts performing their ordinary function in the application of domestic law as neutral arbiters of the legal rights of litigants before them are not subject to review by international tribunals absent a denial of justice under customary international law.

27. For the foregoing reasons, judicial measures may form the basis of a claim under the customary international law minimum standard of treatment under Article 10.5.1 only if they are final and it is proved that a denial of justice has occurred. Were it otherwise, it would be

impossible to prevent Chapter 10 tribunals from becoming supranational appellate courts on matters of the application of substantive domestic law, which customary international law does not permit.

Obligations that have not crystallized into the minimum standard of treatment

28. As noted, customary international law has crystallized to establish a minimum standard of treatment in only a few areas. In contrast, the concepts of legitimate expectations and transparency are not component elements of "fair and equitable treatment" under customary international law and do not give rise to independent host State obligations.

29. The United States is aware of no general and consistent State practice and *opinio juris* establishing an obligation under the minimum standard of treatment not to frustrate investors' expectations; instead, something more is required. An investor may develop its own expectations about the legal regime governing its investment, but those expectations impose no obligations on the State under the minimum standard of treatment.

30. The concept of "transparency" also has not crystallized as a component of "fair and equitable treatment" under customary international law giving rise to an independent host-State obligation. The United States is aware of no general and consistent State practice and *opinio juris* establishing an obligation of host State transparency under the minimum standard of treatment.

Taxation (Article 22.3.1)

31. Article 22.3.1 generally excludes taxation measures from the U.S.-Peru TPA's provisions: "Except as set out in this Article, nothing in this Agreement shall apply to taxation measures." Article 22.3 includes, however, several exceptions to this general exclusion. For example, Article 22.3.4 specifically subjects certain taxation measures to the national treatment and most-favored-nation treatment requirements of Articles 10.3 and 10.4; and Article 22.3.6 specifically subjects, in certain circumstances, taxation measures to the provisions of Article 10.7 relating to expropriation. By implication, taxation measures are not subject to any Chapter Ten obligations, including those embodied in Article 10.5, that are not expressly identified as exceptions to the Article 22.3.1 general exclusion of taxation measures from the U.S.-Peru TPA.

32. Article 22.3.1, moreover, applies to all "taxation measures." A "measure" is defined broadly in Article 1.3 to include "any law, regulation, procedure, requirement or practice." Any "practice" related to "taxation" is therefore addressed by Article 22.3.1. A "practice" in this context includes not only the application of, or failure to apply a tax, but also the enforcement or failure to enforce a tax.

* * * *

On May 2, 2023, the United States made an oral submission in *Freeport McMoRan, Inc., et al. v. Peru*. The oral submission is excerpted below. The transcript of oral submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C8353/DS18821_En.pdf and excerpted below.

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* * * *

Article 10.5 (Minimum Standard of Treatment)

4. I will now turn to my remarks regarding Article 10.5. As the United States mentioned in its written submission dated February 24, 2023, customary international law has crystallized to establish a minimum standard of treatment in only a few areas. One such area, which is expressly addressed in Article 10.5.1, concerns the obligation to provide fair and equitable treatment, which, per Article 10.5.2(a), "includes the obligation not to deny justice in criminal, civil **or** administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world."

5. It follows that state responsibility may be implicated by either an act of a domestic court or an administrative tribunal. A denial of justice may occur in instances such as when the final act of a State's judiciary or administrative adjudicatory tribunal constitutes a "notoriously unjust" administration of justice. The United States, therefore, disagrees with the assertions in this case that the customary international law minimum standard of treatment protects against a denial of justice only with respect to judicial measures. It remains the case, however, that non-final adjudicatory acts cannot be the basis for claims under Article Ten, regardless of whether that adjudicatory act is undertaken by a court or administrative tribunal.

6. The United States further clarifies that an investor's claim challenging adjudicatory measures under Article 10.5.1 is limited to a claim for denial of justice. The Claimant asserts that the U.S. view is "ultimately of no assistance to the Tribunal" because treaty-based and customary international law standards of fair and equitable treatment, as described in certain arbitral awards, are now, in Claimant's words, "largely coextensive." However, as the United States has explained, and as set forth in the ILC Draft Conclusions on Identification of Customary International Law, to identify a rule of customary international law, it is a "indispensable requirement . . . that both a general practice and acceptance of such practice as law (*opinio juris*) be ascertained."

7. Decisions of international courts and arbitral tribunals interpreting fair and equitable treatment as a concept of customary international law are not themselves instances of State practice for purposes of evidencing customary international law, although such decisions can be relevant for determining State practice when they include an examination of State practice and *opinio juris*. In particular, Claimant relies on a decision by an investor-State tribunal as one example where an adjudicatory act was properly the basis for a NAFTA Article 1105 claim even though it was "not cast in denial of justice terms" However, this case provides little guidance since it is not itself an instance of "State practice" for purposes of evidencing customary international law, and does not itself examine State practice and opinio juris.

8. As a final point on Article 10.5, while customary international law has crystallized to establish a minimum standard of treatment in a few areas, concepts such as legitimate expectations and transparency are not component elements of fair and equitable treatment under customary international law that give rise to independent host State obligations. The United States is aware of no general and consistent State practice and *opinio juris* establishing, under the minimum standard of treatment, an obligation of host State transparency, or an obligation not to frustrate investors' expectations. The United States disagrees that such concepts are"relevant to assessing an alleged breach of the minimum standard,"…unless a Claimant, who bears the burden of demonstrating the elements of its claims, can demonstrate such relevance through State practice and *opinio juris*.

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Kaloti Metals & Logistics, LLC

On May 26, 2023, the United States made a written submission in *Kaloti Metals & Logistics, LLC v. Peru*, ICSID Case No. ARB/21/29, regarding Definition of Investment (Article 10.28); "Covered investment" (Article 1.3); Limitations Period (Article 10.8.1); Most-Favored-Nation Treatment (Article 10.4); Minimum Standard of Treatment (Article 10.5); Expropriation (Article 10.7); and Causation and Damages (Articles 10.16 and 10.7). The submission is excerpted below (footnotes omitted).

* * * *

Article 10.28 (Definition of Investment)

2. Article 10.28 states, in pertinent part, that "investment" means "every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk."

3. Article 10.28 further states that the "[f]orms that an investment may take include" the assets listed in the subparagraphs. Subparagraph (e) of the definition lists "turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts." Ordinary commercial contracts for the sale of goods or services typically do not fall within the list in subparagraph (e). Subparagraph (g) lists "licenses, authorizations, permits, and similar rights conferred pursuant to domestic law"; and subparagraph (h) lists "other tangible or intangible, movable or immovable property, and related property rights[.]"

4. The enumeration of a type of an asset in Article 10.28 is not dispositive as to whether a particular asset, owned or controlled by an investor, meets the definition of investment; it must still always possess the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Article 10.28's use of the word "including" in relation to "characteristics of an investment" indicates that the list of identified characteristics, *i.e.*, "the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk," is not an exhaustive list; additional characteristics may be relevant.

5. The determination as to whether a particular instrument has the characteristics of an investment is a case-by-case inquiry, involving an examination of the nature and extent of any rights conferred under the State's domestic law.

6. While Article 10.28 does not expressly provide that each type of investment must be made in compliance with the laws of the host state, it is implicit that the protections in Chapter Ten only apply to investments made in compliance with the host state's domestic law at the time that the investment is established or acquired. As a general matter, however, trivial violations of the applicable law will not put an investment outside the scope of Article 10.28.

7. In the context of an objection to jurisdiction, the burden is on the claimant to prove the necessary and relevant facts to establish that a tribunal has jurisdiction to hear its claim. Further, it is well-established that where "jurisdiction rests on the existence of certain facts, they have to be proven at the jurisdictional stage." As the tribunal in *Bridgestone v. Panama* stated when assessing Panama's jurisdictional objections regarding a claimant's purported investments under

the U.S.-Panama Trade Promotion Agreement, "[b]ecause the Tribunal is making a final finding on this issue, the burden of proof lies fairly and squarely on [the claimant] to demonstrate that it owns or controls a qualifying investment."

Article 1.3 ("Covered investment")

8. Article 10.1 of the U.S.-Peru TPA states that the investment chapter applies to measures adopted or maintained by a Party relating to, among other things, "investors of another Party." Article 10.28 defines an "investor of a Party" as "a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality." Article 1.3 similarly defines a "covered investment" as "with respect to a Party, an investment, as defined in Article 10.28 (Definitions), in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter."

9. A conclusion that the U.S.-Peru TPA Chapter Ten extends substantive protections and the right to arbitrate to investors of a Party that are not seeking to make or have not made investments in the territory of the other Party whose measure is at issue would constitute a radical expansion of the rights that the Parties have granted to foreign investors under BITs and other international agreements into which they have entered.

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b. U.S.-Colombia Trade Promotion Agreement

Neustar Security Services

Article 10.20.2 of the United States-Colombia Trade Promotion Agreement ("U.S.-Colombia TPA" or "Agreement") authorizes a non-disputing Party to make oral and written submissions to a Tribunal regarding the interpretation of the Agreement. On March 27, 2023, the United States made an oral submission to the tribunal in *Security Services, LLC d/b/a Neustar Security Services v. Colombia,* ICSID Case No. ARB 20/7. The submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C8333/DS18718_En.pdf and excerpted below.

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5. I begin by addressing Article 10.16. As you know, a State's consent to arbitration is paramount. Given that consent is the "cornerstone" of jurisdiction in investor-State arbitration, it is axiomatic that a tribunal lacks jurisdiction in the absence of a disputing party's consent to arbitrate.

6. The Parties to the U.S.-Colombia TPA consented to arbitration pursuant to Article 10.17, which provides in relevant part that "[e]ach Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement."

7. Pursuant to Article 10.17, the Parties to the U.S.-Colombia TPA did not provide unconditional consent to arbitration under any and all circumstances. Rather, the Parties have only consented to arbitrate investor-State disputes under Chapter 10, Section B where an investor submits a "claim to arbitration under this Section in accordance with this Agreement."

8. Article 10.16 authorizes a claimant to submit a claim to arbitration either on its own behalf or on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly.

9. Article 10.16.2 requires, however, that "[a]t least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ('notice of intent')." (Emphasis added). Article 10.16.2 further provides that this notice "*shall specify*":

> (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
> (b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
> (c) the legal and factual basis for each claim; and
> (d) the relief sought and the approximate amount of damages claimed.

10. A disputing investor that does not deliver a Notice of Intent at least ninety days before it submits a Notice of Arbitration or Request for Arbitration fails to satisfy the procedural requirement under Article 10.16.2 and therefore fails to engage the respondent's consent to arbitrate. Under such circumstances, a tribunal will lack jurisdiction *ab initio*. A respondent's consent cannot be created retroactively; consent must exist at the time a claim is submitted to arbitration.

11. The procedural requirements in Article 10.16.2 are explicit and mandatory, as reflected in the way the requirements are phrased (i.e., "shall deliver;" "shall specify"). These requirements serve important functions, including to provide a Party time to identify and assess potential disputes, to coordinate among relevant national and subnational officials, and to consider, if they so choose, amicable settlement or other courses of action prior to arbitration. Such courses of action may include preservation of evidence or the preparation of a defense.

12. As recognized by the tribunal in *Merrill & Ring v. Canada*, the safeguards found in Article 1119 of the NAFTA (the NAFTA's counterpart to Article 10.16's Notice of Intent requirement) "cannot be regarded as merely procedural niceties. They perform a substantial function which, if not complied with, would deprive the Respondent of the right to be informed beforehand of the grievances against its measures and from pursuing any attempt to defuse the claim[.]" I am quoting from paragraph 29 of the *Merrill & Ring* Decision on Motion to Add a New Party dated January 31, 2008.

[Article 10.4 – Most Favored Nation Treatment]

13. I now turn to Article 10.4, which requires each Party to accord to investors of another Party and their investments "treatment no less favorable than that it accords, in like circumstances, to" investors, or investments of investors, "of any other Party or of any non-Party

with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

14. To establish a breach of the obligation to provide most-favored-nation, or "MFN," treatment under Article 10.4, a claimant has the burden of proving that it or its investments: first, were accorded "treatment"; second, were in "like circumstances" with identified investors or investments of a non-Party or another Party; and third, received treatment "less favorable" than that accorded to those identified investors or investments. I will briefly discuss the first and third components.

15. With respect to the first component of the MFN standard, the treaty clearly refers to "treatment . . . accorded" to different investors. If the claimant does not identify ***treatment*** that is actually being accorded with respect to an investor or investment of a non-Party or another Party in like circumstances, no violation of Article 10.4 can be established. In other words, the claimant must identify a measure adopted or maintained by a Party through which that Party accorded more favorable treatment, as opposed to speculation as to how a hypothetical measure might have applied to investors of a non-Party or another Party.

16. A Party does not accord ***treatment*** through the mere existence of provisions in its other international agreements such as umbrella clauses or clauses that impose autonomous fair and equitable treatment standards. Treatment accorded by a Party could include, however, measures adopted or maintained by a Party in connection with carrying out its obligations under such provisions.

17. With respect to the third component of an MFN claim, a claimant must also establish that the alleged non-conforming measures that constituted "less favorable" treatment are not subject to the exceptions contained in Annex II of the U.S.-Colombia TPA. In particular, both Parties reserve the "right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement."

[Article 10.20.2 – Authority of a Non-Disputing Party Submission]

18. I will end my remarks by addressing the weight due to the U.S. views on matters addressed in a non-disputing party submission. States Parties are well placed to provide authentic interpretations of their treaties, including in proceedings before investor-State tribunals like this one. The United States consistently includes non-disputing Party provisions in its investment agreements, including the TPA, to reinforce the importance of these submissions in the interpretation of the provisions of these agreements, and we routinely make such submissions.

19. Article 31 of the Vienna Convention on the Law of Treaties recognizes the important role that the States Parties play in the interpretation of their agreements. Although the United States is not a party to the Vienna Convention, we consider that Article 31 reflects customary international law on treaty interpretation. Article 31, Paragraph 3 states that in interpreting a treaty, "[t]here shall be taken into account, together with the context, (a) Any subsequent agreement between the Parties regarding the interpretation of the Treaty or application of its provisions; [and] (b) Any subsequent practice in the application of the Treaty which establishes the agreement of the Parties regarding its interpretation."

20. Article 31 is framed in mandatory terms. It is unequivocal that subsequent agreements between the Parties and subsequent practice of the Parties "*shall* be taken into account." Thus, where the submissions by both TPA Parties demonstrate that they agree on the proper interpretation of a given provision, the Tribunal must, in accordance with Article 31(3)(a), take

this subsequent agreement into account. Moreover, the TPA Parties' concordant interpretations may also constitute subsequent practice under Article 31(3)(b).

21. Investment tribunals have agreed, in the context of non-disputing party submissions under the NAFTA, that submissions by the NAFTA Parties in arbitrations under Chapter Eleven may serve to form subsequent practice. Specifically, I would point you to paragraph 158 of the *Mobil v. Canada* Decision on Jurisdiction and Admissibility dated July 13, 2018, as well as paragraphs 103, 104, and 158-160 for context. I also refer you to paragraphs 188 to 189 of the Award on Jurisdiction in *Canadian Cattlemen for Fair Trade*, dated January 28, 2008.

22. To sum up this point, whether the Tribunal considers that the interpretations presented by the TPA Parties as a subsequent agreement under Article 31(3)(a), as subsequent practice under Article 31(3)(b), or both, on any particular provision, the outcome is the same. The Tribunal must take the TPA Parties' common understanding of the provision of their Treaty into account.

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Angel Samuel Seda

On April 26, 2023, the United States made an oral submission to the tribunal in *Angel Samuel Seda and Others v. Colombia*, ICSID Case No. ARB/19/6. The submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C7733/DS18843_En.pdf and excerpted below. See *Digest 2022* at 496-500 and *Digest 2021* at 464-67 for discussions of prior submissions of the United States.

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4. I will make three points on the essential security interests exception in Article 22.2(b) and the U.S. treaty practice on similarly worded essential security interests exceptions.

5. *First*, the United States reiterates that the language of Article 22.2(b) and similarly worded exceptions in other U.S. treaties is clear: the exception is self-judging and, once invoked, a tribunal must find that the exception applies. As I previously explained, this follows from the ordinary meaning of Article 22.2's use of the phrase "it considers" and is further clarified by the language in footnote 2 that, "For greater certainty" if a Party invokes Article 22.2 "the tribunal or panel hearing the matter shall find that the exception applies." Thus, once a State Party to the TPA raises the exception, its invocation is non-justiciable and a Chapter Ten Tribunal must find that the exception applies to the dispute before it.

6. *Second*, I would like to address Claimants' argument that the U.S. treaty practice on essential security interests exceptions supports the conclusion that Article 22.2(b) merely allows a State to apply, or continue to apply, measures that it considers necessary for the protection of its own essential security interests, but that Article 22.2(b) does not address the question of liability or compensation. Again, the United States disagrees.

7. Article 22.2(b) is an "exception" that is intended to entirely exclude from the scope of the obligations in the TPA those measures covered by Article 22.2(b). As there is no obligation under the TPA with respect to covered measures, a claimant cannot establish that, per Article 10.16, respondent has breached … an obligation under Section A [of Chapter Ten] with respect to such a measure. And for that reason such a claimant also cannot establish that it has, again per Article 16.1, incurred loss or damage by reason of, or arising out of, that breach with respect to such a measure. Consequently, where such a measure is concerned, there is no basis for a Tribunal to make an award of any kind against the respondent. Further, it is a basic principle of State responsibility that there is no obligation to make reparation or restitution unless an injury has been caused by an internationally wrongful act, that is, a breach of an obligation for which the State is liable. In short, because the Article 22.2(b) exception excludes certain measures from TPA obligations, there can be no finding of liability and no order of reparations with respect to those measures. The TPA parties did not take on an obligation to pay compensation for measures that they consider necessary for the protection of their own essential security interests.

8. Against this backdrop, there was no need for explicit language in provisions like Article 22.2(b) stating that once invoked, a tribunal cannot find the relevant measure in breach of any Chapter Ten obligation or order any compensation.

9. I also would note that Claimants' argument also fails to grapple with the fact that Article 10.26 clearly deprives a Chapter Ten Tribunal of authority to order that any measure—essential or otherwise—be withdrawn

10. Claimants' argument that the text of the Singapore-India Comprehensive Economic Cooperation Agreement contains the type of language that the United States and Colombia should have included in the TPA if they desired to prevent any finding of liability or order of compensation is misplaced. That agreement, to which the United States obviously is not a party, has no bearing on the U.S. treaty practice.

11. *Third and finally*, I wish to address the Claimant's argument that Colombia's invocation of Article 22.2(b) is subject to review by this Tribunal for good faith. The United States of course accepts that its treaty partners are obliged to implement their treaty obligations in good faith, and indeed would expect them to do so. That is not the same thing as saying, however, that a Tribunal is authorized to assess whether a treaty partner has done so. Indeed, the words "that it considers" in Article 22.2(b), as well as the text of footnote 2, make clear that it is not for a tribunal to determine whether the exception has been invoked in good faith. Instead, it is solely for State Parties to the TPA to ensure that the provision is invoked in good faith.

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c. U.S.-Vietnam Bilateral Trade Agreement: Dangelas v. Vietnam

On April 4, 2023, the U.S. Embassy in Hanoi delivered a diplomatic note to the Ministry of Justice of the Socialist Republic of Vietnam regarding claims by dual U.S.-Vietnamese nationals under the U.S.-Vietnam Bilateral Trade Agreement. The diplomatic note is excerpted below.

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The Embassy of the United States of America presents its compliments to the Ministry of Justice of the Socialist Republic of Vietnam.

The Embassy acknowledges the receipt of the diplomatic note No.3640/CH-BTP dated December 12, 2022 by the Ministry regarding claims by dual U.S.-Vietnamese nationals under the U.S.-Vietnam Bilateral Trade Agreement (the "Agreement").

The Ministry sought to confirm that it is the understanding of the United States that a natural person who is a dual U.S.-Vietnamese national may not make a claim against a Party under the Agreement unless his or her dominant and effective nationality is that of the other Party. The Embassy confirms that the United States shares this understanding.

Chapter IV, Articles 4(2) and (3) of the Agreement affirmatively grant the right to submit a claim to arbitration to "a national or company of one Party that is a party to an investment dispute" under the conditions specified in that article. Chapter IV, Article 1(4) defines "covered investment" as "as investment of a national or company of a Party in the territory of the other Party." Chapter IV, Article 1(9) defines a "national" of a party to include a "natural person who is a national of a Party under its applicable law." Chapter IV, Article 1(10) defines "investment dispute" as "a dispute between a Party and a national or company of the other Party arising out of or relating to," *inter alia,* "an alleged breach of any right conferred, created or recognized by this Chapter." Read together, these terms of the Agreement suggest that nationals of "one Party" (Article 4(2) and 4(3)) "may submit" (Article 4(2)) a claim to arbitration alleging that the *other* Party breached a right conferred, created or recognized by Chapter IV of the Agreement.

In interpreting a treaty, however, "[t]here *shall* be taken into account, together with the context: ... (c) any relevant rules of international law applicable in the relations between the parties." One. such rule of international law is the principle that no international claim may be asserted against a State on behalf of the State's own nationals, subject to the rule set forth in *United States ex rel. Merge v. Italian Republic,* and adopted by *Iran v. United States,* Case No. A/18. That rule in effect states that a State is not responsible for a claim asserted against it by one of its own nationals, unless the claimant is a dual national whose dominant and effective nationality is that of another State.[4] In light of that rule, the terms of the Agreement should be interpreted so as not to authorize a person who is a dual U.S.-Vietnamese national to assert a claim against a Party under the Agreement unless the person's dominant and effective nationality is that of the other Party.

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e. Dominican Republic-Central America-United States Free Trade Agreement: Sargeant Petroleum v. Dominican Republic

Article 10.20.2 of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR" or "Treaty") allows for non-disputing Party submissions. The United States made a written submission on November 9, 2023, in *Sargeant Petroleum, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/22/1, regarding Denial of Benefits (Article 10.12.2); Definition of Investment (Article 10.28); Limitations Period (Article 10.8.1); Non-Conforming Measures (Article 10.13); National Treatment and Most-Favored-Nation Treatment (Article 10.3 and 10.4); Minimum Standard of

Treatment (Article 10.5); Expropriation (Article 10.7); and Chapter 10 and Contract Breaches. The submission is available at http://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C10516/DS19179_En.pdf and excerpted below (footnotes omitted).

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Article 10.12.2 (Denial of Benefits)

2. Article 10.12.2 provides: "Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise."

3. This treaty right is consistent with a long-standing U.S. policy to include a denial of benefits provision in investment agreements to safeguard against the potential problem of "free rider" investors, i.e., third-party entities that may only as a matter of formality be entitled to the benefits of a particular agreement. While it has been U.S. practice to omit a precise definition of the term "substantial business activities," in order that the existence of such activities may be evaluated on a case-by-case basis, the United States has indicated in, for instance, its Statement of Administrative Action on the North American Free Trade Agreement (NAFTA) that "shell companies could be denied benefits but not, for example, firms that maintain their central administration or principal place of business in the territory of, or have a real and continuous link with, the country where they are established." Similarly, in testimony before the U.S. House of Representatives, Ambassador Peter Allgeier, one of the U.S. negotiators of CAFTA-DR, explained that the denial of benefits provision of CAFTA-DR was intended to "protect against . . . establish[ment of] an affiliate that is merely a 'shell.'"

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Article 10.13 (Non-Conforming Measures)

15. Article 10.13.2 of the CAFTA-DR states "Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II." In Annex II, with respect to most-favored-nation treatments (Articles 10.4 and 11.3), the United States and the Dominican Republic "reserve[] the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Agreement" for "all sectors." This reservation is discussed below in conjunction with Article 10.4.

16. Article 10.13.5 further provides that "Articles 10.3, 10.4, and 10.10 do not apply to: (a) procurement; or (b) subsidies or grants provided by a Party, including government-supported

loans, guarantees, and insurance." Article 10.13.5 thus exempts "procurement" from Chapter 10's obligations with respect to national treatment, most-favored-nation treatment, and appointments to senior management and boards of directors.

17. Article 2.1 defines "procurement" as the "process by which a government obtains the use of or acquires goods or services, or any combination thereof, for governmental purposes and not with a view to commercial sale or resale or use in the production or supply of goods or services for commercial sale or resale[.]"25 A tribunal should determine the applicability of such a carve-out or reservation in advance of considering an alleged breach of Articles 10.3, 10.4, or 10.10.26.

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C. WORLD TRADE ORGANIZATION

The following discussion of developments in 2023 in select World Trade Organization (WTO) dispute settlement proceedings involving the United States is drawn from Chapter II.D, "WTO and FTA Enforcement," of the Annual Report of the President of the United States on the Trade Agreements Program ("Annual Report"), released in March 2024 and available at https://ustr.gov/sites/default/files/The%20Presidents%202024%20Trade%20Policy%20Agenda%20and%202023%20Annual%20Report.pdf. WTO legal texts referred to below are available at https://www.wto.org/ .

1. Disputes brought by the United States

a. China – Additional Duties on Certain Products from the United States (DS558)

In August 2023, a WTO dispute settlement panel circulated its final report agreeing with the United States that certain retaliatory tariffs imposed by China in response to U.S. Section 232 measures on steel and aluminum breached WTO rules. The Panel also found that the U.S. Section 232 measures were taken pursuant to the essential security exception under the GATT 1994. On September 18, 2023, China appealed the Panel report, but no division of the Appellate Body can currently be established to hear the appeal. See Annual Report at 69 for background on the dispute.

b. India – Measures Concerning the Importation of Certain Agricultural Products from the United States (DS430)

In September 2023, after agreeing to terminate six other WTO disputes, discussed in section C.2.a, *infra*, the United States and India reached an agreement to resolve this

dispute, under which India agreed to carry out certain tariff cuts within 180 days.* See Annual Report at 76-77 for background on this dispute. See also the Office of the United States Trade Representative (USTR) September 8, 2023 press release available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/september/united-states-announces-resolution-outstanding-wto-poultry-dispute-india, which follows.

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United States Trade Representative Katherine Tai today announced that the United States and India have agreed to resolve their last outstanding dispute at the World Trade Organization, *India — Measures Concerning the Importation of Certain Agricultural Products* (DS 430). As part of the agreement, India also agreed to reduce tariffs on certain U.S. products, including frozen turkey, frozen duck, fresh blueberries and cranberries, frozen blueberries and cranberries, dried blueberries and cranberries, and processed blueberries and cranberries. These tariff cuts will expand economic opportunities for U.S. agricultural producers in a critical market and help bring more U.S. products to customers in India. The Exchange of Letters between the United States and India is available here.

This announcement comes as President Biden met with Prime Minister Narendra Modi today in New Delhi, India for the G20 Leaders' Summit. In August, Ambassador Tai met with India's Minister of Commerce and Industry, Piyush Goyal, following the G20 Trade and Investment Ministers' Meeting. During that meeting, Ambassador Tai and Minister Goyal discussed this WTO dispute and expressed their shared desire to reach a solution soon.

"Resolving this last outstanding WTO dispute represents an important milestone in the U.S.-India trade relationship, while reducing tariffs on certain U.S. products enhances crucial market access for American agricultural producers," **said Ambassador Tai.** "These announcements, combined with Prime Minister Modi's State Visit in June and President Biden's trip to New Delhi this week, underscores the strength of our bilateral partnership. I look forward to continuing to work with Minister Goyal to deliver inclusive economic opportunities for our people."

In June, the United States and India agreed to terminate six outstanding disputes at the World Trade Organization. India also agreed to reduce tariffs on certain U.S. products, including chickpeas, lentils, almonds, walnuts, apples, boric acid, and diagnostic reagents.

Today's agreement resolves the remaining long-standing dispute and opens a new chapter of bilateral cooperation that will deepen the trade relationship between the United States and India.

The Joint Statement on the 13th Ministerial-level meeting of the United States-India Trade Policy Forum, which was held on January 11, 2023, can be found here.

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* Editor's note: In March 2024, the United States and India notified the DSB that they had reached a mutually agreed solution.

c. Türkiye – Additional Duties on Certain Products from the United States (DS561)

On December 19, 2023, a WTO dispute settlement panel circulated its final report agreeing with the United States that Türkiye's imposition of additional duties in retaliation for the U.S. Section 232 national security measures on steel and aluminum breached WTO rules. The Panel also found that the U.S. Section 232 measures were taken pursuant to the essential security exception under the GATT 1994. See Annual Report at 80-81 for background on the dispute.[**]

2. Disputes brought against the United States

a. Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India (DS436)

In June 2023, the United States and India reached an agreement to resolve six outstanding WTO disputes, including this dispute (DS436). In July 2023, the United States and India notified the WTO Dispute Settlement Body (DSB) of that agreement. See Annual Report at 90-92. See also the USTR June 22, 2023 press release available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/september/united-states-announces-resolution-outstanding-wto-poultry-dispute-india https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/united-states-announces-major-resolution-key-trade-issues-india.

b. Safeguard Measure on Imports of Large Residential Washers (DS546)

As discussed in *Digest 2022* at 515, a WTO dispute settlement panel found that the United States acted inconsistently with the WTO Agreement on Safeguards by not providing Korea with sufficient time to allow for the possibility, through consultations, for meaningful consultations between announcement of the final safeguard measure and the date it took effect. On April 28, 2023, the DSB adopted the panel report. On the same day, the United States and Korea notified the DSB that the parties reached a mutually agreed solution. See Annual Report at 106-07.

c. Certain Measures on Steel and Aluminum Products (DS554)

In June 2023, a WTO dispute settlement panel accepted Russia's request to suspend its work in this dispute pursuant to Article 12.12 of the WTO Dispute Settlement

[**] Editor's note: On January 26, 2024, Türkiye appealed the Panel report, but no division of the Appellate Body can currently be established to hear the appeal.

Understanding (DSU). The United States objected to the suspension. See Annual Report at 108-09.[***]

d. Anti-Dumping and Countervailing Duties on Ripe Olives from Spain (DS577)

See *Digest 2022* at 517-18 and the Annual Report at 111-12 for summary of the consultations between the United States and the European Union (EU) and the subsequent panel findings.[****] As explained in the Annual Report:

> On April 28, 2023, the EU requested consultations with the United States with respect to Commerce's redetermination of the attribution of benefits to downstream agricultural processors in the Section 129 determinations. The United States and the EU held consultations on May 24, 2023, but the consultations failed to resolve the dispute. At the EU's request, the WTO established a compliance panel on July 28, 2023. The EU claims that Section 771B remains inconsistent with Article V:3 of the GATT 1994 and Article 10 of the SCM Agreement, both "as such" and as applied in the Section 129 determinations. On July 31, 2023, the WTO Director-General composed the compliance Panel as follows: Mr. Daniel Moulis, Chair; and Mr. Martin Garcia and Ms. Charis Tan, Members. As of December 2023, the compliance panel proceeding was ongoing.

D. TRADE AGREEMENTS AND TRADE-RELATED ISSUES

1. United States-Mexico-Canada Agreement ("USMCA")

The USMCA includes a Rapid Response Labor Mechanism ("RRM") between the United States and Mexico that permits the U.S. Government to take expedited enforcement actions against individual factories that appear to be denying workers the right of freedom of association and collective bargaining under Mexican law. The U.S. Government initiated 13 RRM actions in 2023. These actions included review of labor rights concerns reported at a Grupo Mexico mine and a Grupo Yazaki Auto Components Factory, as well as an alleged denial of workers' rights at Mas Air, a Mexican airline. See https://ustr.gov/issue-areas/enforcement/dispute-settlement-proceedings/fta-dispute-settlement/usmca/chapter-31-annex-facility-specific-rapid-response-labor-mechanism.[*****]

[***] Editor's note: In June 2024, the WTO Secretariat published a note indicating that the authority for the establishment of the panel in DS554 had lapsed because the panel had not been requested to resume its work.

[****] Editor's note: The panel circulated its final report on February 20, 2024. On March 19, 2024, the DSB adopted the panel report.

2. U.S.-Taiwan Trade Agreement

On June 1, 2023, the United States and Taiwan signed the first agreement under the U.S.-Taiwan Initiative on 21st Century Trade framework (the "21CT Agreement"), available at https://ustr.us7.list-manage.com/track/click?u=b58f12c4da47019d98a1e84ef&id=4f0a6e6d39&e=2cf7c58cfb. The 21CT Agreement covers the areas of customs administration and trade facilitation, good regulatory practices, services domestic regulation, anti-corruption, and small and medium-sized enterprises. USTR's press release announcing of the trade deal, released May 18, 2023, is available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/may/ustr-announcement-regarding-us-taiwan-trade-initiative. A statement by USTR Spokesperson Sam Michel at the signing ceremony, which includes background information on the agreement, is available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/june/statement-ustr-spokesperson-sam-michel-us-taiwan-initiative-21st-century-trade-signing-ceremony, and excerpted below.******

* * * *

Customs Administration and Trade Facilitation

The negotiated text on customs administration and trade facilitation will streamline border procedures and reduce red tape, making it easier, faster, and cheaper for American businesses to bring their products to Taiwan and Taiwanese customers. Customs forms will be able to be submitted electronically and will allow border agencies to accept electronic payment of duties, taxes, and fees. Reducing wait times for idling vessels and trucks will also lower greenhouse gas emissions and reduce spoilage, especially of perishable goods.

Good Regulatory Practices

The negotiated text on good regulatory practices creates improved transparency tools and mechanisms that will help small and medium-sized enterprises better understand regulatory procedures in both the U.S. and Taiwan markets. This includes public consultations on draft regulatory measures, which can contribute to better and more informed regulations.

The text also establishes a Good Regulatory Practices Committee to monitor implementation of the obligations in this chapter, improve information sharing, and facilitate enhanced regulatory cooperation.

Services Domestic Regulation

The negotiated text ensures service suppliers are treated fairly when they apply for permission to operate, and that there is a smooth flow of information between the applicant for a license and the regulator. Regulators are required to be independent of the industry they oversee, and must inform applicants of the requirements to obtain a license, provide applicants a fair

***** Editor's note: The U.S. Government initiated five actions in 2024, as of May 28.

****** Editor's note: While the excerpted statement refers to a negotiated text, the agreement was signed on June 1, 2023, as discussed in the explanatory note.

opportunity to demonstrate that they meet the requirements, and make a decision on whether to issue a license in a reasonable period of time.

The negotiated text also prohibits licensing rules that discriminate on the basis of gender.

Anticorruption

The negotiated text on anticorruption commits the sides to establish comprehensive anticorruption measures that will prevent and combat bribery and other forms of corruption. Building on the anticorruption framework established in the United States-Mexico-Canada Agreement, this chapter addresses money laundering, denial of entry for foreign public officials, the recovery of proceeds of corruption, and enhanced protections for corruption whistleblowers.

The negotiated text also mandates procedures for possible removal of public officials who are charged or convicted of corruption.

Small- and Medium-Sized Enterprises (SMEs)

The negotiated text on SMEs will encourage SME trade and investment opportunities between the United States and Taiwan, including through training programs, trade education, trade finance, trade missions, and improving SME access to capital and credit. The sides would promote online, publicly available resources for SMEs to learn more about how to conduct business in both markets.

The negotiated text encourages that the SME Dialogues include SME owned by diverse, underserved, and underrepresented groups.

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On August 7, 2023, President Biden signed into law H.R. 4004, the United States-Taiwan Initiative on 21st-Centry Trade First Agreement Implementation Act. President Biden's statement on H.R. 4004 is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/07/statement-from-president-joe-biden-on-h-r-4004-the-united-states-taiwan-initiative-on-21st-century-trade-first-agreement-implementation-act/ and follows:

> Today, I have signed into law H.R. 4004, the "United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act" (the "Act"). Among other things, the Act would impose requirements on the negotiations of certain further trade agreements between the United States and Taiwan.
>
> Section 7 of the Act includes requirements for the negotiation of certain further trade agreements with Taiwan that raise constitutional concerns. Section 7(b) of the Act would require the United States Trade Representative (USTR) to provide negotiating texts to congressional committees in the midst of negotiations with a foreign partner, and section 7(c) of the Act would preclude the USTR from transmitting United States-proposed texts to Taiwan while the Congress is reviewing them. Section 7(c) of the Act would further, in violation of INS v. Chadha, afford 2 members of the Congress the power to increase the required waiting period before the USTR may provide texts to Taiwan. Section 7(d) of the Act would require the inclusion of members of the Congress as accredited members of the United States delegation who would be entitled to daily briefings, including of tentative agreements. In cases where the

requirements of section 7 of the Act would impermissibly infringe upon my constitutional authority to negotiate with a foreign partner, my Administration will treat them as non-binding.

3. Africa Growth and Opportunity Act ("AGOA")

On October 30, 2023, the President of the United States sent a message to the U.S. Congress providing notice of the termination of the designation of the Central African Republic, Gabon, Niger, and Uganda as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act ("AGOA"). The statement is available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/letters-to-the-speaker-of-the-house-and-president-of-the-senate-on-intent-to-terminate-the-designation-of-the-central-african-republic-the-gabonese-republic-niger-and-the-republic-of-uganda-as-bene/, and below.

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In accordance with section 506A(a)(3)(B) of the Trade Act of 1974, as amended (19 U.S.C. 2466a(a)(3)(B)), I am providing advance notification of my intent to terminate the designation of the Central African Republic, the Gabonese Republic (Gabon), Niger, and the Republic of Uganda (Uganda) as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA).

I am taking this step because I have determined that the Central African Republic, Gabon, Niger, and Uganda do not meet the eligibility requirements of section 104 of the AGOA. Specifically, the Government of the Central African Republic has engaged in gross violations of internationally recognized human rights and has not established, or is not making continual progress toward establishing, the protection of internationally recognized worker rights, the rule of law, and political pluralism. Niger and the Government of Gabon have not established, or are not making continual progress toward establishing, the protection of political pluralism and the rule of law. Finally, the Government of Uganda has engaged in gross violations of internationally recognized human rights.

Despite intensive engagement between the United States and the Central African Republic, Gabon, Niger, and Uganda, these countries have failed to address United States concerns about their non-compliance with the AGOA eligibility criteria.

Accordingly, I intend to terminate the designation of these countries as beneficiary sub-Saharan African countries under the AGOA, effective January 1, 2024. I will continue to assess whether the Central African Republic, Gabon, Niger, and Uganda meet the AGOA eligibility requirements.

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In a December 29, 2023 Proclamation, President Biden determined that Mauritania meets the eligibility requirements set forth in section 104 of the AGOA and the eligibility criteria set forth in section 502 of the Trade Act, and designated Mauritania as a beneficiary sub-Saharan African country. 89 Fed. Reg. 437 (Jan. 4, 2024). The President also designated Mauritania as a ''lesser developed beneficiary sub-Saharan African country'' under section 112(c) of the AGOA. *Id*.

4. Indo-Pacific Economic Framework

On November 16, 2023, the leaders of the Indo-Pacific Economic Framework for Prosperity ("IPEF") negotiating countries signed a first-of-its-kind Supply Chain Agreement and substantially concluded negotiations on a groundbreaking Clean Economy Agreement and an innovative Fair Economy Agreement, and an Agreement on IPEF establishing a structure for ongoing cooperation at the ministerial level. See Digest 2022 at 521-22 for background on the launch of IPEF. The November 16, 2023, leaders' statement is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/16/leaders-statement-on-indo-pacific-economic-framework-for-prosperity/, and a fact sheet is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/16/fact-sheet-in-san-francisco-president-biden-and-13-partners-announce-key-outcomes-to-fuel-inclusive-sustainable-growth-as-part-of-the-indo-pacific-economic-framework-for-prosperity/. President Biden's November 16, 2023 remarks are excerpted below and available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/11/16/remarks-by-president-biden-at-the-indo-pacific-economic-framework-san-francisco-ca/.

* * * *

Today, we're announcing progress on the important initiative that we proposed with 13 of my colleagues here … of … the Indo-Pacific Economic Framework — Australia, Brunei, Fiji, India, Indonesia, Japan, South Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, Vietnam, and the United States.

In May of 2022, we came together in Tokyo to launch negotiations on this so-called framework. We still have more work to do, but we've made substantial progress. In record time, we've reached consensus on three of the pillars of the IPEF. I hate acronyms. I apologize. …

The first, we signed a first-of-its-kind supply chain agreement to help identify supply chain bottlenecks before they become the kind of disruptions we saw during the COVID-19 pandemic. We saw what happened then in the United States and elsewhere. But the [United] States' semiconductor supply chains dried up in Asia, and the United States — a lot of it shut down.

This is an agreement we've been in — we put back in place. We could — if we had this agreement in place we're talking about today, we would not have had to lay off so many auto

workers because lack of semiconductors and many other examples.

Second, we've concluded an agreement to accelerate the clean energy transition in the Indo-Pacific region, including by enabling greater U.S. and private sector investment in clean energy, innovation, and infrastructure in our partner countries.

You heard discussions today about how there's many opportunities and ideas that have — but being able to attract private sector investment and government investment is hard for many of these countries that have great ideas and great opportunities.

Well, the solar investments in the Philippines is an example, offshore wind in Thailand and … Indonesia, joint investments between the United States and India on energy storage, and so much more.

Third, we've concluded an agreement to combat corruption and improve tax administration to make sure that our trade and investment is clean and transparent and private companies don't have any worry about their investments being used properly. And that's exactly what we've done.

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E. INTELLECTUAL PROPERTY AND SECTION 301 OF THE TRADE ACT

1. Special 301 Report and Notorious Markets Report

The "Special 301" Report is an annual congressionally-mandated report that in effect reviews the global state of intellectual property rights ("IPR") protection and enforcement. USTR provides information about the Special 301 Report on its website at https://ustr.gov/issue-areas/intellectual-property/Special-301.

USTR issued the 2023 Special 301 Report in April 2023. The Report is available at https://ustr.gov/issue-areas/intellectual-property/special-301/2023-special-301-report. The 2023 Report lists the following seven countries on the Priority Watch List: Argentina, Chile, China, India, Indonesia, Russia, and Venezuela. It lists the following on the Watch List: Algeria, Barbados, Belarus, Bolivia, Brazil, Bulgaria, Canada, Colombia, Dominican Republic, Ecuador, Egypt, Guatemala, Mexico, Pakistan, Paraguay, Peru, Thailand, Trinidad & Tobago, Turkey, Turkmenistan, Uzbekistan, and Vietnam. See *Digest 2007* at 605-11 and the *2023 Special 301 Report* at 4-8 and Annex 1 for additional background on the watch lists. USTR press release is available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/april/ustr-releases-2023-special-301-report-intellectual-property-protection-and-enforcement, and includes the following:

- USTR added Belarus to the Watch List, in response to Belarus passing a law that legalized unlicensed use of certain copyrighted works if the right holder is from a foreign state "committing unfriendly actions," including sanctioning Belarus for their role in Russia's unprovoked invasion of Ukraine. Furthermore, Belarus can keep royalties from this unlicensed usage and shift them to Belarus's general budget, meaning that the Lukashenka regime would directly financially benefit from this unauthorized usage.

- USTR added Bulgaria to the Watch List because it did not sufficiently address deficiencies in its investigation and prosecution of online piracy cases, such as by allowing criminal investigations, expert examinations, and prosecutions to proceed with just a subset of seized infringing works. USTR will again conduct an Out-of-Cycle Review of Bulgaria in 2023 to assess whether Bulgaria makes material progress in this area.
- The Special 301 review of Ukraine continues to be suspended due to Russia's premeditated and unprovoked further invasion of Ukraine in February 2022.

USTR released its "Review of Notorious Markets for Counterfeiting and Piracy," for 2023, which is available at https://ustr.gov/sites/default/files/2023_Review_of_Notorious_Markets_for_Counterfeiting_and_Piracy_Notorious_Markets_List_final.pdf. The 2023 Notorious Markets List identifies 39 online markets and 33 physical markets that are reported to engage in or facilitate substantial trademark counterfeiting or copyright piracy. This includes continuing to identify the WeChat e-commerce ecosystem as one of the largest platforms for counterfeit goods in China. China-based online markets Baidu Wangpan, DHGate, Pinduoduo, and Taobao were listed again, as well as seven physical markets located within China that are known for trade in counterfeit and pirated goods. See January 30, 2024 USTR press release, available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/january/ustr-releases-2023-review-notorious-markets-counterfeiting-and-piracy.

2. OECD Multilateral Tax Convention

Negotiations on the Organization for Economic Cooperation and Development (OECD) Multilateral Convention to Implement Amount A of Pillar One (Pillar One MLC) occurred in 2023. On October 11, 2023, the Department of the Treasury sought public input on the draft of Pillar One MLC. The Treasury Department issued a press release, available at https://home.treasury.gov/news/press-releases/jy1789, and excerpted below.

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Today, the U.S. Department of the Treasury announced a request for public input on the draft OECD/G20 Inclusive Framework Multilateral Convention to Implement Amount A of Pillar One (Pillar One MLC) and accompanying documents. The Inclusive Framework's Task Force on the Digital Economy released the current draft text of the Pillar One MLC, the Explanatory Statement to the Pillar One MLC, and the Understanding on the Application of Amount A Certainty (describing certain administration and dispute resolution parameters) following intensive negotiations. The three documents represent a years-long effort to find broad consensus among over 140 Inclusive Framework countries on a reallocation of taxing rights that better reflects the modern global economy.

"The Treasury Department considers the release of the draft Pillar One documents a key step forward in the Pillar One negotiations. These documents reflect countless hours of discussions, across multiple U.S. administrations, and among hundreds of negotiators. Treasury stands behind the negotiations, which have resulted in many difficult compromises by all sides with respect to both the design of the partial reallocation of taxing rights and the elimination of discriminatory digital services taxes and similar measures," said Assistant Secretary for Tax Policy Lily Batchelder. "However, as the cover note in the documents states, Pillar One represents a uniquely significant reform to the international tax system. Because of the breadth and complexity of the changes proposed, we view public input as critical to our process—to ensure transparency, to facilitate the resolution of several remaining open issues, and to hear whether the proposed framework would be workable for U.S. taxpayers and other stakeholders."

Pillar One is being negotiated as part of the OECD/G20 Inclusive Framework Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy. The Pillar One architecture is designed to update the allocation of international taxing rights over a portion of the profits of the largest and most profitable multinational corporations ("Amount A") and to provide greater tax certainty and stability on certain cross-border transactions ("Amount B"). The draft Pillar One agreement would also explicitly require signatory jurisdictions to withdraw discriminatory digital services taxes or similar measures. The Pillar One documents released by the Inclusive Framework relate to Amount A; work on Amount B is ongoing.

Certain key pieces of the Pillar One MLC have already been subject to OECD public consultations and the comments received have been critical to informing previous Inclusive Framework negotiations. However, the recent release represents the first time that a complete draft text of the Pillar One MLC documents is available to the public. The Treasury Department is especially interested in comments related to novel issues identified by a review of the complete text, implementation and administrability issues (including the balance between simplification and technical precision), and technical adjustments to address errors or clarify the operation of the Pillar One MLC provisions.

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F. OTHER ISSUES

1. Foreign Account Tax Compliance Act

On January 1, 2023, the U.S.-Argentina Agreement to Improve International Tax Compliance and to Implement the Foreign Account Tax Compliance Act ("FATCA") entered into force. The Argentina FATCA agreement was signed at Buenos Aires December 5, 2022 and is available at https://www.state.gov/argentina-23-101.1.

2. Global Minimum Tax

On February 2, 2023, the OECD/G20 Inclusive Framework released a package of technical and administrative guidance on the global minimum tax on multinational corporations, known as Pillar Two. The guidance is available at https://www.oecd.org/tax/beps/international-tax-reform-oecd-releases-technical-

guidance-for-implementation-of-the-global-minimum-tax.htm. The Treasury Department press release detailing the guidance is available at https://home.treasury.gov/news/press-releases/jy1243, and excerpted below.

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Today, the OECD/G20 Inclusive Framework released a package of technical and administrative guidance that achieves clarity on the global minimum tax on multinational corporations known as Pillar Two, and provides critical protections for important tax incentives, including green tax credit incentives established in the Inflation Reduction Act. The guidance was agreed by consensus of all 142 countries and jurisdictions in the OECD/G20 Inclusive Framework and forms part of the common approach under which countries that adopt the rules agree to implement them. Pillar Two provides for a global minimum tax on the earnings of large multinational businesses, leveling the playing field for U.S. businesses and ending the race to the bottom in corporate income tax rates.

The publication of this package follows the release of the Model Rules in December 2021 and Commentary in March 2022, as well as rules for a transitional safe harbor in December 2022. The newly released guidance provides greater certainty for issues of top concern for U.S. taxpayers and helps sustain incentives critical to achieving Biden-Harris Administration climate goals, and will be incorporated into a revised version of the Commentary that will replace the prior version.

The package includes guidance on over two dozen topics, addressing those issues that Inclusive Framework members identified are most pressing. This includes topics relating to the scope of companies that will be subject to the Global Anti-Base Erosion (GloBE) Rules and transition rules that will apply in the initial years that the global minimum tax applies. Also included is guidance on domestic minimum taxes, known as Qualified Domestic Minimum Top-up Taxes (QDMTTs), that countries may choose to adopt.

"The continued progress in implementing the global minimum tax represents another step in leveling the playing field for U.S. businesses, while also protecting U.S. workers and middle-class families by ending the race to the bottom in corporate tax rates," said **Assistant Secretary of the Treasury for Tax Policy Lily Batchelder**. "We welcome this agreed guidance on key technical questions, which will deliver certainty for green energy tax incentives, support coordinated outcomes and provide additional clarity that stakeholders have asked for."

The package of guidance provides certainty on several key issues. Examples include:

- Protection of the Low-Income Housing Tax Credit (LIHTC) as well as green tax credits, including those that were included in the Inflation Reduction Act.
- Clear and administrable treatment of taxes paid under the existing U.S. GILTI global minimum tax regime.
- A consensus statement by all Inclusive Framework members that Pillar Two was intentionally designed so that top-up tax imposed in accordance with those rules will be compatible with common tax treaty provisions.

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3. New Executive Order 14093

On March 27, 2023, President Biden issued Executive Order 14093, "Prohibition on Use by the United States Government on Commercial Spyware That Poses Risks to National Security." 88 Fed. Reg. 18957 (Mar. 30, 2023). The White House published a fact sheet with information about the new executive order, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/27/fact-sheet-president-biden-signs-executive-order-to-prohibit-u-s-government-use-of-commercial-spyware-that-poses-risks-to-national-security/, and excerpted below.

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Today, President Biden signed an Executive Order that prohibits, for the first time, operational use by the United States Government of commercial spyware that poses risks to national security or has been misused by foreign actors to enable human rights abuses around the world. Commercial spyware – sophisticated and invasive cyber surveillance tools sold by vendors to access electronic devices remotely, extract their content, and manipulate their components, all without the knowledge or consent of the devices' users – has proliferated in recent years with few controls and high risk of abuse.

The proliferation of commercial spyware poses distinct and growing counterintelligence and security risks to the United States, including to the safety and security of U.S. Government personnel and their families. U.S. Government personnel overseas have been targeted by commercial spyware, and untrustworthy commercial vendors and tools can present significant risks to the security and integrity of U.S. Government information and information systems.

A growing number of foreign governments around the world, moreover, have deployed this technology to facilitate repression and enable human rights abuses, including to intimidate political opponents and curb dissent, limit freedom of expression, and monitor and target activists and journalists. Misuse of these powerful surveillance tools has not been limited to authoritarian regimes. Democratic governments also have confronted revelations that actors within their systems have used commercial spyware to target their citizens without proper legal authorization, safeguards, and oversight.

In response, the Biden-Harris Administration has mobilized a government-wide effort to counter the risks posed by commercial spyware. Today's Executive Order builds on these initiatives, and complementary bipartisan congressional action, to establish robust protections against misuse of such tools.

This Executive Order will serve as a cornerstone U.S. initiative during the second Summit for Democracy on March 29-30, 2023, which President Biden will co-host with the leaders of Costa Rica, the Netherlands, the Republic of Korea, and the Republic of Zambia. In furtherance of President Biden's National Security Strategy, this Executive Order demonstrates the United States' leadership in, and commitment to, advancing technology for democracy, including by countering the misuse of commercial spyware and other surveillance technology. This Executive Order will also serve as a foundation to deepen international cooperation to promote responsible use of surveillance technology, counter the proliferation and misuse of such technology, and spur industry reform.

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4. Tax Treaties

On June 22, 2023, the U.S. Senate provided advice and consent to ratification of the Convention between the Government of the United States of America and the Government of the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to taxes on Income and Capital, with Protocol and related Agreement, done at Washington February 4, 2010, and related exchanges of notes (U.S.-Chile tax treaty). The Senate's advice and consent was subject to two reservations, which the United States and Chile agreed to implement through an amendment of the treaty by an exchange of diplomatic notes dated September 28 and October 6, 2023. Documents related to the treaty are available at https://home.treasury.gov/policy-issues/tax-policy/treaties#chile. See *Digest 2010* at 501-02 and *Digest 2012* at 412. On December 19, 2023, the U.S.-Chile tax treaty, as amended by the 2023 exchange of notes, entered into force. See December 19, 2023 State Department media note available at https://www.state.gov/united-states-chile-bilateral-tax-treaty-enters-into-force/ and includes the following:

> A comprehensive bilateral tax treaty between the United States and Chile enters into force today. The Chile tax treaty is the first new comprehensive bilateral tax treaty signed by the United States to enter into force in more than ten years. The U.S. Senate provided advice and consent to ratification of the treaty on June 22, 2023, and President Biden signed the instrument of ratification in December. The treaty entered into force today when the United States notified Chile that it had completed the required procedures for bringing the treaty into force.
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> The Chile tax treaty will reduce tax-related barriers to cross-border investment between the United States and Chile, facilitating stronger bilateral business ties. Lower tax rates will allow entities doing business in both countries to save money. U.S. and Chilean companies and industry associations have long championed the passage of this tax treaty, which will make Chilean companies more competitive in the United States, and U.S. companies more competitive in Chile. The United States remains the number one market for Chilean women-led and small and medium-size businesses. This treaty will reduce the cost of business for them, as well.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy2003.

5. New Executive Order 14105

On August 9, 2023, President Biden issued Executive Order, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of

Concern." 88 Fed. Reg. 54,867 (Aug. 11, 2023). The Order directs the Secretary of the Treasury to establish a program to prohibit or require notification of certain types of outbound investments by United States persons into certain entities located in or subject to the jurisdiction of a country of concern, and certain other entities owned by persons of a country of concern, involved in specific categories of advanced technologies and products. Section one of E.O. 14105 is excerpted below and available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/09/executive-order-on-addressing-united-states-investments-in-certain-national-security-technologies-and-products-in-countries-of-concern/.

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I, JOSEPH R. BIDEN JR., President of the United States of America, find that countries of concern are engaged in comprehensive, long-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries' military, intelligence, surveillance, or cyber-enabled capabilities. Moreover, these countries eliminate barriers between civilian and commercial sectors and military and defense industrial sectors, not just through research and development, but also by acquiring and diverting the world's cutting-edge technologies, for the purposes of achieving military dominance. Rapid advancement in semiconductors and microelectronics, quantum information technologies, and artificial intelligence capabilities by these countries significantly enhances their ability to conduct activities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will accelerate the development of advanced computational capabilities that will enable new applications that pose significant national security risks, such as the development of more sophisticated weapons systems, breaking of cryptographic codes, and other applications that could provide these countries with military advantages.

As part of this strategy of advancing the development of these sensitive technologies and products, countries of concern are exploiting or have the ability to exploit certain United States outbound investments, including certain intangible benefits that often accompany United States investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. The commitment of the United States to open investment is a cornerstone of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, innovation, and productivity, and the United States supports cross-border investment, where not inconsistent with the protection of United States national security interests. However, certain United States investments may accelerate and increase the success of the development of sensitive technologies and products in countries that develop them to counter United States and allied capabilities.

I therefore find that advancement by countries of concern in sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the United States, which has its source in whole or substantial part outside the United States, and that certain

United States investments risk exacerbating this threat. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

Section 1 . *Notifiable and Prohibited Transactions.* (a) To assist in addressing the national emergency declared in this order, the Secretary of the Treasury (Secretary), in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant executive departments and agencies (agencies), shall issue, subject to public notice and comment, regulations that require United States persons to provide notification of information relative to certain transactions involving covered foreign persons (notifiable transactions) and that prohibit United States persons from engaging in certain other transactions involving covered foreign persons (prohibited transactions).

(b) The regulations issued under this section shall identify categories of notifiable transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines may contribute to the threat to the national security of the United States identified in this order. The regulations shall require United States persons to notify the Department of the Treasury of each such transaction and include relevant information on the transaction in each such notification.

(c) The regulations issued under this section shall identify categories of prohibited transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines pose a particularly acute national security threat because of their potential to significantly advance the military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern. The regulations shall prohibit United States persons from engaging, directly or indirectly, in such transactions.

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The White House issued a press release announcing E.O. 14105, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/09/president-biden-signs-executive-order-on-addressing-united-states-investments-in-certain-national-security-technologies-and-products-in-countries-of-concern/ and excerpted below.

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Today, President Joe Biden signed an Executive Order on Addressing United States Investments In Certain National Security Technologies And Products In Countries Of Concernthat authorizes the Secretary of the Treasury to regulate certain U.S. investments into countries of concern in entities engaged in activities involving sensitive technologies critical to national security in three sectors: semiconductors and microelectronics, quantum information technologies, and artificial intelligence. In an Annex to the E.O., the President identified the People's Republic of China (PRC), including the Special Administrative Region of Hong Kong and the Special Administrative Region of Macau, as a country of concern.

The Department of the Treasury simultaneously released an Advanced Notice of Proposed Rulemaking (ANPRM), with proposed definitions to elaborate the scope of the program, which will be subject to public notice and comment, before it goes into effect.

Cross-border investment flows have long contributed to U.S. economic vitality. We are committed to taking narrowly targeted actions to protect our national security while maintaining our longstanding commitment to open investment. This program will seek to prevent foreign countries of concern from exploiting U.S. investment in this narrow set of technologies that are critical to support their development of military, intelligence, surveillance, and cyber-enabled capabilities that risk U.S. national security.

The program complements the United States' existing export control and inbound screening tools with a "small yard, high fence" approach to address the national security threat posed by countries of concern advancing such sensitive technologies. Specifically, it will prohibit certain investments in entities that engage in specific activities related to these technology areas that pose the most acute national security risks, and require notification for other sensitive investments.

President Biden signed this Executive Order following extensive and thorough consultations with hundreds of stakeholders, industry members, and foreign allies and partners. Those engagements will continue as part of the notice-and-comment period to solicit additional public feedback to make any needed adjustments before the rule goes into effect.

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Senior Biden-Harris administration officials held a background press call previewing E.O. 14105 on August 9, 2023. The transcript, which was published on the White House website on August 10, 2023, is available at https://www.whitehouse.gov/briefing-room/press-briefings/2023/08/10/background-press-call-by-senior-administration-officials-previewing-executive-order-on-addressing-u-s-investments-in-certain-national-security-technologies-and-products-in-countries-of-concern/.

6. Comprehensive Security Integration and Prosperity Agreement with Bahrain

On September 13, 2023, the United States and Bahrain signed the Comprehensive Security Integration and Prosperity Agreement (C-SIPA) at Washington. The agreement entered into force October 20, 2023 and is available at https://www.state.gov/bahrain-23-1020. C-SIPA provides for enhanced cooperation between the parties across a range of areas, including defense and security cooperation; economic, commercial, and trade cooperation; and science, technology, and network security cooperation. The White House published a fact sheet on September 13, 2023, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/13/fact-sheet-biden-harris-administration-strengthens-partnership-with-kingdom-of-bahrain-and-launches-comprehensive-security-integration-and-prosperity-agreement/, and excerpted below.

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Comprehensive Security Integration and Prosperity Agreement

Secretary Blinken and Crown Prince/Prime Minister Salman today signed C-SIPA in an official ceremony at the State Department. This new bilateral agreement can serve as a cornerstone for cooperation among a broader grouping of countries that share mutual interests and a common vision with respect to deterrence, diplomacy, security and economic integration, and de-escalation of conflicts in the Middle East region. C-SIPA is the latest manifestation of the United States' enduring commitment to Bahrain and to the region in support of peace and shared prosperity.

After two decades of major conflicts in the Middle East region, the American people benefit from a region that is more peaceful, more secure, and more integrated internally and with the broader global economy. Our partnership under C-SIPA will deliver on that goal by:

- Enhancing deterrence, including through expanded defense and security cooperation, interoperability, and mutual intelligence capacity-building. C-SIPA will help formalize steps being taken by U.S. Central Command to integrate the region's air and missile defense systems and increase maritime domain awareness, among other initiatives;
- Promoting cooperation on trade and investment, building on the existing U.S.-Bahrain Free Trade Agreement;
- Encouraging investments in global supply chain resilience and infrastructure; and
- Promoting the development and deployment of trusted technologies, including in digital and Information and Communication Technology (ICT) infrastructure supply chains, to support secure and resilient global telecommunications networks. C-SIPA is the first binding U.S. international agreement of its kind to promote cooperation in developing and deploying trusted technologies – a critical feature of today's international security environment.

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7. Corporate Responsibility Regimes

a. Kimberley Process

The Kimberley Process ("KP") is an international, multi-stakeholder initiative created to increase transparency and oversight in the diamond industry in order to eliminate trade in conflict diamonds. The Kimberley Process currently limits its definition of conflict diamonds to rough diamonds sold by rebel groups or their allies to fund conflict against legitimate governments.

On November 16, 2023, the State Department issued a media note following participation in annual Kimberley Process Plenary meetings, which were held in Victoria Falls, Zimbabwe, from November 6-10, 2023. The media note, available at https://www.state.gov/united-states-participation-in-kimberley-process-plenary-meetings/, is included below.

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The United States participated in the annual Kimberley Process (KP) Plenary meetings in Victoria Falls, Zimbabwe, November 6-10. The Kimberley Process is an international, multi-stakeholder initiative created to increase transparency and oversight in the diamond industry to eliminate trade in conflict diamonds, a goal the United States strongly supports.

The United States regrets that meeting participants remained unable to examine the implications for the Kimberley Process of Russia's diamond production and its war against Ukraine, as requested by Ukraine and supported by the United States and others. Russia and a small number of other KP participants objected to the request, despite the KP's mandate to address how the trade in rough diamonds fuels conflict. Russia also refused to support a public communiqué that acknowledged Ukraine's request.

The Kimberley Process' decision not to issue a Plenary communiqué following the meetings undermines its credibility by failing to publicly report its work in an objective and transparent manner, one of its most important tasks as a multilateral body.

During the Plenary meetings, the United States shared concerns about the ongoing conflict in the Central African Republic and its impact on rough diamond exports and expressed support for the future establishment of a KP Secretariat in Gaborone, Botswana. In 2024, the United States will continue its participation in the KP Ad Hoc Committee on Review and Reform, recognizing that reform is essential for the KP's long term viability, and will advocate to expand the definition of a conflict diamond.

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b. *Business and Human Rights*

See Chapter 6.

8. International Tax Cooperation

On November 22, 2023, Rose Marks, U.S. Adviser to the UN General Assembly Economic and Financial Committee, or Second Committee,
delivered the U.S. explanation of position on a Second Committee resolution on the promotion of inclusive and effective international tax cooperation. The explanation is available at https://usun.usmission.gov/explanation-of-position-on-a-second-committee-resolution-on-promotion-of-inclusive-and-effective-international-tax-cooperation-at-the-united-nations/ and excerpted below.

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The United States regrets that it cannot join consensus on this resolution and wishes to explain the reasons for this decision before the vote.

The content of the resolution, and the process followed over the course of negotiations, have resulted in outcomes that are likely to duplicate and undermine existing intergovernmental negotiations on international tax cooperation. The resolution has failed to achieve the consensus necessary to strengthen international tax cooperation for the benefit of all countries.

The United States continues to strongly support the political commitment made by 141 jurisdictions to reform the international tax architecture and stabilize the international tax system using a two-pillar approach spearheaded by the Inclusive Framework. We also reaffirm our 2015 commitment to the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

Negotiations at the Inclusive Framework occur in a setting in which 145 jurisdictions provide input, and decisions are made by consensus. This approach affords every member a real voice in negotiations and decision-making, which allows for the development of solutions with broad consensus that have a better chance of standing the test of time.

While the Inclusive Framework's Two-Pillar Solution is focused specifically in the corporate income tax area, there is other important work in international tax cooperation that other organizations may be better suited to address. We believe that the UN has a key role to play in international tax cooperation. We began these negotiations with the hope of reaching consensus on a resolution that would permit the creation of an ad hoc intergovernmental working group that could leverage the strengths of the United Nations to develop taxation proposals that would not undermine the progress made in international tax cooperation in other fora. Multiple countries offered compromise proposals for consideration that we could have supported; however, all attempts to discuss those proposals or reach consensus were ignored. We appreciated and supported the UK's proposed amendments, and we regret that the final text will not reflect them.

Without broad consensus among countries, any process is unlikely to strengthen international tax cooperation or achieve meaningful results.

There are currently highly inclusive fora working to strengthen international cooperation on tax, including the Inclusive Framework. The UN has an opportunity to complement those efforts and further support the Sustainable Development Goals. Unfortunately, the process outlined in this resolution will undermine, rather than complement and strengthen, existing efforts to improve the international tax system through international tax cooperation.

For these reasons, the United States must vote against the resolution.

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9. Telecommunications

On December 15, 2023, the State Department issued a media note regarding U.S. participation in the World Radiocommunication Conference held in Dubai, United Arab Emirates from November 20, 2023 to December 15, 2023 ("WRC-23"). The media note is available at https://www.state.gov/u-s-department-of-state-leads-successful-u-s-delegation-to-world-radiocommunication-conference-in-dubai/ and excerpted below.

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Agreements reached during the four-week conference will help expand digital connectivity and drive technological innovation, unlock the space economy and promote the next generation of space science, protect U.S. national defense capabilities, and preserve maritime and aviation safety.

WRC-23 took decisions to expand international mobile telecommunication (IMT) identifications that pave the way for future 5G deployments, while also preserving opportunities for unlicensed technologies in the 6 GHz band. These decisions will help enable growth of both licensed and unlicensed connectivity solutions and foster an ecosystem of innovative applications and services that will drive economic growth for years to come. U.S. companies are leading developers of Wi-Fi technology and keeping the 6 GHz band open for unlicensed deployments without further studies will enable countries to take decisions promptly to make this spectrum available for next generation Wi-Fi deployment. WRC-23 also took steps to further harmonize spectrum available for 5G in the Americas in the 3.3-3.4 GHz and 3.6-3.8 GHz bands, creating 500 megahertz of contiguous mobile broadband spectrum across the entire region while providing the necessary interference protection to our federal agencies who also use some of this spectrum.

In addition, WRC-23 agreed on new spectrum allocations for geostationary (GSO) and non-geostationary satellite systems, including through inter-satellite links and updated regulatory procedures to support increased deployment of large non-GSO constellations driving connectivity in the most remote areas while ensuring protection for GSO satellite and terrestrial mobile systems relied upon by millions of people worldwide. Decisions reached related to space science will help address impacts and possible mitigation of the climate crisis through new allocations and regulatory provisions enabling earth exploration satellite services to explore polar ice caps and support greater understanding of space weather.

The conference also reached consensus on the agenda for the next WRC, which will be held in 2027. Studies over the next four years will cover a range of new technologies and services, including identifying new spectrum for 5G and future 6G communications, setting the stage for future communications on the Moon, reviewing regulations for aeronautical communications, and enabling additional growth of the satellite sector, including for communications direct to consumer mobile devices. The next conference also will consider actions to further promote scientific research into space weather and climate change mitigation.

World Radiocommunication Conferences are held every four years by the International Telecommunication Union to update the international Radio Regulations – a treaty-level instrument governing coordination and use of the radio frequency spectrum and satellite orbital resources. The U.S. delegation included nearly 200 participants with representatives from the Department of Commerce, the Department of Defense, the Federal Communications Commission, NASA, the Federal Aviation Administration, Department of Energy, National Science Foundation, Office of Science and Technology Policy, and U.S. telecommunications and technology sectors.

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Cross References

UN Third Committee on trade, **Ch. 6.A.3**
HRC on trade, **Ch. 6.A.4**
Business and human rights, **Ch. 6.H**
WTO Agreement on Fisheries Subsidies, **Ch. 13.B.1**
Southern Cross Seafoods, LLC v. United States of America, and National Marine Fisheries Service, **Ch. 13.B.8**
UNCITRAL, **Ch. 15.A**
Belarus sanctions, **Ch. 16.A.5**

CHAPTER 12

Territorial Regimes and Related Issues

A. LAW OF THE SEA AND RELATED BOUNDARY ISSUES

1. Freedom of Navigation, Overflight, and Maritime Claims

a. South China Sea

On February 13, 2023, the State Department issued a statement supporting the Philippines in the South China Sea, available at https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-3/ and follows.

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The United States stands with our Philippine allies in the face of the People's Republic of China (PRC) Coast Guard's reported use of laser devices against the crew of a Philippine Coast Guard ship on February 6 in the South China Sea. The PRC's conduct was provocative and unsafe, resulting in the temporary blindness of the crewmembers of the BRP Malapascua and interfering with the Philippines' lawful operations in and around Second Thomas Shoal. More broadly, the PRC's dangerous operational behavior directly threatens regional peace and stability, infringes upon freedom of navigation in the South China Sea as guaranteed under international law, and undermines the rules-based international order.

As reflected in an international tribunal's legally binding decision issued in July 2016, the People's Republic of China has no lawful maritime claims to Second Thomas Shoal. The United States reiterates, pursuant to the 1982 Law of the Sea Convention, the 2016 arbitral decision is final and legally binding on the PRC and the Philippines, and we call upon the PRC to abide by the ruling.

The United States stands with our Philippine allies in upholding the rules-based international maritime order and reaffirms an armed attack on Philippine armed forces, public vessels, or aircraft, including those of the Coast Guard in the South China Sea, would invoke

U.S. mutual defense commitments under Article IV of the 1951 U.S. Philippines Mutual Defense Treaty.

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The State Department released further press statements in support of the Philippines in the South China Sea on several occasions in 2023, including: April 29, 2023 (see https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-4/); August 5, 2023 (see https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-5/); October 22, 2023 (see https://www.state.gov/u-s-support-for-our-philippine-allies-in-the-face-of-repeated-prc-harassment-in-the-south-china-sea/); November 10, 2023 (see https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-6/); and December 10, 2023 (see https://www.state.gov/u-s-support-for-the-philippines-in-the-south-china-sea-7/).

On April 9, 2023, the USS Milius conducted a freedom of navigation operation in the South China Sea, near the Spratly Islands, challenging unlawful restrictions on innocent passage imposed by China, Vietnam, and Taiwan. See release available at https://www.cpf.navy.mil/Newsroom/News/Article/3358759/7th-fleet-destroyer-conducts-freedom-of-navigation-operation-in-south-china-sea/ and excerpted below.

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This freedom of navigation operation ("FONOP") upheld the rights, freedoms, and lawful uses of the sea. USS Milius demonstrated that Mischief Reef, a low-tide elevation in it its natural state, is not entitled to a territorial sea under international law.

The United States engaged in "normal operations" within 12 nautical miles of Mischief Reef. Under customary international law as reflected in the Law of the Sea Convention, features like Mischief Reef that are submerged at high tide in their naturally formed state are not entitled to a territorial sea. The land reclamation efforts, installations, and structures built on Mischief Reef do not change this characterization under international law. By engaging in normal operations within 12 nautical miles of Mischief Reef, the United States demonstrated that vessels can lawfully exercise high-seas freedoms in those areas.

Unlawful and sweeping maritime claims in the South China Sea pose a serious threat to the freedom of the seas, including the freedoms of navigation and overflight, free trade and unimpeded commerce, and freedom of economic opportunity for South China Sea littoral nations.

The United States challenges excessive maritime claims around the world regardless of the identity of the claimant. Customary international law of the sea as reflected in the 1982 Law of the Sea Convention provides for certain rights and freedoms and other lawful uses of the sea to all nations. The international community has an enduring role in preserving the freedom of the seas, which is critical to global security, stability, and prosperity.

The United States upholds freedom of navigation for all nations as a principle. As long as some countries continue to claim and assert limits on rights that exceed their authority under

international law, the United States will continue to defend the rights and freedoms of the sea guaranteed to all. No member of the international community should be intimidated or coerced into giving up their rights and freedoms.

U.S. forces operate in the South China Sea on a daily basis, as they have for more than a century. They routinely operate in close coordination with like-minded allies and partners who share our commitment to uphold a free and open international order that promotes security and prosperity. All of our operations are conducted safely, professionally, and in accordance with international law. These operations demonstrate that the United States will fly, sail, and operate wherever international law allows –regardless of the location of excessive maritime claims and regardless of current events.

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Additional freedom of navigation operations were conducted in the South China Sea on several other occasions in 2023, including, *inter alia*: March 24, 2023 (relating to the Paracel Islands, challenging unlawful straight baselines and innocent passage restrictions, see release, available at https://www.cpf.navy.mil/Newsroom/News/Article/3340874/7th-fleet-destroyer-conducts-freedom-of-navigation-operation-in-south-china-sea/); November 3, 2023 (relating to the Spratly Islands, challenging unlawful innocent passage restrictions, see release available at https://www.navy.mil/Press-Office/News-Stories/Article/3578783/us-navy-destroyer-conducts-freedom-of-navigation-operation-in-the-south-china-s/); and November 27, 2023 (relating to the Parcel Islands, challenging unlawful innocent passage restrictions, see release available at https://www.navy.mil/Press-Office/News-Stories/Article/3597907/us-navy-destroyer-conducts-freedom-of-navigation-operation-in-the-south-china-s/).

b. Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports

On April 18, 2023, President Biden continued for one year the national emergency and the emergency authority relating to the regulation of the anchorage and movement of Russian-affiliated vessels to United States ports. 88 Fed. Reg. 24,327 (Apr. 20, 2023). See *Digest 2022* at 543-45 for discussion of 2022 Proclamation 10371. The notice on continuation includes the following:

> The policies and actions of the Government of the Russian Federation to continue the premeditated, unjustified, unprovoked, and brutal war against Ukraine continue to constitute a national emergency by reason of a disturbance or threatened disturbance of international relations of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the Russian Federation and the emergency authority relating to the

regulation of the anchorage and movement of Russian-affiliated vessels to United States ports set out in Proclamation 10371.

c. Freedom of Navigation

On April 21, 2023, the Department of Defense ("DoD") released the annual freedom of navigation ("FON") report for fiscal year 2022. The press release is available at https://www.defense.gov/News/Releases/Release/Article/3370607/dod-releases-fiscal-year-2022-freedom-of-navigation-report/ and excerpted below. The report is available at https://policy.defense.gov/OUSDP-Offices/FON/.

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Today, the Department of Defense (DoD) released its annual Freedom of Navigation (FON) Report for Fiscal Year 2022. During the period from October 1, 2021, through September 30, 2022, U.S. forces operationally challenged 22 different excessive maritime claims made by 15 different claimants throughout the world.

Excessive maritime claims are inconsistent with international law as reflected in the Law of the Sea Convention. They include a variety of restrictions on the exercise of navigation and overflight rights and other freedoms. Unlawful maritime claims – or incoherent theories of maritime entitlements – pose a threat to the legal foundation of the rules-based international order. If left unchallenged, excessive maritime claims could limit the rights and freedoms enjoyed by every nation.

Upholding freedom of navigation as a principle supports unimpeded lawful commerce and the global mobility of U.S. forces. DoD's freedom of navigation operations (FONOPs) demonstrate that the United States will fly, sail, and operate wherever international law allows.

DoD's regular and routine operational challenges complements diplomatic engagements by the U.S. State Department and supports the longstanding U.S. national interest in freedom of the seas worldwide.

Each year, DoD releases an unclassified summarized FON Report identifying the broad range of excessive maritime claims that are challenged by U.S. forces. It also includes general geographic information to describe the location of FON assertions while still maintaining operational security of U.S. military forces. This report demonstrates U.S. non-acquiescence to excessive maritime claims —wherever they may be.

As long as restrictions on navigation and overflight rights and freedoms that exceed the authority provided under international law persist, the United States will continue to challenge such unlawful maritime claims.

The United States will uphold the rights, freedoms, and lawful uses of the sea for the benefit of all nations—and will stand with like-minded partners doing the same.

* * * *

2. Maritime Law Enforcement Agreements

On May 22, 2023, the United States and Papua New Guinea signed an agreement concerning "Counter Illicit Transnational Maritime Activity Operations." This law enforcement and "shiprider" agreement with Papua New Guinea entered into force on August 16, 2023, and is available at https://www.state.gov/papua_new_guinea-23-816.1. The State Department released a media note announcing the agreement, available at https://www.state.gov/the-united-states-and-papua-new-guinea-sign-new-defense-cooperation-agreement-and-an-agreement-concerning-counter-illicit-transnational-maritime-activity-operations/, and excerpted below.

* * * *

The new Agreement Concerning Counter Illicit Transnational Maritime Activity Operations addresses a range of maritime threats including illegal, unreported, and unregulated (IUU) fishing, drug trafficking, migrant smuggling, and illicit transport of weapons of mass destruction (WMD). This agreement adds to the 11 existing agreements within the Pacific Island region and strengthens maritime governance and enforcement globally.

This new Agreement will enable PNG to participate in the U.S. Coast Guard's Shiprider program, enhancing PNG's organic enforcement capabilities, improving overall maritime domain awareness, and helping PNG protect its sovereignty.

This agreement will provide an expedited mechanism for obtaining flag State consent to board and search vessels reasonably suspected of illicit trafficking, as well as promote robust cooperation and information sharing between the United States and PNG. The signing of this agreement demonstrates a commitment to work together to promote good maritime governance in the region.

Together, we can deliver a strong, united response to actors that continue to engage in predatory behavior, as well as those who disregard territorial integrity and responsible and respectful use of marine resources.

* * * *

On September 27, 2023, the United States and Ecuador signed an agreement concerning "Counter Illicit Transitional Maritime Activity Operations." The agreement is available at https://www.state.gov/ecuador-24-223.[*]

3. Maritime Drug Law Enforcement Act Litigation: *U.S. v. Dávila-Reyes and U.S. v. Reyes Valdiva*

On October 5, 2023, following the 2022 grant of the Government's petition for rehearing en banc, the U.S. Court of Appeals for the First Circuit, in a 5-3 opinion,

[*] Editor's note: The Agreement Concerning Counter Illicit Transnational Maritime Activity Operations with Ecuador entered into force February 23, 2024.

rejected defendants' challenges to their Maritime Drug Law Enforcement Act ("MDLEA") convictions and declined to reach their novel constitutional theory on which a divided panel previously held a portion of the statute, 46 U.S.C. § 70502(d)(1)(C), facially invalid. *United States v. Dávila-Reyes v. Reyes-Valdivia*¸ 84 F.4th 400 (2023). See also *Digest 2022* at 548-49. The dissent appended an opinion of more than 90 pages addressing the merits of the Felonies Clause issue and disagreeing with the majority's decision to not address the constitutional challenge. Excerpts of the majority opinion follow (footnotes omitted).

* * * *

III.

The defendants contend that their challenges take aim at the subject matter jurisdiction of the District Court because the challenges take aim at the basis for concluding that their vessel was "subject to the jurisdiction of the United States" for purposes of the MDLEA. This phrase appears in several sections of the MDLEA, although the defendants and the government focus chiefly on its use in § 70502(c)(1) and § 70504 of the MDLEA. The defendants' and the government's contentions are best understood, however, to be addressing the use of the phrase in § 70503(e)(1). That provision is the operative one, as it provides that a "vessel subject to the jurisdiction of the United States" is a "covered vessel" and so the type of vessel that a person must be "on board" to violate the MDLEA under § 70503(a).

We may assume that the defendants are right to contend that their various challenges on appeal implicate § 70503(e)(1), because we agree with the government that, even if the challenges do, the challenges do not implicate the subject matter jurisdiction of the District Court, because § 70503(e)(1) does not impose a limitation on a court's subject matter jurisdiction. Accordingly, we reject the defendants' Article III-based arguments as to both whether their guilty pleas waived their challenges and why the standard of review that applies to those challenges is de novo regardless of whether the challenges were raised below.

A.

The defendants acknowledge up front that, in United States v. González, 311 F.3d 440 (1st Cir. 2002), a panel of this court held that § 70503(e)(1) does not establish a limitation on a court's subject matter jurisdiction. But the defendants contend that González was wrong to so hold -- as some other circuits have also concluded, see United States v. Miranda, 780 F.3d 1185, 1191-97 (D.C. Cir. 2015); United States v. Tinoco, 304 F.3d 1088, 1106 (11th Cir. 2002); United States v. Bustos-Useche, 273 F.3d 622, 626 (5th Cir. 2001) -- and that we should overrule that precedent.

The Second Circuit has comprehensively reviewed the relevant post-González precedent, however, and sided with González. See United States v. Prado, 933 F.3d 121, 132-51 (2nd Cir. 2019). We conclude that the Second Circuit's reasoning is persuasive.

1.

Congress vested "courts of the United States" (emphasis added) with "original jurisdiction ... of all offenses against the laws of the United States" in 18 U.S.C. § 3231. Thus, the defendants need to show that § 70503(e)(1) of the MDLEA, by referring to the "jurisdiction of the United States" (emphasis added), limits the otherwise operative grant of subject matter

jurisdiction to federal courts over federal criminal prosecutions that 18 U.S.C. § 3231 sets forth. See Prado, 933 F.3d at 134-35.

The Supreme Court has explained in a case that post-dates González that "[i]f the Legislature clearly states that a threshold limitation on a statute's scope shall count as jurisdictional," then the limitation concerns the Article III subject matter jurisdiction of the courts. Arbaugh v. Y&H Corp., 546 U.S. 500, 515, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006). But the Court went on to say in that case that "when Congress does not rank a statutory limitation on coverage as jurisdictional," the limitation does not concern the Article III subject matter jurisdiction of the courts. Id. at 516, 126 S.Ct. 1235.

Here, of course, the provision in question does use the word "jurisdiction." But, as Prado emphasized, 933 F.3d at 132, and González itself noted, "[t]he term 'jurisdiction' is notoriously malleable and is used in a variety of contexts ... that have nothing whatever to do with the court's subject matter jurisdiction," 311 F.3d at 443 (emphasis removed). We therefore find it telling that, as Arbaugh acknowledges, Congress knows how to write statutes that provide for or limit the subject matter jurisdiction of courts by expressly referring to cases or controversies heard by the courts themselves. See, e.g., 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."); 7 U.S.C. § 2707(e)(3) ("[T]he several district courts of the United States are hereby vested with jurisdiction to entertain such suits [that pertain to orders of the Egg Board] regardless of the amount in controversy."); 16 U.S.C. § 814 ("United States district courts shall only have jurisdiction of cases [concerning suits regarding the use of eminent domain to obtain land to construct a dam or certain public waterways] when the amount claimed by the owner of the property to be condemned exceeds $3,000.").

This past legislative practice is telling because the provision at issue here does not refer to courts having "jurisdiction" over "actions," "suits," or their equivalent. It refers only to a "vessel" being "subject to ... jurisdiction" and to "the United States" -- rather than a court -- having "jurisdiction" over the vessel. Thus, § 70503(e)(1) does not by using the term "jurisdiction" impose a limitation on the Article III subject matter jurisdiction of courts. It instead defines the scope of the regulatory jurisdiction that Congress is asserting through the MDLEA.

Section 70503(b) supports the same understanding. That section, titled "Extension beyond territorial jurisdiction," (emphasis added), clarifies that the substantive prohibition that is set forth in § 70503(a) -- the provision that invokes the phrase "covered vessel" -- "applies even though the act is committed outside the territorial jurisdiction of the United States" (emphasis added). Because the phrase "jurisdiction of the United States" in § 70503(b) clearly is not referring to the jurisdiction of a court, we see no reason to read that same phrase in § 70503(e)(1) to be doing so. See Prado, 933 F.3d at 142-44.

Other sections of Title 46 of the United States Code, we note, also use the phrase "jurisdiction of the United States" in contexts that make clear that those sections are not referring to the power of courts to adjudicate disputes. See Prado, 933 F.3d at 143 n.12 (collecting statutes). By contrast, § 70505 of the MDLEA states that "[a] failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter." Given that § 70503(e)(1) refers only to the "jurisdiction of the United States" over a "vessel," we see no basis for reading it as if it, like § 70505, were referring to the "jurisdiction" of a "court" over a "proceeding."

In sum, the MDLEA's statutory text provides no support for the conclusion that Congress intended the phrase "subject to the jurisdiction of the United States" in § 70503(e)(1) to impose a limitation on the subject matter jurisdiction of courts. Nor do we see any basis for concluding that Congress's use of the phrase constitutes the kind of clear statement required by Arbaugh to impose such a limitation. Accordingly, we see no basis for breaking with our ruling in González.

* * * *

1.

The indictment-focused variant depends on the following chain of logic. The Felonies Clause does not give Congress the power to criminalize drug trafficking by persons on a vessel on the high seas if the United States would not have regulatory jurisdiction over those persons under international law. Because international law does not permit the United States to exercise regulatory jurisdiction over foreign nationals engaged in drug trafficking on the high seas while aboard foreign vessels, the United States could criminalize the defendants' charged conduct under the Felonies Clause only if the defendants were aboard a vessel on the high seas that was stateless under international law. A vessel may not be deemed stateless under international law, however, simply because the nation to which the vessel's master has claimed that it belongs fails to "affirmatively and unequivocally assert," § 70502(d)(1)(C), that the vessel is registered with that nation. Yet, the indictment charged that the vessel that the defendants were aboard was "without nationality" under § 70502(c)(1)(A) solely based on the operation of § 70502(d)(1)(C). Thus, the indictment necessarily charged the defendants with violating the MDLEA on a basis that is not constitutional, given that § 70502(d)(1)(C) provides that "a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality" is a vessel that is "without nationality" for the purposes of the MDLEA.

Because the defendants advanced this exact claim in their motion to dismiss the indictment, it is preserved, such that our review of the challenge is de novo. See United States v. Savarese, 686 F.3d 1, 6 (1st. Cir 2012). But the government contends that the challenge nonetheless fails, and we agree. The reason is simple: The indictment cannot be read, even on de novo review, to rely exclusively on § 70502(d)(1)(C) in charging the defendants with having been aboard a "vessel without nationality" under § 70502(c)(1)(A). Thus, the challenge rests on a faulty premise about the basis for the indictment's charge that the defendants were on a vessel that was "without nationality."

The indictment states with respect to whether the defendants were aboard a "vessel subject to the jurisdiction of the United States" only that they were aboard a vessel "as defined in Title 46, United States Code, Section 70502(c)(1)(A)." The indictment thus makes no reference to § 70502(d)(1)(C), let alone solely to that provision. Nor does the indictment refer to any other provision of the MDLEA that bears on the question of whether the vessel was "subject to the jurisdiction of the United States" because it was "without nationality."

In addition, the indictment alleges no facts that could be understood to limit to § 70502(d)(1)(C) the permissible bases for finding the vessel in question to be "without nationality" under § 70502(c)(1)(A). For example, the indictment makes no reference to any facts that implicate § 70502(d)(1)(C), such as to the master of the vessel having made a "claim of registry" (or even a "claim of nationality") or the United States having attempted unsuccessfully to confirm the vessel's registration with another country.

Moreover, the defendants do not dispute that a vessel may be shown to be a "vessel without nationality" under § 70502(c)(1)(A) -- the one "jurisdictional" provision of the MDLEA that the indictment does mention -- through means other than the application of § 70502(d)(1)(C). Nor do we see how the defendants could do so.

As a panel of this court explained in Matos-Luchi, the use of the word "includes" in § 70502(d)(1) makes clear that "the listed examples" set forth in that section "do not exhaust the scope of [§] 70502(d)" in defining a "vessel without nationality." 627 F.3d at 4. Moreover, Matos-Luchi explained that a vessel may be determined to be "without nationality" under § 70502(c)(1)(A) through a means other than application of any of the subsection of § 70502(d)(1) -- namely, when a vessel is not "entitled to fly[ ] the flag of a State." 627 F.3d at 6 (quoting Molvan v. Att'y-Gen. for Palestine, [1948] A.C. 351 (P.C.) 369-70) (cleaned up). And Matos-Luchi also described that standard as a proper one for determining whether a vessel is stateless for purposes of international law. See id.; see also United States v. Rosero, 42 F.3d 166, 171 (3d Cir. 1994) ("Under international law, 'ships have the nationality of the State whose flag they are entitled to fly.' " (quoting Convention on the High Seas of 1958 art. 5(1), Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 11) (cleaned up)).

Because the defendants do not contend that Matos-Luchi was wrong on any of these counts, they fail to explain why the indictment on its face would not permit the government to show that the defendants' vessel was not authorized to fly the flag of any state and so was "without nationality" under § 70502(c)(1)(A) -- and stateless under international law -- for reasons independent of the vessel being the kind of vessel that § 70502(d)(1)(C) describes. See United States v. Stepanets, 879 F.3d 367, 372 (1st Cir. 2018) ("[T]he government need not recite all of its evidence in the indictment." (quoting United States v. Innamorati, 996 F.2d 456, 477 (1st Cir. 1993))). Thus, we conclude that, even on de novo review, the first variant of the defendants' Felonies Clause-based challenge fails.

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4. The Outer Limits of the U.S. Extended Continental Shelf

On December 19, 2023, the United States released the geographic coordinates defining the outer limits of the U.S. extended continental shelf ("ECS"), in seven ocean regions: the Arctic, Atlantic, Bering Sea, Pacific, Mariana Islands, and two areas in the Gulf of Mexico. The ECS refers to the portion of the continental shelf beyond 200 nautical miles from the coast. The U.S. ECS limits were also published in the Federal Register. See 88 Fed. Reg. 88,470 (Dec. 21, 2023). Information related to the U.S. ECS announcement, including an Executive Summary, is available at https://www.state.gov/continental-shelf/. The State Department's December 19, 2023 media note announcing the outer limits of the U.S. ECS is available at https://www.state.gov/announcement-of-u-s-extended-continental-shelf-outer-limits/, and excerpted below.

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Today, the Department released the geographic coordinates defining the outer limits of the U.S. continental shelf in areas beyond 200 nautical miles from the coast, known as the extended continental shelf (ECS). The continental shelf is the extension of a country's land territory under the sea. Like other countries, the United States has rights under international law to conserve and manage the resources and vital habitats on and under its ECS.

The U.S. ECS area is approximately one million square kilometers spread across seven regions. This maritime zone holds many resources (e.g., corals, crabs) and vital habitats for marine life. The Department of State led the ECS effort through the U.S. ECS Task Force, an interagency body of the U.S. Government composed of 14 agencies.

Determining the ECS outer limits requires data on the depth, shape, and geophysical characteristics of the seabed and subsoil. The National Oceanic and Atmospheric Administration (NOAA) and U.S. Geological Survey (USGS) were responsible for collecting and analyzing the necessary data. Data collection began in 2003 and constitutes the largest offshore mapping effort ever conducted by the United States.

The United States has determined its ECS limits in accordance with customary international law, as reflected in the relevant provisions of the 1982 United Nations Convention on the Law of the Sea, and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf.

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On December 19, 2023, the State Department published a fact sheet, available at https://www.state.gov/announcement-of-u-s-extended-continental-shelf-outer-limits-2/ and excerpted below.

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What is the ECS? The continental shelf is the extension of a country's land territory under the sea. The continental shelf holds many resources (e.g., corals, crabs) and vital habitats for marine life. The portion of the continental shelf beyond 200 nautical miles from the coast is known as the "extended continental shelf," or ECS. The ECS includes the seabed and subsoil, but not the water column.

Where is the U.S. ECS? The United States has ECS in seven regions: the Arctic, Atlantic (east coast), Bering Sea, Pacific (west coast), Mariana Islands, and two areas in the Gulf of Mexico. The U.S. ECS area is approximately one million square kilometers – an area about twice the size of California. The geographic coordinates and maps of the seven U.S. ECS regions are available in the Executive Summary posted on the **U.S. ECS website at state.gov/shelf**.

Why determine the ECS limits? The United States, like other countries, has an inherent interest in knowing, and declaring to others, the extent of its ECS and thus where it is entitled to exercise sovereign rights. Defining our ECS outer limits in geographical terms provides the specificity and certainty necessary to allow the United States to conserve and manage the resources of the ECS.

What are U.S. rights in the ECS? Like other countries, the United States has exclusive rights to conserve and manage the living and non-living resources of its ECS.The United States also

has jurisdiction over marine scientific research relating to the ECS, as well as other authorities provided for under customary international law, as reflected in the 1982 UN Convention on the Law of the Sea.

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How are ECS limits determined? The continental shelf is defined in the 1982 UN Convention on the Law of the Sea, and the ECS outer limits are determined using the complex rules found in Article 76. Applying these rules requires knowledge of the geophysical and geological characteristics of the seabed and subsoil.

What information is needed to determine ECS outer limits? Two primary datasets are needed to determine the outer limits of the ECS. The first is bathymetric data, which provide a three-dimensional map of the surface of the seafloor. The second is seismic data, which provide information on the depth, thickness, and other characteristics of the sediments beneath the seafloor. Geological samples and other geophysical techniques, where available, are used to augment these primary data types. U.S. data collection began in 2003 and constitutes the largest offshore mapping effort ever conducted by the United States.

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Is the United States extending its exclusive economic zone (EEZ)? No. The ECS is not an extension of the EEZ. The continental shelf includes only the seabed and subsoil, whereas the EEZ also includes the water column. In addition, while the maximum extent of the EEZ is 200 nautical miles from the coast, the continental shelf may extend beyond 200 nautical miles. Some of the rights that a country has in its EEZ, especially sovereign rights over water column resources (such as fish), do not apply to the ECS.

Does the U.S. ECS overlap with the ECS areas of any neighboring countries? Yes. The U.S. ECS partially overlaps with ECS areas of Canada, The Bahamas, and Japan. In these areas, the United States and its neighbors will need to establish maritime boundaries in the future. In other areas, the United States has already established ECS boundaries with its neighbors, including with Cuba, Mexico, and Russia.

Does the Administration still support joining the Law of the Sea Convention? Yes. Like past Administrations, both Republican and Democratic, this Administration supports the United States joining the 1982 UN Convention on the Law of the Sea. The announcement of the U.S. ECS limits in no way changes the Administration's position toward the Convention.

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B. OUTER SPACE

1. Cooperation Agreements

On January 13, 2023, the United States and Japan signed the Framework Agreement for Cooperation in the Exploration and Use of Outer Space, including the Moon and Other

Celestial Bodies, for Peaceful Purposes. The Framework Agreement entered into force on June 19, 2023, and is available at https://www.state.gov/japan-23-619. Remarks delivered at the signing of the framework agreement are available at https://www.state.gov/remarks-at-the-u-s-japan-space-cooperation-framework-agreement-signing-ceremony/, and excerpted below.

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SECRETARY BLINKEN: …Our bilateral partnership is among the strongest in the world – in part because we're always adapting it to meet the evolving challenges of our time. And that's the case on everything from advancing security and stability in the Indo-Pacific, to bolstering our economic and energy security, to defending the rights at the core of the United Nations Charter.

We're also expanding the horizons of our partnership in a very literal way: through space cooperation. And here I also want to thank Vice President Harris for her leadership as chair of the National Space Council.

For decades now, Japan and the United States have worked together to extend humanity's reach in space. We've long collaborated to support the International Space Station. We were two of the first signatories of the Artemis Accord that the prime minister referred to. We're partners in the Artemis Program, which will return astronauts to the lunar surface – including the first woman and the first person of color. We just signed a new arrangement to support the Lunar Gateway, which will prepare for future missions to Mars.

The Framework Agreement that we're about to sign will take our cooperation to new heights. It'll strengthen our partnership in areas like research on space technology and transportation, robotic lunar surface missions, climate-related missions, and our shared ambition to see a Japanese astronaut on the lunar surface.

In the last century, the space race electrified the world – seizing the imaginations of millions of people, awed by the men and women who dared to go into the unknown. It inspired generations of scientists, researchers, innovators, dreamers. And it paved the way for countless technological advances – in computers, satellites, GPS, camera lenses, medical equipment, and so much more. And these advances have improved the daily lives of people across the planet.

Now, we're entering a new chapter of space exploration. And our ambitions are no less soaring than in President Kennedy's time, when he declared his commitment to "landing a man on the Moon and returning him safely to Earth" within the decade. And our achievements, I believe, will be no less impressive, or important, for the benefit of humankind.

But even more than in the past, we will reach new frontiers through an approach that is fundamentally collaborative.

We've seen what international space collaboration can achieve. Just in the last two years, it put a rover on Mars and launched the most powerful space telescope ever, the James Webb Space Telescope. Just this week, that telescope confirmed the existence of an exoplanet for the first time – an Earth-sized planet located 41 light-years away from us. With Japan, our countries will soon make similar incredible discoveries, as we prepare to send a probe to Mars's moons, explore the South pole of our Moon, and more.

Agreements like the one that we're signing today help create and strengthen the partnerships that are at the heart of this extraordinary progress. We need to harness the world's collective vision and all of our strengths to reach these new horizons.

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See also January 13, 2023 Secretary Blinken's press statement, available at https://www.state.gov/the-united-states-and-japan-sign-framework-agreement-on-space-cooperation/, and follows.

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Today I joined Japanese Prime Minister Kishida Fumio, Foreign Minister Hayashi Yoshimasa, NASA Administrator Bill Nelson, Ambassador Rahm Emanuel, and other dignitaries to sign an agreement more than 10 years in the making. The Framework Agreement for Cooperation in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, for Peaceful Purposes builds on many years of peaceful and fruitful cooperation in space – and represents our shared vision for furthering scientific progress and human space exploration.

U.S.-Japan cooperation and friendship here on Earth have led to significant accomplishments in outer space. Japan and the United States were two of the initial eight signatories of the Artemis Accords, demonstrating our countries' foundational commitment to responsible, sustainable, and peaceful outer space exploration for the benefit of all humankind. Together, we have advanced the frontiers of human endeavor and scientific knowledge through our partnership – from the creation of the International Space Station to development of the lunar Gateway, a research outpost that will orbit the Moon and be used to prepare for future missions to Mars.

This Framework Agreement will intensify and strengthen our bilateral cooperation in space. Our nations plan to collaborate on space science, including lunar science; Earth science; space operations and exploration, including lunar operations and exploration; aeronautical science and technology; space technology; space transportation; safety and mission assurance; and other related opportunities. Our nations plan to hold a Comprehensive Dialogue on Space in March 2023 to build on this agreement and strengthen cooperation across all sectors of our space cooperation.

The future of space will be built on collaboration. Through this agreement, we will go farther and learn even more together.

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On April 11, 2023, the United States and Japan agreed to cooperation for the Martian Moons eXploration Mission through an exchange of notes at Tokyo. The agreement entered into force April 11, 2023. The agreement is available at https://www.state.gov/japan-23-411.

Through an exchange of notes at Buenos Aires on July 24 and July 26, 2023, the United States and Argentina extended the Framework Agreement on Cooperation in the

Peaceful Uses of Outer Space. The agreement entered into force July 31, 2023, available at https://www.state.gov/argentina-23-731, and extends the agreement of October 25, 2011.

On November 28, 2023, the United States and Saudi Arabia released a joint statement on the occasion of their intent to commence negotiations on a Framework Agreement for space cooperation. The joint statement is available as a State Department media note, available at https://www.state.gov/joint-statement-from-the-united-states-of-america-and-the-kingdom-of-saudi-arabia-on-intent-to-cooperate-in-the-exploration-and-use-of-outer-space-for-peaceful-purposes/, and includes the following:

> The United States and the Kingdom of Saudi Arabia intend to hold technical discussions on potential cooperative activities in aeronautics, Earth and space science, space operations, and the exploration and use of outer space for peaceful purposes. Our countries confirm their mutual desire to enhance cooperation involving commercial and regulatory development, responsible behavior in outer space, and space security. This effort could promote opportunities for collaboration between our respective commercial space industries.

2. Norms of Responsible Behavior in Outer Space

On January 30, 2023, Ambassador Bruce Turner, the U.S. Permanent Representative to the Conference on Disarmament in Geneva, delivered the U.S. statement to the UN Open-Ended Working Group on Reducing Space Threats. The statement is available at https://geneva.usmission.gov/2023/01/30/us-statement-to-the-open-ended-working-group-on-reducing-space-threats/, and includes the following.

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The United States has long advocated for norms, rules, and principles of responsible state behavior in outer space and looks forward to continuing to work with all of you on this important issue. The United States appreciates the significant engagement that has occurred during the first two meetings of this OEWG and we will continue our efforts to reach a successful outcome for this process.

Mr. Chair, as this group meets to discuss developing norms related to national security behaviors, we must take a moment to reflect on the revolutionary, world changing events that are occurring almost daily in outer space. One delegation may be able to hinder us from discussing these developments here or today, but it cannot prevent the developments themselves. From weather forecasting, to navigating, to communicating, space has become an essential tool driving prosperity and security for all States.

To preserve these global benefits and reduce the risks to the outer space environment from anti-satellite weapons, and to reduce the risks of miscalculation and misinterpretation leading to conflict, the OEWG must take steps to address these risks and threats.

In October, at the UNGA First Committee, the body tasked with dealing with threats to peace, Russia very clearly and repeatedly stated that satellites providing support to Ukraine in response to Russia's illegal invasion, "may be a legitimate target for a retaliatory strike." I would urge colleagues to think about that statement, especially in light of Russia's recently demonstrated capability to destroy satellites in outer space using ground-launched, direct-ascent anti-satellite missiles.

I would encourage you also to think about Russia's choice to make use of this capability in conjunction with its statements in the First Committee regarding retaliatory strikes when you hear another country state that, "irresponsible polices, doctrines, and strategies of one superpower" – by which we presume China means the United States – "is the greatest threat to outer space security, and the root cause of the increasing risks of the weaponization of and an arms race in outer space."

In the current environment of tension and mistrust, it is important that we take tangible and concrete steps to address the risks of misunderstanding leading to conflict or a degradation of the outer space environment. That is why the United States believes the most critical issue to address is not doctrines or strategies or unworkable and unverifiable legal treaties, but addressing those behaviors that could lead to miscalculation and misunderstandings.

We hope to use the discussions over the course of this week to offer some real-world examples of recent satellite interactions in orbit, as a means to create shared understandings about the threats and the potential misperceptions that can result from these interactions. Our hope is that we can use those events as examples of why we need to develop guidelines of responsible behavior that enhance trust.

Ultimately, this is an issue that affects all countries, not just the so-called "major powers." All countries use outer space – whether they launch their own satellites, field their own satellites, or benefit directly from satellites. We must take steps to reduce the risk to all of us, by using this process to develop norms of behavior that can strengthen peace and stability.

Mr. Chair, in the U.S. working paper that was submitted to the OEWG last week, we put forward seven proposals for norms, rules, and principles of responsible State behavior. These are:

1. States should promote compliance with international law and adherence to voluntary guidelines and standards applicable to space activities;
2. States should share information publicly and with other States about national space policies, strategies, doctrine, and major activities;
3. States should operate in, from, to, and through space in a safe and professional manner;
4. States should limit the creation of new space debris;
5. States should avoid the creation of harmful interference;
6. States should maintain safe separation and safe trajectory; and
7. States should communicate and make notifications to enhance the safety and stability of outer space activities and to resolve concerns about international peace and security that arise from the conduct of outer space activities.

My delegation looks forward to providing more insight on our proposal in the course of this week's meeting and working with colleagues here to discuss these ideas.

Mr. Chair, in keeping with today's topic, I would like to discuss our first proposal, which calls upon States to promote compliance with international law and adherence to voluntary guidelines and standards applicable to space activities.

International law, including the law of armed conflict, applies to activities in outer space. Compliance with international law and consistent adherence to a State's voluntary commitments are the foundation of the rules-based international order and peaceful relations between States. We encourage all States to promote compliance with existing international law applicable to outer space activities, including the four core outer space treaties, the Charter of the United Nations, and other international law, including the law of armed conflict.

As we have heard from the previous sessions, the Outer Space Treaty serves a constitutional role in the international legal framework for outer space. It has enabled the exploration and use of space by an increasingly diverse range of actors, serving a growing set of vital needs on Earth. The Treaty incorporates the basic principles that address the legal character of the space domain, which were originally addressed by the entire international community of States in the UNGA's 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. These basic principles were further elaborated in the three other core space treaties: the Rescue and Return Agreement; the Liability Convention; and the Registration Convention.

The Outer Space Treaty lays out essential rules for, and restraints on, States Parties' exploration and use of outer space, including with respect to national security. States Parties must conduct their activities with due regard to the interests of other States Parties, as well as undertake international consultations before proceeding with an activity that it has reason to believe would cause potentially harmful interference with the activities of others in the peaceful exploration and use of outer space. Of particular relevance to our work, the Moon and other celestial bodies can only be used exclusively for peaceful purposes, and States Parties are prohibited from placing nuclear or other weapons of mass destruction in orbit around the Earth, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner.

As activities in outer space continue to expand both in numbers and complexity, it is in our collective long-term interest to promote compliance with the four core space treaties – especially since membership in the four core space treaties is not universal. There are 193 UN member states, but only 112 state parties to the Outer Space Treaty. 98 States are party to both the Rescue and Return Agreement and the Liability Convention. Only 72 states are party to the Registration Convention.

Take our Iranian colleagues, for example, who have been very vocal in calling for additionally legally-binding arms control measures. They have signed but not ratified the Outer Space Treaty and the Registration Conventions. At the same time, Iran's Islamic Revolutionary Guards Corps has announced that it has successfully put several "military" satellites in orbit. However, it appears that none of these military satellites has been registered. We would welcome our Iranian colleagues' thoughts on these military satellites and whether Iran intends to register them with the United Nations. This is not the way to enhance trust and reduce the perceptions of threat.

As we shift to the other topics this week, we can further develop how norms, rules, and principles of responsible behavior can promote common understandings regarding activities undertaken in outer space when operating in accordance with existing international law.

There have been discussions at the OEWG on elaborating what terms like "due regard" or "harmful interference" mean. There have been several working papers, including one by the Philippines, that have referenced these issues. We do not believe it would be advisable to re-open any of the four core space treaties, or that this is the correct forum to engage in a definitional

exercise. Instead, we believe that this OEWG, through its focus on identifying responsible behaviors, can articulate voluntary, non-legally binding measures that address how to operate safely in outer space in accordance with existing international law and examine ideas to further determine if there are shared understandings between nations which could serve as an impetus for future work. Our proposals on safe separation and safe trajectory, or on limiting the creation of new space debris, are examples that could be considered by the OEWG.

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3. Artemis Accords

As discussed in *Digest 2022* at 549-50, *Digest 2021* at 523-24, and *Digest 2020* at 492-94,, several countries have signed the Artemis Accords, which establish a practical set of non-legally binding principles grounded in the Outer Space Treaty of 1967 to guide space exploration cooperation among signatory nations. Further information about the Artemis Accords is available at https://www.nasa.gov/artemis-accords/. On May 3, 2023, the State Department issued a fact sheet on the Artemis Accords, available at https://www.state.gov/artemis-accords-foster-peaceful-civil-space-cooperation/, and excerpted below.

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As of May 3, 2023, signatories include Australia, Bahrain, Brazil, Canada, Colombia, the Czech Republic, France, Israel, Italy, Japan, Luxembourg, Mexico, New Zealand, Nigeria, Poland, the Republic of Korea, Romania, Rwanda, Saudi Arabia, Singapore, Ukraine, the United Arab Emirates, the United Kingdom, and the United States. By signing the Artemis Accords, these nations affirm their commitment to key principles, grounded in the Outer-Space Treaty of 1967, including: use of space for peaceful purposes, transparency, interoperability, emergency assistance, registration of space objects, release of scientific data, protection of space heritage, safe and sustainable use of space resources, deconfliction of activities, and mitigation of orbital debris, including disposal of spacecraft.

Artemis Accords signatories intend to facilitate further peaceful collaboration in space, including through NASA's Artemis program, which seeks to put the first woman and first person of color on the Moon and build the foundation for human missions to Mars. The Artemis program is expected to become the broadest and most diverse international human space exploration coalition in history.

The Artemis Accords play a significant role in our civil space cooperation and diplomacy efforts, and cooperation between Accords signatories is not limited to the Artemis program. Collaboration between signatories ranges from space and Earth science to aeronautics research.

The United States will continue encouraging more nations to sign the Artemis Accords, and in doing so, build a more peaceful, cooperative space future.

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On May 3, 2023, the State Department announced in a media note, available at https://www.state.gov/the-czech-republic-signs-the-artemis-accords/, that Czech Republic signed the Artemis Accords. The Czech Republic became the 24th nation to sign.

On May 30, 2023, the State Department announced in a media note, available at https://www.state.gov/kingdom-of-spain-signs-the-artemis-accords/, that the Kingdom of Spain signed the Artemis Accords.

On June 22, 2023, the State Department announced in a media note, available at https://www.state.gov/the-republic-of-ecuador-signs-the-artemis-accords/, that Ecuador signed the Artemis Accords.

On June 24, 2023, the State Department announced in a media note, available at https://www.state.gov/the-republic-of-india-signs-the-artemis-accords/, that India had signed the Artemis Accords.

On July 27, 2023, the State Department announced in a media note, available at https://www.state.gov/argentina-signs-the-artemis-accords/, that Argentina signed the Artemis Accords. The media note includes the following:

> The United States and Argentina have a long history of cooperating in space, including in space geodetic research; satellite-based Earth observations; and in bilateral trade and investment in space-related goods and services. Through the Artemis Accords, our nations share a common understanding and approach to safe and sustainable exploration and use of outer space.

On September 15, 2023, the State Department announced in a media note, available at https://www.state.gov/united-states-welcomes-germanys-signing-of-the-artemis-accords/, that Germany signed the Artemis Accords. The media note includes the following:

> The United States and Germany have a strong partnership in civil space, including in aeronautics research, science, and exploration. Through the Artemis Accords, our nations share a common understanding and approach to safe and sustainable exploration and use of outer space.

On November 7, 2023, the State Department announced in a media note, available at https://www.state.gov/united-states-welcomes-the-kingdom-of-the-netherlands-to-the-artemis-accords/, that the Kingdom of the Netherlands signed the Artemis Accords.

On November 9, 2023, the State Department announced in a media note, available at https://www.state.gov/united-states-welcomes-the-republic-of-bulgaria-to-the-artemis-accords/, that Bulgaria signed the Artemis Accords. The media note includes the following:

> This year, the United States and the Republic of Bulgaria celebrate 120 years of diplomatic relations. With this signing, the Republic of Bulgaria looks to the next 120 years and demonstrates its commitment, alongside the other Artemis

> Accords signatories, to safe and sustainable international cooperation in outer space.

On December 4, 2023, the State Department announced in a media note, available at https://www.state.gov/united-states-welcomes-the-republic-of-angolas-signature-of-the-artemis-accords/, that Angola signed the Artemis Accords. Angola became the 33rd country worldwide and the third African country to sign the Artemis Accords. The media note includes the following:

> The United States looks forward to building on Angola's Artemis Accords commitment and engaging on bilateral space cooperation, including working together to mitigate the effects of climate change and boosting food and water security.

4. Strategic Framework for Space Diplomacy

On May 20, 2023, the State Department released the first-ever Strategic Framework for Space Diplomacy. The framework explains U.S. plans to expand international cooperation through the Artemis Accords and commitments to encourage responsible behavior in outer space. The framework is available at https://www.state.gov/wp-content/uploads/2023/05/Space-Framework-Clean-2-May-2023-Final-Updated-Accessible-5.25.2023.pdf. Included in the framework is the following regarding international law.

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Our Obligations

Four widely subscribed international treaties, developed in the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) in the 1960s and early 1970s, underpin international space law. The foundational Outer Space Treaty (1967) affirms, among other things, that international law, including the Charter of the United Nations, applies to activities in outer space and that States Parties bear international responsibility for their national activities in space, including those of nongovernmental entities. In addition to meeting these treaty obligations, our work must remain consistent with other international commitments and with U.S. laws, regulations, and policies. Within the U.S. government, State has the lead on treaty interpretation and facilitates and reviews all binding bilateral and multilateral government and agency-to-agency international cooperation agreements. The Department also represents USG positions at multilateral negotiations on space governance and policy, including in discussions regarding international law and legally nonbinding norms, guidelines, and best practices, as well as current and emerging space issues. We will not cede U.S. leadership in these diplomatic fora to other space faring nations that do not share our values and our commitment to an international rules-based order for space, space sustainability, and space for all.

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See also Secretary Blinken's press statement on the framework, which is available at https://www.state.gov/united-states-leads-in-space-with-diplomacy/ and included below.

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Today the Department of State is releasing our first-ever **Strategic Framework for Space Diplomacy,** a groundbreaking initiative to advance U.S. global space leadership. Through this Framework, we will expand international cooperation on mutually beneficial space activities, including through the **Artemis Accords**, and commitments against destructive anti-satellite missile tests. We will encourage responsible behavior, strengthen understanding and support for U.S. national space policies, and promote international use of U.S. space capabilities.

The Department currently leads in building international partnerships for current U.S. space undertakings – including the James Webb Space Telescope, NASA's Artemis missions, and the Department of Commerce's Space Traffic Coordination System. The Strategic Framework provides a critical foundation for our work, grounded in U.S. strategic objectives and values. We are committed to expanding space benefits for all humankind by engaging allies and partners who share our democratic values of openness, transparency, adaptability, and the free flow of ideas and information.

As near-earth space gets more crowded, the Framework will help maintain the rules-based international order and foster cooperation for long-term sustainability, commercialization, exploration, and space utilization. We will work with our interagency partners to ensure U.S. leadership in this new collaborative space era.

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5. U.S. National Space Council

On December 20, 2023, Vice President Harris convened the third meeting of the National Space Council ("NSpC") in Washington, D.C. Remarks by Vice President Harris at the meeting are available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/12/20/remarks-by-vice-president-harris-at-a-meeting-of-the-u-s-national-space-council/. Also on December 20, 2023, the White House issued a fact sheet entitled "Strengthening U.S. International Space Partnerships." The fact sheet is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/20/fact-sheet-strengthening-u-s-international-space-partnerships/.

Vice President Harris announced the United States Novel Space Activities Authorization and Supervision Framework at the NSpC meeting. The framework, a new policy that accompanies a corresponding legislative proposal transmitted to Congress in December 2023, is available at https://www.whitehouse.gov/wp-content/uploads/2023/12/Novel-Space-Activities-Framework-2023.pdf. The NSpC's legislative proposal, "Authorization and Supervision of Novel Private Sector Space

Activities Act" is available at https://www.whitehouse.gov/wp-content/uploads/2023/11/Authorization-and-Supervision-of-Novel-Private-Sector-Space-Activities_Legislative-Text_final.pdf. On December 20, 2023, the White House published Fact Sheet: U.S. Novel Space Activities Authorization and Supervision Framework, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/20/fact-sheet-u-s-novel-space-activities-authorization-and-supervision-framework/.

Secretary Blinken delivered remarks at the NSpC meeting on December 20, 2023. The remarks included an update on the United States commitment not to conduct destructive direct-ascent anti-satellite missile tests in space. The remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-a-u-s-national-space-council-meeting/, and include the following.

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Today what I'd like to do is just briefly update the council on three lines of effort that the State Department is leading to advance international partnerships on space priorities. And the Vice President has touched on a number of these, but let me just foot stomp a few of the points that she made.

First, with our colleagues at NASA, we've grown the coalition of countries under the Artemis Accords, a set of practical principles to guide safe, peaceful, and sustainable space exploration and cooperation. You heard the Vice President say this – when this council first met just two years ago, we had about a dozen countries participating in the Artemis Accords. Today, 33 countries are on board, with 12 new signatories joining just over the past year including Angola, which joined us earlier this month. To the ambassadors here with us today from those Artemis countries: thank you. Thank you for your partnership. Thank you for your collaboration.

We are determined to continue to expand this coalition and expand its areas of cooperation as well, like we did this past October in Baku when we agreed to take practical steps to increase mission deconfliction and ensure that future operations on the lunar surface are both transparent and safe.

Second, we have made significant progress toward ending destructive, direct ascent anti-satellite missile tests in space. A single test – a single test – can release thousands of pieces of debris into space, and we know it takes only one piece of debris, traveling at thousands of miles an hour, to destroy a satellite or threaten the life of an astronaut. Since Vice President Harris committed in April 2022 that the United States would refrain from conducting anti-satellite missile tests, 36 countries, as you've heard, have pledged to do the same. Next year we'll continue our diplomatic efforts to establish this as an international norm.

Third, we're laying the groundwork for future international collaboration. A few months ago, in May, the State Department released our first-ever Strategic Framework for Space Diplomacy. We're leading with diplomacy, advancing space policy to leverage space activities to meet a wider range of diplomatic goals; for example, making progress on the climate crisis, contending with pollution, dealing with illegal, under-reported, and unregulated fishing. As part of those efforts, we're continuing capacity-building outreach to emerging spacefaring nations.

And here, these partnerships, the transfer of knowledge, the transfer of expertise, is in many ways one of our most powerful exports.

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Cross References

U.S.-Cuba Maritime Boundary Treaty, **Ch. 4.B.2**
U.S.-Mexico Maritime Boundary Treaty, **Ch. 4.B.2**
Reducing Greenhouse Gas Emissions from Ship, **Ch. 13.A.1.a**
Biological diversity of areas beyond national jurisdiction ("BBNJ"), **Ch. 13.C.2**

CHAPTER 13

Environment, Transnational Scientific Issues, and Global Health Security

A. LAND AND AIR POLLUTION AND RELATED ISSUES

1. Climate Change

a. Reducing Greenhouse Gas Emissions from Ships

On July 7, 2023, the International Maritime Organization ("IMO") adopted a revised Strategy for Reduction of Greenhouse Gas ("GHG") Emissions from Ships. Additional information is available at https://www.imo.org/en/MediaCentre/HotTopics/Pages/Cutting-GHG-emissions.aspx. The United States participated in the negotiations, which resulted in a common goal of reaching net-zero GHG emissions from international shipping by or around, i.e. close to 2050. Sue Biniaz, Principal Deputy Special Envoy for Climate, delivered the U.S. statement, included below.

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Thank you, Chair.

First, we would like to thank the Chair of ISWG-GHG for his leadership and the Secretariat for its tireless support.

The United States also would like to thank Member States for their constructiveness and for their hard work. We appreciate in particular the efforts of States that worked together, across delegations, to identify landing zones.

This Revised Strategy not only achieves consensus but constitutes a strong contribution from the shipping sector as we work to keep the 1.5-degree goal within reach.

We have collectively agreed to accelerate our work to decarbonize the shipping sector from the end of the century to by or close to 2050, sending a clear signal to all stakeholders that we need to take decisive action.

We have recognized the need to take into account the full lifecycle of greenhouse gas emissions of all marine fuels, as a zero-emission future for shipping should not come at the cost of increased emissions upstream.

We have included a new level of ambition, to increase the uptake of zero- and near-zero GHG emission fuels and technologies by at least 5% and striving for 10% by 2030. Our strategy now speaks not only to our sector, but to others across the shipping supply chain, to ensure that we have the necessary technology to deliver on our ambition.

And we also have included indicative checkpoints that will map a clear trajectory of emissions reductions – 20 percent striving for 30 percent by 2030, and 70 percent striving for 80 by 2040 – that are ambitious and also feasible.

For the record, we would like to reiterate our objection to the section in the Initial Strategy, and repeated in this Revised Strategy, that references the Kyoto Protocol. We will send in that objection for the report.

Finally, Chair, we look forward to working with all other Member States – building on the spirit of trust and cooperation that we have developed this week – on the important work that lies ahead of us: The development of ambitious measures that help us deliver on our collective goal.

Thank you, Chair.

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Objection to 3.5.1.2

With regard to paragraph 3.5 of the 2023 Strategy, in the Guiding Principles section, the United States recalls its statement in 2018 concerning the corresponding paragraph of the Initial GHG Strategy, i.e., paragraph 3.2. In line with that earlier statement, we object to the reference to the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. This Organization has always operated under the principles of non-discrimination and no more favorable treatment. The Strategy must similarly follow those principles. As Paragraph 3.5.1.1 makes clear, any measures adopted in furtherance of this 2023 Strategy must apply equally to all ships operating internationally, regardless of flag. Paragraph 3.5, specifically

3.5.1.1.2, includes a principle that does not apply in this Organization; it cannot override or diminish the principles of this Organization. Neither that paragraph nor paragraphs 4.10 to 4.14 in section 4 on the section on impacts on states, can be used to suggest this Organization can take action that would be discriminatory. We will work tirelessly to ensure any future actions taken by this Organization are non-discriminatory.

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b. Annual UN Climate Change Conference

The 28th UN Climate Change Conference ("COP28") was held in Dubai, United Arab Emirates, November 30 to December 12, 2023. Special Presidential Envoy for Climate John Kerry led a delegation of over 20 U.S. Departments, Agencies, and organizations. See November 30, 2023 State Department media note, available at https://www.state.gov/u-s-delegation-to-the-2023-un-climate-change-conference-cop28. A summary of all COP28-related press releases from the U.S. delegation is available at https://www.state.gov/climate-crisis/cop-28.

Vice President Kamala Harris attended COP28 from December 1-2, 2023. On December 2, 2023, the White House published Fact Sheet: Biden-Harris Administration

Leverages Historic U.S. Climate Leadership at Home and Abroad to Urge Countries to Accelerate Global Climate Action at COP28. The fact sheet is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/02/fact-sheet-biden-harris-administration-leverages-historic-u-s-climate-leadership-at-home-and-abroad-to-urge-countries-to-accelerate-global-climate-action-at-u-n-climate-conference-cop28.

At COP28, Parties to the Paris Agreement adopted a decision on the first "global stocktake" under the Paris Agreement that sets forth a set of ambitious global efforts to keep a 1.5 degrees Celsius limit on global warming within reaching, including transition away from fossil fuels in energy systems, so as to achieve net zero by 2050, and tripling renewable energy globally by 2030. Remarks are available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/13/statement-from-president-joe-biden-on-agreement-reached-at-cop28 and https://www.state.gov/remarks-to-the-press-at-the-conclusion-of-the-un-climate-change-conference-cop28/.

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2. Desertification

On November 21, 2023, Faith Kroeker-Maus, U.S. Adviser to the UN General Assembly Economic and Financial Committee, or Second Committee, delivered the U.S. explanation of position on a Second Committee resolution on implementation of the UN Convention to Combat Desertification in those countries experiencing serious drought and/or desertification particularly in Africa. The statement is available at https://usun.usmission.gov/explanation-of-position-on-a-second-committee-resolution-on-implementation-of-the-united-nations-convention-to-combat-desertification/ and includes the following:

> The United States supports the UN Convention to Combat Desertification in its global efforts to reduce land degradation increase land restoration and build resilience to drought. The United States is pleased to join consensus on this resolution and would like to take this opportunity to clarify our position on the following:
>
> While the Abidjan Call is a useful document it is not a negotiated document and was not approved by the COP. It was agreed to by a limited number of countries that attended the High-level summit at the Head of State level. As such it does not belong in this document.

B. PROTECTION OF MARINE ENVIRONMENT AND MARINE CONSERVATION

1. Fisheries Subsidies Agreement

On April 12, 2023, the United States deposited its letter of acceptance for the World Trade Organization ("WTO") Agreement on Fisheries Subsidies. The agreement is the result of more than 20 years of negotiations and will prohibit certain harmful fisheries subsidies, which are a key factor in the depletion of ocean resources, once it enters into force. The United States is the fourth WTO member and the first of the large fishing nations to deposit its instrument of acceptance. To become operational, the agreement will need acceptance from two-thirds of WTO members. The Offices of the United States Trade Representative ("USTR") issued a press release, available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/april/what-they-are-saying-us-formally-accepts-wto-agreement-fisheries-subsidies. The USTR published a fact sheet entitled, "WTO Agreement on Fisheries Subsidies," available at https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2022/august/fact-sheet-wto-agreement-fisheries-subsidiesd, and follows.

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For more than two decades, Members of the World Trade Organization (WTO) have negotiated how to address the use of harmful subsidies in the fisheries sector. Through extensive U.S. engagement and leadership over the course of these long-running negotiations, the WTO was able to achieve a groundbreaking agreement at the WTO's 12th Ministerial Conference to discipline harmful fisheries subsidies.

The WTO Agreement on Fisheries Subsidies is the first ever multilateral trade agreement with environmental sustainability at its core. It contains several important disciplines, including prohibitions on granting or maintaining fisheries subsidies to:

- Vessels or operators engaged in illegal, unreported, and unregulated (IUU) fishing or fishing related activities in support of IUU fishing;
- Fishing or fishing related activities regarding stocks that are overfished; and
- Fishing or fishing related activities on the unregulated high seas.

In addition to disciplines on these types of harmful fisheries subsidies, the Agreement includes robust transparency requirements aimed at strengthening WTO Members' notifications of fisheries subsidies and enabling effective surveillance of the implementation of the obligations in the Agreement.

The Fisheries Subsidies Agreement also requires WTO Members to take special care and exercise due restraint when granting subsidies to fishing vessels that are not flying that Member's flag, as the practice of vessels flying flags of convenience has been linked to enabling illegal activity, including the use of forced labor. A similar provision requires Members to take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding unassessed fish stocks, which can be particularly harmful and may lead to overfishing.

WTO Members also committed to continue negotiations to build on the Fisheries Subsidies Agreement with additional disciplines on fisheries subsidies that contribute to overcapacity and overfishing. Through these continued negotiations, the United States will pursue additional ambitious disciplines. The United States will also continue to urge Members to support greater transparency with respect to the use of forced labor on fishing vessels.

The Fisheries Subsidies Agreement will enter into force when it has been accepted by two-thirds of WTO Members. To maintain the momentum towards a more ambitious agreement, the current agreement will lapse if more comprehensive disciplines are not adopted within four years of entry into force, unless WTO Members decide otherwise.

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2. Arctic Council

On May 11, 2023, the 13th meeting of the Arctic Council took place virtually, during which the Council transferred Chairmanship from Russia to Norway. Senior Arctic Officials participated in the meeting and accomplished the essential business of the meeting via the issuance of an Arctic Council Statement, available at http://hdl.handle.net/11374/3146.

3. Sea Turtle Conservation and Shrimp Imports

The Department of State makes annual certifications related to conservation of sea turtles, consistent with § 609 of U.S. Public Law 101-162, 16 U.S.C. § 1537 note ("Section 609"), which prohibits imports of shrimp and shrimp products harvested with methods that may adversely affect sea turtles. On May 25, 2023, the State Department announced in a media note, available at https://www.state.gov/sea-turtle-conservation-and-shrimp-imports-into-the-united-states-3/, that it had notified Congress on May 12, 2023 of the certification 37 nations and one economy, and granted determinations for nine fisheries as having adequate measures in place to protect sea turtles while harvesting wild-caught shrimp under Section 609. 88 Fed. Reg. 33,953 (May 25, 2023). The media note explains:

> Annual certifications and determinations are based in part on overseas verification visits by a team composed of Department of State and NOAA Fisheries representatives.
>
> Six of the world's seven species of marine turtles are listed as endangered or threatened under the Endangered Species Act. The U.S. government is currently providing technology and capacity-building assistance to other nations to help them meet the standard for certification under Section 609 and to contribute to the recovery of sea turtle species. The U.S. government also encourages legislation like Section 609 in other nations to prevent the importation of shrimp harvested in a manner harmful to protected sea turtles.

4. Non-binding Declaration on Atlantic Cooperation

On May 23, 2023, senior officials from 43 Atlantic coastal countries met virtually to build upon a 2022 joint statement on Atlantic Cooperation. The 2022 joint statement is available at https://www.state.gov/joint-statement-on-atlantic-cooperation/. See also State Department May 25, 2023 media note, available at https://www.state.gov/senior-officials-meeting-on-atlantic-cooperation/. On September 6, 2023, senior officials of 45 Atlantic coastal countries convened a second virtual meeting to discuss a draft Declaration on Atlantic Cooperation. See State Department September 8, 2023 media note, available at https://www.state.gov/second-senior-officials-meeting-on-atlantic-cooperation/. On September 18, 2023, Secretary Blinken delivered remarks at the ministerial meeting on Atlantic Cooperation. The remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-the-ministerial-meeting-on-atlantic-cooperation/, and excerpted below.

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* * * *

Tonight we're excited by the launch of the Partnership for Atlantic Cooperation. This is the first multilateral entity of this scope open to all Atlantic nations, bridging four continents. And at a moment when there's some doubt about our ability to come together in common cause, we're showing with this initiative that it is indeed possible. By joining the declaration, each of us is affirming our commitment to the interconnected goals of advancing a peaceful, stable, prosperous, open, safe, and cooperative Atlantic region, and to conserving a healthy, sustainable, and resilient resource for generations to come. I am grateful to the U.S. Congress for already dedicating $10 million to support this effort.

As a first order of business for our partnership, we will focus on promoting greater scientific and technological cooperation, from sharing ocean data, to exchanging best practices on combating marine plastic pollution, to training the next generation of Atlantic researchers. We'll also advance the sustainable ocean economy, encouraging inclusive, broad-based growth throughout the Atlantic. That means strengthening free and open maritime trade, fostering environmentally sound fisheries and fishing practices, developing resilient coastal economies.

As Atlantic nations, we're especially invested in addressing the climate crisis and the extreme weather it's exacerbating. In many parts of Africa and the Caribbean, for example, people don't receive early warning when there's a hurricane, when there's a flood, when there's a drought. So the U.S. National Oceanic and Atmospheric Administration is working to expand access to these critical alert systems. These are the kinds of efforts that our partnership hopes to, in effect, turbocharge for coastal communities throughout the Atlantic.

This new forum will build on, learn from, and support existing Atlantic organizations and initiatives, from the Atlantic Center, to the Friends of the Gulf of Guinea, to the All-Atlantic Ocean Research and Innovation Alliance. Our commitment to work with Atlantic partners includes the new High Seas Treaty. This creates a coordinated approach to establishing marine protected areas that are beyond national jurisdictions and safeguarding the health, safeguarding the resilience, of our ocean. The United States plans to sign this treaty later this week. We welcome others in this partnership joining us and doing the same, and for that matter, those beyond this partnership.

We've now inaugurated this promising partnership, and in the coming months what we'll work to do is to bring more partners on board who share this vision and are ready to collaborate with us in common cause. And with all of our nations working together, we believe that we can ensure that the Atlantic continues to advance prosperity and progress for our people.

I'm very pleased now to present the Declaration on Atlantic Cooperation for your consideration and for your adoption. And I thank you.

* * * *

On the margins of the 78th session UN General Assembly in September 2023, Secretary Blinken announced the adoption of a non-binding Declaration on Atlantic Cooperation and the launch of the Partnership for Atlantic Cooperation ("PAC") by 32 Atlantic countries. The PAC will promote cooperation on science and technology, environmental issues, and sustainable economic development. Secretary Blinken's September 18, 2023 press statement is available at https://www.state.gov/secretary-blinken-launches-the-partnership-for-atlantic-cooperation/, and includes the following:

> Today, the United States was among 32 coastal Atlantic countries to adopt the Declaration on Atlantic Cooperation and launch the Partnership for Atlantic Cooperation. This new multilateral forum brings together coastal Atlantic countries across Africa, Europe, North America, South America, and the Caribbean to engage in collective problem-solving and uphold a set of shared principles for Atlantic cooperation. Secretary of State Antony Blinken and leaders from the other participating states launched this new initiative at the Ministerial for Atlantic Cooperation on the margins of the 78th United Nations General Assembly in New York. Participants also adopted a Plan of Action outlining the grouping's first phase of work.
>
> The Partnership for Atlantic Cooperation is the first Atlantic-based grouping to include both the North and South Atlantic and address a broad range of issues on shared priorities. It seeks to usher in a new chapter in regional cooperation, notably on sustainable development and science and technology. The purpose is twofold — one, to unite the community of Atlantic states around a framework to engage more effectively, and two, to articulate a set of guiding principles for Atlantic cooperation, as outlined in the Declaration on Atlantic Cooperation.

The Declaration is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/18/declaration-on-atlantic-cooperation/. The White House published a fact sheet, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/18/fact-sheet-32-countries-launch-the-partnership-for-atlantic-cooperation/. As of November 30, 2023, 35 countries have joined the PAC. See State Department November 30, 2023 media note, available at https://www.state.gov/partnership-for-atlantic-cooperation-senior-officials-meeting/.

5. International legally binding instrument on plastic pollution, including in the marine environment

In 2023, the United States continued to take part in the negotiation of a new legally binding instrument on plastic pollution. A 40-person U.S. delegation attended the second session of the Intergovernmental Negotiating Committee ("INC-2") on Plastic Pollution, which took place from May 29 to June 2, 2023 in Paris, France. The U.S. intervention at INC-2 on Agenda item 4, available at https://resolutions.unep.org/resolutions/uploads/23062023_us_agendaitem4.pdf.

The third session of the Intergovernmental Negotiating Committee ("INC-3") took place from November 13-19, 2023 in Nairobi, Kenya, which resulted in a revised draft text of the future instrument. The U.S. intervention at INC-3 is available at https://resolutions.unep.org/resolutions/uploads/united_states_of_america_1.pdf.

6. Antarctic Treaty Consultative Meeting

The Antarctic Treaty Consultative Meeting ("ATCM"), held in May 29 - June 8, 2023 in Helsinki, Finland, included a full-day Joint Session with the Committee on Environmental Protection focused on climate change. At the Joint Session, the United States encouraged countries to establish more protected areas in Antarctica and to commit to ambitious research programs leading up to and during the International Polar Year 5 ("IPY-5") in 2032-2033. Following prolonged multilateral discussions and revisions, the ATCM Chairperson obtained consensus on the Helsinki Declaration on Climate Change and the Antarctic. As noted in paragraph 473 of the Final Report, Volume I, available at https://documents.ats.aq/ATCM45/fr/ATCM45_fr001_e.pdf, the United States delivered the following Explanation of Position regarding the reference in the Helsinki Declaration to the UNFCCC and greenhouse gas emissions.

* * * *

The United States does not support the reference to the "principles of the UNFCCC" in this declaration. These principles are irrelevant both to the work of this body and to the Antarctic Treaty. In that regard, we would note that the declaration simply recognizes the existence of the UNFCCC principles, and does not speak to any relationship between those principles and the Antarctic Treaty or the work of this body. Additionally, the United States does not support solely referring to the current trajectory of "CO2" emissions when referring to the causes of continued warming. Reductions in non-CO2 greenhouse gases, particularly methane, are critical to limiting future warming. The IPCC Sixth Assessment Cycle Synthesis Report states that, "From a physical science perspective, limiting human-caused global warming to a specific level requires limiting cumulative CO2 emissions, reaching at least net zero CO2 emissions, along with strong reductions in other greenhouse gas emissions.

* * * *

Also at the ATCM, the United States advocated a reaffirmation of the commitment to Article 7 of the Protocol on Environmental Protection to the Antarctic Treaty (Environmental Protocol). Delegations noted the erroneous public perception that the Environmental Protocol would expire or that Party action was required to maintain Article 7 in force. Along with 23 other Consultative Party proponents, the United States supported a resolution to combat that misinformation and reaffirm the ATCM's dedication to preserving Antarctica for peace and science. The meeting adopted Resolution D (2023) Reaffirming ongoing commitment to the prohibition on Antarctic mineral resource activities, other than for scientific research.

Russia's war on Ukraine was a topic of discussion. The Final Report of the 45th ATCM notes that "[m]ost Parties condemned the Russian Federation's unlawful war of aggression on Ukraine and noted that the ATCM had the competency and responsibility to discuss the impacts of such events on national Antarctic programmes. These Parties noted that discussing these factual issues did not politicise the Antarctic Treaty System." See paragraph 216 of the Final Report.

7. Commission for the Conservation of Antarctic Marine Living Resources

On June 23, 2023, U.S. Commission for the Conservation of Antarctic Marine Living Resources ("CCAMLR") Commissioner Elizabeth Phelps delivered remarks for the third extraordinary meeting of the CCAMLR. The remarks are available at https://www.state.gov/remarks-for-the-third-extraordinary-meeting-of-the-commission-for-the-conservation-of-antarctic-marine-living-resources/, and included below.

* * * *

The United States thanks the Government of Chile for its hospitality and its excellent hosting of this very important meeting of the Commission. Chair, we are thankful for your leadership and the leadership of the Chairs and Co-Chairs of the informal groups. We are deeply disappointed that we have not made progress on establishing a representative system of MPAs at this special meeting, such as by development of a roadmap that would lead to the designation of marine protected areas in the CAMLR Convention area.

We have listened carefully to the robust discussions and believe there could be common ground among most of the Commission Members. We heard all Members express the common view that MPAs are an effective and important tool for meeting the Convention objective to conserve Antarctic marine living resources. We appear to diverge on whether CCAMLR should use this tool to achieve its conservation objective. The U.S. delegation is quite concerned that some statements made by one Member could signal that country is retreating from the consensus CCAMLR commitment to establish a representative system of MPAs.

The United States is convinced that a representative system of MPAs is necessary to achieve the objective of the Convention. Failure to fulfil this effort could lead to us failing to fully meet the objective of the Convention. We also risk failing to ensure the long-term ecological viability of Antarctic marine ecosystems and protection of Antarctic marine

biodiversity. There are no winners when we fail. In fact, the real loser is Antarctic marine living resources.

The United States remains flexible on ways we can go about achieving this goal. As we stated before, we are open to discussions to improve the General Framework (i.e., CM91-04), but we must also achieve the end goal of establishing a representative system of MPAs. As reflected in our joint statement with other delegations, the United States is interested in continuing this discussion in advance of October, and hopes that we can make real, substantive progress towards achieving our common goal.

* * * *

The Forty-second Annual Meeting of CCAMLR took place from October 16-27, 2023, in Hobart, Australia. Several topics were discussed at the meeting, including the management of toothfish, icefish, and krill fisheries and the impact of fishing activities on non-target species. Russia continued to block consensus on a conservation measure regarding an established toothfish fishery. See *Digest 2022* at 569-72 and *Digest 2021* at 557. The Patagonian toothfish harvested in CCAMLR Statistical Subarea 48.3 was at the center of litigation filed in the United States. See Chapter 11 of this Digest for discussion.

Also during the 42nd annual meeting, CCAMLR members made attributed statements regarding the host country's obligations under the CCAMLR Headquarters Agreement following the delayed issuance of visas for the Russian delegation to enter Australia for the meeting. The United States joined consensus when the Commission instructed its Executive Secretariat to consult with the Australian authorities on the application of the Headquarters Agreement. See the Final Report of the Forty-second meeting of the Commission is available at https://meetings.ccamlr.org/system/files/meeting-reports/e-cc-42-rep_2.pdf, and includes the following:

> 2.20 The Commission reached an agreement on the point that the CAMLR Convention and the Headquarters Agreement shall be implemented to ensure the equal right to representation of every Member.
>
> 2.21 The Commission instructed the Executive Secretary to consult with the Australian authorities on the application of the Headquarters Agreement in o der to ensure equal right to representation of all Members in accordance with the Convention.

8. Patagonian Toothfish Litigation

Southern Cross Seafoods, LLC v. United States of America, and National Marine Fisheries Service, filed in the U.S. Court of International Trade, concerned a National Oceanic and Atmospheric Administration ("NOAA") National Marine Fisheries Service ("NMFS") denial of a preapproval import of toothfish from CCAMLR Statistical Subarea 48.3. No.

22-00299 (Ct. Int'l Trade). The agency deemed the toothfish harvested in contravention of a CCAMLR conservation measure. The United States denied the allegations that the import denial constituted an embargo and moved to dismiss for lack of subject matter jurisdiction. The court asked the parties to address jurisdictional arguments and whether the denial constituted an embargo. On December 7, 2023, the court concluded that it lacked jurisdiction and decided to transfer the case to an appropriate U.S. District Court. 668 F.Supp.3d 1324 (Ct. Int'l Trade 2023). The court reasoned that NMFS's denial of a preapproval certificate for the import of toothfish does not amount to an embargo. Excerpts from the court's opinion and order follow (footnotes omitted).

* * * *

C. Analysis

To determine whether the Court has jurisdiction over the instant action, the court considers: (1) whether the denial constitutes an embargo or other quantitative restriction on the importation of merchandise; (2) whether AMLRCA and its implementing regulations provide for such an embargo or other quantitative restriction; and (3) whether AMLRCA and its implementing regulations provide for the administration and enforcement of such an embargo or other quantitative restriction. For the reasons discussed below, the court concludes that (1) the denial pursuant to AMLRCA regulations, 50 C.F.R. § 300.105(d) and (h)(2), by NMFS of Southern Cross' preapproval application does not constitute an embargo or other quantitative restriction, and (2) neither AMLRCA, 16 U.S.C. § 2435(3), nor its regulations, 50 C.F.R. § 300.105(d) and (h)(2), provide for an embargo or other quantitative restriction, or the administration and enforcement thereof.

1. Whether NMFS' denial of plaintiff's preapproval application constitutes an embargo or other quantitative restriction

Plaintiff's action arises out of a challenge to the denial by NMFS of plaintiff's preapproval application. Corrected Compl. ¶ 1 ("This action concerns Defendants' unlawful denial of Southern Cross's application for preapproval to import [toothfish] ...."). Defendants argue that the Court does not have jurisdiction over the denial. Defs. Mot. Dismiss at 5 (quoting 28 U.S.C. § 1581(i)(1)(C)). Plaintiff argues that NMFS, by its denial of plaintiff's application, is "barring trade in toothfish from Subarea 48.3 entirely" such that the denial constitutes an embargo — "a governmentally imposed quantitative restriction—of zero", *K Mart*, 485 U.S. at 185, 108 S.Ct. 950 — or other quantitative restriction within the meaning of the statute. Pl. Resp. at 15; *see* Pl. Resp. at 8 (arguing that "NMFS's action is an 'embargo' " or else that "it is certainly a 'quantitative restriction on the importation of merchandise' "). The court is unpersuaded.

NMFS is not authorized under AMLRCA or its implementing regulations to institute a blanket ban on toothfish through the denial of an application for a preapproval certificate. *See generally* 16 U.S.C. §§ 2431, 2435; 50 C.F.R. § 300.105. Rather, NMFS "*may* issue a preapproval certificate" if certain conditions are met, including that NMFS determines that the instant "resources were not harvested in violation of any CCAMLR conservation measure." 50 C.F.R. § 300.105(d) (emphasis supplied). Similarly, NMFS "will not issue a preapproval certificate" for a toothfish harvest or transshipment determined to be "in contravention of" any conservation measure. 50 C.F.R. § 300.105(h)(2). Moreover, "the proper focus of an analysis of

jurisdiction under 28 U.S.C. § 1581(i) is the law upon which the plaintiffs' action is based, and whether that law (rather than the specific claims set forth by the plaintiff) provides for an embargo." *Int'l Labor Rights Fund*, 357 F. Supp. 2d at 209 n.3. The court addresses the statutes and regulations governing the instant action *infra* Section I.C.2.

The NMFS denial before the court pertained to one shipment of toothfish. As such, the denial does not constitute an embargo or other quantitative restriction.
The NMFS denial of plaintiff's preapproval certificate was specific to plaintiff's application: "[NMFS] is denying issuance of a pre-approval certificate *for this shipment of toothfish* for the reasons outlined below." NMFS Denial Letter at 1 (emphasis supplied). The NMFS denial also stated the foundational legal predicate for the application of AMLRCA by NMFS, namely that "fishing in Subarea 48.3 was not authorized under CCAMLR conservation measures" and that "the toothfish at issue was [sic] harvested in contravention of CCAMLR CM 31-01." NMFS Denial Letter at 4; *see* NMFS Denial Letter at 3-4 (quoting 50 C.F.R. § 300.105(d)). As such, NMFS determined not to issue a preapproval certificate to Southern Cross because NMFS determined that the *specific* toothfish shipment at issue was "harvested or transshipped in contravention of a[ ] CCAMLR Conservation Measure in force at the time of harvest or transshipment." *See* NMFS Denial Letter at 4 (quoting 50 C.F.R. § 300.105(h)(2)).

Similarly, in a different context, Southern Cross inquired of NMFS whether Southern Cross could import fish from another part of the South Georgia waters. NMFS responded in a manner consistent with its explanation in the letter denying the preapproval application in the instant case: "[a]ny final determination would, as always, be made upon submission of an application for preapproval to import a specific shipment." Dawson Email. Accordingly, the NMFS denial is not an embargo or other quantitative restriction within the meaning of 28 U.S.C. § 1581(i).

2. Whether AMLRCA and its implementing regulations provide for embargoes or other quantitative restrictions

i. Embargoes

In light of plaintiff's request for declaratory judgment applicable to future preapproval applications, the court turns to whether the applicable statute and regulations provide for an embargo. Corrected Compl. ¶¶ 9, 12, 51 (citing 28 U.S.C. § 2201(a), which authorizes "any court of the United States ... [to] declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought"). Plaintiff argues that the NMFS denial of plaintiff's preapproval application amounts to an embargo based on what plaintiff argues is the provision for an embargo under AMLRCA, 16 U.S.C. § 2435(3). Pl. Resp. at 1-2.

The court examines first the applicable statutes and regulations in the instant action, then considers the case law in which this Court and other courts have concluded that the statutes before them envisaged embargoes and consequently fell within the jurisdiction of this Court. The court concludes that AMLRCA and its implementing regulations provide "conditions of importation" and the potential for other types of "governmental importation prohibition[s]" that do not constitute embargoes. *See K Mart*, 485 U.S. at 187, 108 S.Ct. 950.

AMLRCA, its implementing regulations and the CAMLR Convention all "anticipate[ ] trade in" toothfish. *Native Fed'n*, 31 C.I.T. at 595, 491 F. Supp. 2d at 1183. Under AMLRCA, "[i]t is unlawful... to ... import ... any Antarctic marine living resource ... harvested in violation of a conservation measure in force with respect to the United States pursuant to article IX of the Convention ...." 16 U.S.C. § 2435(3). *See also* 50 C.F.R. § 300.114(d). AMLRCA regulations by

their terms "regulate[ ] ... *[t]he import* ... into the United States of any Antarctic marine living resource." 50 C.F.R. § 300.100(b)(2) (emphasis supplied); *see* 50 C.F.R. § 300.104(a)(1) ("A person *may import* ... AMLR into the United States only under a NMFS-issued International Fisheries Trade Permit (IFTP)." (emphasis supplied)). Under the AMLRCA regulations, imports of toothfish must have a preapproval certificate, which NMFS may issue. *See* 50 C.F.R. § 300.105(d); *see also* 50 C.F.R. § 300.104(a)(2) (providing that frozen toothfish shipments "must also be accompanied by ... a preapproval certificate"); 50 C.F.R. § 300.106(e)(1) (defining toothfish import requirements). For NMFS to issue such a preapproval certificate, NMFS must be able to determine that a condition has been met, namely that the toothfish were not "harvested in violation of any CCAMLR conservation measure." *Id.* § 300.105(d); *see id.* § 300.105(h)(2).

Under the CAMLR Convention, as noted *supra* Section I, " 'conservation' includes *rational use.*" CAMLR Convention, art. II.2 (emphasis supplied); *see* CAMLR Convention art. IX.2(c) ("The conservation measures ... include ... the designation of the quantity which may be harvested from the populations of regions and sub-regions"). In addition, Congress found that "the Convention incorporates an innovative ecosystem approach to the *management* of Antarctic marine living resources ...." 16 U.S.C. § 2431(a)(2) (emphasis supplied). Further, when certain conditions are met, NMFS "*may* issue a preapproval certificate for importation of a shipment of frozen [toothfish]." 50 C.F.R. § 300.105(d) (emphasis supplied). As such, to the extent that the provisions amount to a "governmental importation prohibition," they are nonetheless not embargoes. *K Mart*, 485 U.S. at 187, 108 S.Ct. 950. Instead, the regulation delineates the preapproval framework for the importation of toothfish that is harvested in compliance with CCAMLR conservation measures and that meets certain other prerequisites. *See* 50 C.F.R. § 300.105(d).

In *K Mart*, the Supreme Court addressed two instances of governmental importation prohibitions that did not constitute embargoes: (1) a regulation requiring a permit and appropriate "tagging" for milk and cream importation, 485 U.S. at 187, 108 S.Ct. 950 (quoting 19 C.F.R. § 12.7(a)-(b) (1987)); and (2) a regulation requiring inspection for meat product importation, *id.* (quoting 19 C.F.R. § 12.8 (1987)). The Supreme Court reasoned that "[t]o hold [that every governmental importation prohibition is an embargo] would yield applications of the term 'embargo' that are unnatural, to say the least." *Id.* The Supreme Court illustrated such an application by explaining that the "prohibitory nature" of the milk and cream regulations "would convert licensing and tagging requirements into embargoes on unlicensed or improperly tagged dairy products." *Id.* Similarly, the Supreme Court noted that the meat product inspection requirement "would magically become an embargo of uninspected (but not necessarily tainted) meat." *Id.*

AMLRCA establishes as a condition of importation that the shipment be harvested in compliance with CCAMLR conservation measures. 16 U.S.C. § 2435(3). AMLRCA provides the authority for NMFS to deny a pre-approval application on the grounds that this condition has not been met. 16 U.S.C. § 2436(b) (providing the authority to the Secretary of Commerce to promulgate regulations to implement conservation measures); 50 C.F.R. § 300.105 (implementing regulation of the statute). This denial may constitute a prohibition on importation of the imports in question. 50 C.F.R. § 300.105(h)(2). As the Supreme Court found in *K Mart,* such a prohibition may not "magically" become an embargo of imports that do not meet the conditions of AMLRCA. In sum, the conditional regulatory language of AMLR parallels that of the statute and regulations for milk and meat importation, which the Supreme

Court previously discussed did not constitute embargoes within the jurisdiction of the USCIT. *See K Mart*, 485 U.S. at 187, 108 S.Ct. 950.

That conclusion is further supported by the USCIT's holding in *Native Federation.* 31 C.I.T. 585, 491 F. Supp. 2d 1174. Similar to AMLRCA, the statute at issue in *Native Federation* stated that it was "unlawful ... to engage in any trade in any specimens contrary to the provisions of the Convention." 16 U.S.C. § 1538(c)(1). In addition, under the ESA regulations, imports of bigleaf mahogany are required to be accompanied by an export permit. *Native Fed'n,* 31 C.I.T. at 594, 491 F. Supp. 2d at 1182 (citing 50 C.F.R. § 23.12(a)(2)(i)). The USCIT in *Native Federation* looked to the language of CITES and the ESA to guide the Court's reasoning that the regulation — including, in certain instances, a prohibition — of mahogany imports did not constitute an embargo:

> By entering into [CITES], the United States did not agree to end trade in CITES-listed species, nor did it elect to do so by enacting Section 9(c) to implement the Convention. On the contrary, the aim of CITES and the provisions of the ESA that implement it is to *permit trade* in certain species in a controlled, sustainable manner.

Id. at 597-98, 491 F. Supp. 2d at 1185 (emphasis supplied) (citing CITES Proclamation of the Contracting States, 27 U.S.T. at 1090). The *Native Federation* court concluded that the section of the ESA applicable to bigleaf mahogany did not "forbid" or "completely ban" trade but rather "regulate[s]" such trade through permit requirements. *Id.* at 593-94, 491 F. Supp. 2d at 1182-83. For the category of species under which bigleaf mahogany falls, the ESA and CITES, "while restricting trade, do not restrict the quantity of imports to zero." *Id.* at 598, 491 F. Supp. 2d at 1185-86 (citing *K Mart*, 485 U.S. at 185, 108 S.Ct. 950).

The AMLRCA regulations spell out specific requirements for preapproval certification, much like the CITES and ESA regulations at issue in *Native Federation* set out requirements for permitting. *Compare* 50 C.F.R. § 300.105(d) (requiring that the "preapproval application form is complete and NMFS determines that the activity proposed by the applicant meets the requirements of the Act and that the resources were not harvested in violation of any CCAMLR conservation measure or in violation of any regulation") *with* 50 C.F.R. § 23.12(a)(2)(i) (requiring "a valid foreign export permit issued by the country of origin").

Plaintiff raises four examples to support its argument that AMLRCA and its regulations, as applied by NMFS, provide for an embargo. Pl. Resp. at 12-14 (citing 19 C.F.R. § 12.60 (1987); *Humane Soc'y*, 19 C.I.T. 1104, 901 F. Supp. 338*; Earth Island*, 6 F.3d 648; *Int'l Labor Rights Fund*, 357 F. Supp. 2d. 204).

AMLRCA and its implementing regulations are distinct from the examples of embargoes that plaintiff provides. *See* 19 C.F.R. § 12.60 (1987); *K Mart*, 485 U.S. at 184, 108 S.Ct. 950 (describing 19 C.F.R. § 12.60 (1987) as an embargo); *Humane Soc'y,* 19 C.I.T. at 1112-1113, 901 F. Supp. at 346 (explaining that 16 U.S.C. § 1826a, which "prohibit[s] the importation" of fishing-related products, confers jurisdiction to this Court under the provision for residual jurisdiction because § 1826a lists embargo language); *Earth Island*, 6 F.3d at 652 (concluding that the 16 U.S.C. § 1537(b) implemented a ban on importation of shrimp products and "prohibit[ed]" shrimp imports that did not comply with regulations protecting sea turtles and holding that those terms corresponded to the embargo language conferring jurisdiction on the USCIT); *Int'l Labor Rights*, 357 F. Supp. 2d at 207 (holding that the language of 19 U.S.C. § 1307, stating that goods produced by forced labor and "importation thereof is hereby *prohibited*," constituted embargo language conferring jurisdiction on this Court) (emphasis supplied). The court analyzes each in turn.

The first example that plaintiff references is 19 C.F.R. § 12.60 (1987), which the Supreme Court in *K Mart* referred to as providing for an embargo. 485 U.S. at 184, 108 S.Ct. 950; *see* Pl. Resp. at 12. The regulation in question prohibits the importation of "skins of fur seals or sea otters ... if such skins were taken contrary to the provisions of section 2 of the [Provisional Fur Seal Agreement of 1942 between the United States of America and Canada]." 19 C.F.R. § 12.60 (1987). The regulation provides a limited exception for the import of sea otter skins and fur seals by "Indians, Aleuts, or other aborigines dwelling on the American coasts of the waters of the North Pacific Ocean." Provisional Fur Seal Agreement of 1942 (repealed 1944), ch. 65, § 3.

The CAMLR Convention, AMLRCA and its implementing regulations expressly *envision and provide* that harvesting of Antarctic marine resources will and should occur. *See* CAMLR Convention art. II.2 (noting that " 'conservation' includes rational use"), art. II.3 ("Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation ...."), art. IX.2(c) (noting "the designation of the quantity [of species] which may be harvested"). AMLRCA implements the CAMLR Convention, 16 U.S.C. § 2431(b), and the AMLRCA regulations provide a framework under which importers can attain preapproval to import harvested Antarctic marine living resources, including frozen toothfish, if certain conditions are met. *See* 50 C.F.R. §§ 300.100(b)(2), 300.105. In sum, the Provisional Fur Seal Agreement of 1942 as addressed by the Supreme Court in *K Mart* is not apposite to the assessment of the CAMLR Convention, CCAMLR CMs and AMLRCA in the instant case. *K Mart,* 485 U.S. at 184, 108 S.Ct. 950.

Plaintiff next raises this Court's holding in *Humane Society* that the High Seas Driftnet Fisheries Enforcement Act ("HSDFEA") was within the USCIT's exclusive jurisdiction. Pl. Resp. at 13; *see Humane Soc'y*, 19 C.I.T. at 1104, 1121, 901 F. Supp. at 340, 352. The Court in *Humane Society* exercised jurisdiction over plaintiff's action, concluding that the language of the HSDFEA explicitly provided authority for the Secretary of the Treasury at the direction of the president to implement a prohibition on imports of fish and fish products from nations that do not comply with the requirements of the HSDFEA. Pl. Resp. at 13; *see Humane Soc'y*, 19 C.I.T. at 1104, 1112-1113, 901 F. Supp at 338, 340, 346, 352. Plaintiffs there alleged that defendants — the Secretary of Commerce and the Secretary of State — had failed to exercise their "responsibilities" under the HSDFEA to identify any country (in that case, Italy) that engaged in the proscribed fishing. *Id.* at 1105-06, 1111, 901 F. Supp. at 341, 345 (citing 16 U.S.C. § 1826a(b)(1)(A)-(B)). Upon such identification, the HSFDEA prohibited fish imports from that nation. *Humane Soc'y*, 19 C.I.T. at 1110, 901 F. Supp. at 344 (citing 16 U.S.C. § 1826a(b)(3)18 (delineating the procedure to instate a "[p]rohibition on imports of fish and fish products and sport fishing equipment")). The *Humane Society* court relied on *Earth Island* to conclude that the USCIT had exclusive jurisdiction over that action. *Id.* at 1112-13, 901 F. Supp at 346.

AMLRCA again stands in contrast to the statute — HSFDEA — before the court in *Humane Society*. The HSFDEA establishes a procedure to implement a blanket prohibition. AMLRCA, by contrast, does not do so; rather, it sets out the requirements necessary to import toothfish in compliance with the conservation measures adopted. AMLRCA prohibits the import of products *conditionally* and *only if* they are harvested in violation of regulations promulgated under this chapter. 16 U.S.C. § 2435. This approach is comparable to that involving the conditions on imports described in *Native Federation*, *supra* Section I.C.2.i. Specifically, 50

C.F.R. § 300.105 requires that importers of toothfish provide a "complete" preapproval application and that NMFS then "determine[ ] that the activity proposed by the applicant meets the requirements of the Act and that the resources were not harvested in violation of any CCAMLR conservation measure or in violation of any regulation in this subpart." 50 C.F.R. § 300.105(d). The language of the regulations is formulated in a way that *enables* the importation of toothfish so long as the conditions of the statute and regulations are met. The CMs of the CAMLR Convention in turn provide a framework and conditions such that importers that wish to import fish from the area may seek to do so. *See* 16 U.S.C. § 2435(3). For the foregoing reasons, the statute and holding in *Humane Society* are inapposite to the statute and regulations at issue in the instant action.

The third case that plaintiff presents to the court is the decision of the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit") in *Earth Island*. Pl. Resp. at 13-14 (citing *Earth Island*, 6 F.3d at 649 n.1, 651-52). There, the Ninth Circuit held that the statute at issue, which banned shrimp imports from countries that did not protect sea turtles from commercial nets, was an embargo such that the USCIT had exclusive jurisdiction. *Earth Island,* 6 F.3d at 649, 651 (citing The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990, Pub.L. 101–162, Title VI, § 609, 103 Stat. 1037 (1989)) (codified at 16 U.S.C. § 1537 note ("Section 609") (2000)).19 Section 609 prohibited shrimp imports harvested with technology harmful to sea turtles unless the president otherwise certified to Congress that a country had taken steps to protect sea turtles. *Id.* at 649 n.1, 650. The Ninth Circuit focused on two subsections of the statute:

> Subsection (a) of 16 U.S.C. § 1537 requires the Secretary of State to initiate negotiations with foreign countries to develop treaties to protect sea turtles, and to report to Congress about such negotiations. Subsection (b) requires limitations on the importation of shrimp from nations that have not moved to protect sea turtles. If the President certifies that a country has undertaken measures to protect turtles, shrimp imports from that country are not banned.

Id. at 650 (citing Section 609(a)-(b)). The Ninth Circuit drew a parallel to the embargo on sea otter and fur seal skins identified in *K Mart* to hold that the "prohibitions on shrimp importation for environmental protection" were, similarly, within the USCIT's jurisdiction. *Id.* at 652.

Section 609 is distinct in at least two respects from AMLRCA. First, Section 609 authorizes the executive to impose a nation-wide ban — an embargo — on importation of shrimp or products from shrimp from the specific country. Section 609(b). As the Ninth Circuit found in *Earth Island*, the Section 609 ban on shrimp importation exists *de facto* unless the president certifies affirmatively that a nation is in compliance with the requirements of the statute. 6 F.3d at 650. Section 609 itself provides for the establishment of an embargo; the statute subsequently provides exceptions to the "ban on importation of shrimp" if the President certifies that the governments of harvesting nations meet listed requirements. Section 609(b). By contrast, subsection (h)(2) of the AMLRCA regulations does not create a nation-wide or other ban on imports; rather, subsection (h)(2) expressly *permits* NMFS to preapprove certificates of importation of Antarctic marine living resources so long as they are not harvested in violation of CMs. *See* 50 C.F.R. § 300.105(h)(2). As noted, subsection (h)(2) does not preliminarily impose an embargo. *Id.*; 16 U.S.C. § 2435(3).

The second key distinction is that Section 609 and its implementing regulations establish a mechanism for the creation, application and administration of an embargo, whereas neither AMLRCA nor its implementing regulations do the same. Unlike the embargo in *Earth*

Island, the action in the instant case that plaintiff would portray as an "embargo" is the result of plaintiff failing to meet the requirements of a NMFS preapproval application and NMFS' inability to approve the application for importation when plaintiff cannot show compliance with CMs. *See* NMFS Denial Letter at 3-4 (citing 50 C.F.R. § 300.105(d), (h)(2)). The provision of the statute and regulations in the instant action serve to *facilitate* importation of toothfish within the parameters of CCAMLR CMs, whereas the statute before the Ninth Circuit in *Earth Island* served to *prohibit* the importation of shrimp from an entire country if the country was found not to comply with shrimp trawl fishing protocols that protect sea turtles. *Earth Island*, 6 F.3d at 649.

Further, the circumstances of the instant denial — based on the failure of the CCAMLR "to adopt catch limits or other measures as necessary in accordance with CM 31-01," NMFS Denial Letter at 3 — are distinct from the prohibition in Section 609. Section 609 prohibits shrimp importation harvested in a way that endangers sea turtles, whereas AMLRCA, prohibits importation of Antarctic marine living resources harvested in a way that does not comply with measures adopted by a committee pursuant an international convention. *Compare* Section 609, 16 U.S.C. § 1537(b), *with* AMLRCA, 16 U.S.C. § 2435(3). The inability of such a commission, the CCAMLR, to adopt, by consensus, "limitations [on catch] or other [equivalent] measures," CM 31-01, is not the equivalent of a limitation instituted affirmatively by a law of the United States government to effectuate an importation prohibition of zero. *See K Mart*, 485 U.S. at 185, 108 S.Ct. 950.

Last, plaintiff raises a decision of the U.S. District Court for the District of Columbia ("D.D.C."), *International Labor Rights Fund*, 357 F. Supp. 2d at 205, 208-10. The D.D.C. granted defendant's motion to dismiss for lack of subject matter jurisdiction because plaintiffs' claims arose out of section 307 of the Tariff Act of 1930 ("Section 307"),21 which expressly provides for an embargo on goods produced from forced labor. *Id.* at 206. On this basis, the D.D.C. concluded that the USCIT had exclusive jurisdiction over an action under Section 307:

> In contrast to the provision of the Tariff Act at issue in *K Mart*, Section 307 expressly "provides for" an "embargo" under 28 U.S.C. § 1581(i)(3), as defined by the Supreme Court. The plain language of Section 307 states that goods produced in a foreign country as a result of forced or convict labor "shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited."

Id. at 208 (citing 19 U.S.C. § 1307). The D.D.C. added that "[n]either the interest in uniformity of judicial review, nor Congress' intent to reserve certain cases for the specific expertise of the CIT, would be served by retaining jurisdiction over the plaintiffs' claims." *Id.* at 209. The D.D.C. also found support for its position in the fact that the USCIT had exercised jurisdiction over Section 307 cases in the past. *Id.* at 209 (citing *McKinney v. U.S. Dep't of Treasury*, 9 C.I.T. 315, 614 F. Supp. 1226 (1985); *China Diesel Imps., Inc. v. United States*, 18 C.I.T. 515, 855 F. Supp. 380 (1994)).

The prohibition under Section 307 on importation of goods produced or manufactured by forced labor is distinct from the conditions on importation provided for by AMLRCA. Under Section 307, the importation of goods produced by forced labor is banned in its entirety, and the statute provides for the Secretary of the Treasury to prescribe regulations for the enforcement of the statute. 19 U.S.C. § 1307. By contrast, AMLRCA does not provide for the issuance of a ban on all imports of Antarctic marine living resources. Rather, as described *supra*, AMLRCA provides for mechanisms and legal obligations necessary for the protection and conservation of Antarctic marine living resources. 16 U.S.C. § 2431(a)(1). Under AMLRCA, were NMFS to

determine that an importation of a shipment of Antarctic marine living resources was harvested in violation of a CCAMLR CM under the international framework for resource management established by the CAMLR Convention and implemented by AMLRCA, NMFS would be authorized to prohibit importation of that shipment. 16 U.S.C. § 2435. In contrast to the default ban provided for in Section 307, AMLRCA and its implementing regulations do not provide for such a ban; rather, the statute and regulations expressly provide for importation so long as importers meet delineated requirements so that harvesting of Antarctic living resources can be balanced with the underlying conservation efforts of the statute. *Compare* Section 307 (prohibiting entry of all goods produced by forced labor), *with* 16 U.S.C. § 2435 (making unlawful the import of Antarctic marine living resources harvested in violation of the CAMLR Convention or in violation of regulations promulgated under the statute).

In the instant action, the court concludes that AMLRCA, 16 U.S.C. § 2431 *et seq.*, and the implementing regulations, 50 C.F.R. §§ 300.105(d), (h)(2), as invoked by NMFS, *see* NMFS Denial Letter at 4, *regulate* the import of toothfish in conjunction with international conservation efforts agreed to by the United States and adopted by consensus by the CCAMLR under the CAMLR Convention. The language in AMLRCA and its implementing regulations making it unlawful to import toothfish is expressly conditioned on the terms of the CAMLR Convention and the conservation measures adopted thereunder. The denial by NMFS of the preapproval application does not constitute an "embargo" under 28 U.S.C. § 1581(i)(1)(C).

* * * *

C. OTHER ISSUES

1. Columbia River Treaty

The United States and Canada continued negotiations to modernize the Columbia River Treaty regime. See *Digest 2022* at 592-93, *Digest 2021* at 570, *Digest 2020* at 519, *Digest 2019* at 446-47, and *Digest 2018* at 511 regarding previous rounds of negotiations. In a January 27, 2023, State Department media note, available at https://www.state.gov/conclusion-of-round-15-of-negotiations-to-modernize-the-columbia-river-treaty-regime/, the Department noted the conclusion of the fifteenth round of negotiations. Round sixteen of negotiations concluded on March 23, 2023. See March 27, 2023 State Department media note available at https://www.state.gov/virtual-listening-session-following-the-16th-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. The seventeenth round of negotiations took place from May 16-17, 2023. The State Department media note is available at https://www.state.gov/virtual-listening-session-following-the-17th-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. The United States hosted the eighteenth round of negotiations from August 10-11, 2023. See August 14, 2023 State Department media note, available at https://www.state.gov/18th-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. The media note includes the following:

> As committed by President Biden and Prime Minister Trudeau at the conclusion of the President's March visit to Canada, the U.S. negotiation team has further accelerated negotiation efforts towards an agreement that meets the needs of the Columbia Basin with greater certainty and improved results.
>
> To that end, the United States recently put forward a range of options for Canada to consider that the U.S. believes provides both countries with increased certainty in managing flood risks, planning for Treaty hydropower operations, integrating Canada's desire for greater flexibility, establishing mechanisms for incorporating tribal and indigenous input, and taking advantage of opportunities to strengthen Treaty ecosystem provisions and collaborate on ongoing salmon reintroduction studies. During the session negotiation teams exchanged views on this set of proposals.
>
> The United States is focused on ensuring that resource planners, operators, and others have time to make plans to implement a modernized Treaty regime or rely on the current Treaty regime as it exists today.

The nineteenth round of negotiations took place on October 12-13, 2023, in Portland, Oregon. The October 16, 2023 State Department media note is available at https://www.state.gov/19th-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/.

2. Biodiversity

On February 20, 2023, the fifth session of the intergovernmental conference ("IGC") to elaborate the text of an international legally binding instrument under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction ("BBNJ"), also referred to as the High Seas Treaty, resumed following a 2022 decision to suspend to a later date. See *Digest 2022* at 583-84. On March 4, 2023, the draft Agreement text was finalized, in principle and was adopted by consensus on June 19, 2023. In conjunction with the adoption of the Agreement, the United States submitted an explanation of position, excerpted below.

_____

* * * *

The United States is very pleased to join consensus on adopting the new Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

Our ocean is key to the health and biodiversity of our planet. The United States is committed to safeguarding the health of our ocean for generations to come.

The BBNJ Agreement represents a once-in-a-lifetime opportunity to make good on that commitment for the high seas, which are increasingly threatened by a variety of stressors, including climate change, illegal, unreported, and unregulated fishing, and pollution.

This ambitious BBNJ Agreement creates for the first time an effective, coordinated, and cross-sectoral approach to establishing marine protected areas on the high seas. This is a truly remarkable accomplishment for the international community, and a key step in achieving our goal to conserve or protect at least 30 percent of the global ocean by2030.

Additionally, the Agreement ensures that Parties conduct comprehensive and rigorous environmental review of their activities on the high seas and harmonizes the EIA process with assessments conducted under other international organizations.

We have also come together to create a fair and equitable benefit-sharing system under the Agreement that will ensure access to marine genetic resources in areas beyond national jurisdiction and promote marine scientific research, exploration, and innovation by countries around the globe.

Finally, the Agreement includes robust provisions on capacity building and transfer of marine technology, which will promote the conservation and sustainable use of high seas biodiversity.

We would like to take this opportunity to clarify our interpretations of several important issues related to this Agreement.

We do not interpret anything in this Agreement as authorizing or permitting any waiver or undermining of existing intellectual property rights and obligations under international or national law; requiring mandatory disclosure of trade secrets, protected undisclosed or confidential information; requiring mandatory disclosure in patent applications of the origin or source of marine genetic resources; or requiring compulsory licenses.

Regarding the undefined term "digital sequence information," we understand this term to refer to genetic sequence data that describes the order of nucleotides in DNA or RNA.

While the provisions of this Agreement shall apply to utilization of marine genetic resources (MGR) and digital sequence information (DSI) collected or generated before entry into force for a party that does not make an exception under Article 10.1, the utilization itself must occur after entry into force for the provisions to apply.

We support this Agreement creating a system for the fair and equitable sharing of benefits related to MGR of areas beyond national jurisdiction, even though these resources are not the common heritage of humankind. This Agreement does not depart from the United Nations Convention on the Law of the Sea, which uses the term common heritage of humankind only in reference to the mineral resources of the Area.

We interpret the requirements to take “necessary legislative, administrative or policy measures,” in Article 14.11 to require that adequate notice of the obligation to share benefits is provided to users prior to the activities that trigger the benefit-sharing obligation.

Regarding the term “collection in situ,” in relation to MGR, we interpret this term to mean the collection of MGR which are collected for the purpose of conducting research into their genetic properties.

Regarding the undefined term “activities,” with respect to MGR and DSI, we interpret the meaning of activities to be determined through the substantive provisions of the Agreement. As related to benefit sharing obligations, we interpret “activities” to include collection of MGR in areas beyond national jurisdiction, access to MGR of areas beyond national jurisdiction, and utilization of such MGR and DSI on such MGR.

Regarding Article 12.7 on biennial reports on access to MGR and DSI, we interpret this as applying only to those MGR and DSI that have a known BBNJ identifier. Additionally, the aggregate report on access will only provide the number of times a given MGR or DSI is

accessed every two years, not information on who accessed, from where they accessed, or any subsequent utilization.

While Article 12.8 requires certain information related to the utilization of MGR and DSI, including commercialization, to be notified to the BBNJ Clearinghouse Mechanism, nothing in the Agreement requires disclosure of information that is protected from disclosure under the domestic law of a Party or other applicable law.

We do not view Article 13 on traditional knowledge associated with MGR as precedent-setting for other fora.

Regarding the obligation to share non-monetary benefits and the non-exhaustive list of such benefits in Article 14.2, we interpret this to mean that a Party may choose which non-monetary benefits to provide. We interpret non-monetary benefits as being required for activities with respect to MGR of areas beyond national jurisdiction, but not to access to or utilization of DSI of such MGR.

We interpret Article 22 to mean that the BBNJ Conference of the Parties cannot take decisions pursuant to that article to adopt measures within the competence of other relevant legal instruments or frameworks, or relevant global, regional, subregional, or sectoral bodies.

Regarding the relationship between fisheries and Part II, we interpret the term "fishing-related activities" in Article 10 to include, among other things, research to support management of fisheries and their associated ecosystems.

Regarding emergency measures in Article 24, we interpret "serious or irreversible harm" to reflect the circumstances arising from catastrophic and unforeseen disasters. We support the use of these measures when necessary and when the relevant legal instrument or framework or global, regional, subregional, or sectoral body cannot take timely action.

We interpret the obligations to "give consideration" to concerns, comments, notifications, and recommendations in Articles 31, 33, and 37 to apply whether or not a planned activity has commenced, and as not requiring a specific outcome with respect to implementation of a planned activity.

We interpret the scope of "planned activities under [a Party's] jurisdiction or control" to be solely within the discretion of such Party to determine, on a case-by-case basis and consistent with its domestic law.

We interpret the term "guidelines" as used in Article 38 to refer to non-legally binding instruments.

With regard to the provisions on transfer of marine technology, the clause "mutually agreed terms and conditions" referenced in Article 43 means that all parties to the transfer have agreed to all terms and conditions voluntarily, without being forced or coerced into such agreement.

We interpret the references to access and accessibility in Article 52 to mean eligibility for access to resources in compliance with applicable programming strategies, standards, policies, and procedure.

With respect to Article 64, we confirm our understanding that a regional economic integration organization (REIO), when voting on a matter within its competence, should only exercise a number of votes equal to the number of members who are present and duly accredited at the time of the vote.

We look forward to resolving the voting modalities for all parties in the rules of procedure or through another mechanism by the first meeting of the Conference of the Parties.

Consistent with Article 239 of the Convention, we reaffirm the fundamental importance of promoting and facilitating marine scientific research with respect to all Parts of this Agreement.

In conclusion, we would like to commend the President, Ambassador Rena Lee, for her tireless leadership, as well as the facilitators, the Division for Ocean Affairs and the Law of the Sea, all delegations and observers, and civil society for the hard work, flexibility, and collaborative spirit needed to reach this important milestone.

Our ocean is under threat and it is long past time for a change. Our collective commitment to a successful Agreement on the conservation and sustainable use of high seas marine biodiversity will enable us to realize that change.

We look forward to continuing to work together as we take the next steps to implement this historic Agreement.

* * * *

On September 20, 2023, the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, referred to as the High Seas Treaty, opened for signature. The United States signed the Agreement on September 20, 2023. Secretary Blinken's announcement of U.S. signature is available at https://www.state.gov/signing-of-the-high-seas-treaty/, and follows:

> The United States yesterday signed the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, otherwise known as the High Seas Treaty at the United Nations in New York.
>
> The ocean is one global system, and its health is key to the health of our planet. This historic High Seas Treaty creates a coordinated approach to establishing marine protected areas on the high seas, a critical step to conserving ocean biodiversity and reaching the global community's "30×30" target to conserve or protect at least 30 percent of the ocean by 2030.
>
> The United States stands with the global community in committing to safeguard the health and resilience of our ocean so that it may continue to sustain us for generations to come.

3. Sustainable Development

On July 10, 2023, Deputy U.S. Representative to the Economic and Social Affairs Council Jonathan Shrier delivered remarks at a UN high-level political forum on sustainable development town hall meeting. The statement is excerpted below and available at https://usun.usmission.gov/remarks-at-a-high-level-political-forum-on-sustainable-development-town-hall-meeting/.

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* * * *

Excellencies, colleagues, as we gather today, the world is facing an array of complex and interlinked challenges: the lingering effects of the COVID-19 pandemic; a global food security crisis exacerbated by conflict and resulting food and energy price volatility and supply chain disruptions; rising poverty and inequality; and increasingly frequent and pervasive climate impacts that have reversed or stalled the last two decades of development gains, especially in the poorest and most vulnerable countries. These compounding crises – and their impact on countries' ability to make critical investments in health, education, and other core development priorities – represent serious obstacles to achieving the SDGs.

As with the UN Charter, our commitment to full implementation of the 2030 Agenda and achievement of all 17 SDGs is grounded in our belief in a free, open, prosperous, and secure international system – and ultimately in our determination to uphold the inherent dignity of every human being. Moreover, we believe economic development is transformative for all countries – including the United States. We are all in this together.

In the U.S. National Security Strategy, President Biden highlighted the need to redouble our efforts to reduce poverty and hunger and expand access to education to get back on track to achieve the Sustainable Development Goals by 2030. At the federal, state, and local level, the United States is making good on this call to action both domestically and internationally. Panelists today addressed SDG 2 – zero hunger. Since last year, the United States has provided over $14 billion in humanitarian and development aid to fight food insecurity and remains the single largest donor to each of the Rome-based food agencies.

Indeed, we are investing toward progress across all 17 SDGs including water, energy, climate, sustainable cities, and many of the other SDGs that will be the focus of our discussions over the next two weeks. Over each of the last two years, the United States has provided over $50 billion in total official development assistance and leveraged billions more in private finance for development projects.

Across our development work, the United States emphasizes the principles and best practices that underlie durable progress and impact, including transparency and accountability; high environmental, social, and labor standards; inclusion; respect for human rights; and local partnerships supported by foreign assistance and sound, sustainable financing.

Madam President, we know that achieving gender equality is foundational to the 2030 Agenda and a key accelerator to achieving all 17 SDGs. We cannot advance development without women and girls and their leadership, their full, equal, and meaningful participation, and the full realization of their human rights.

The bottom line is this: we can meet even these most daunting global challenges if we translate our commitment to the SDGs into meaningful action at all levels and do so with the urgency and ambition that this moment calls for. We are strongest together – and when we mobilize the power of collective action to tackle shared goals.

* * * *

4. Nature Crime Alliance

On August 23, 2023, the State Department issued as a media note available at https://www.state.gov/joint-statement-on-launch-of-the-nature-crime-alliance/, a joint statement on the launch of a multi-sector Nature Crime Alliance. The governments of Gabon, the Kingdom of Norway, and the United States of America, along with the UN Office on Drugs and Crime ("UNODC"); the Global Environment Facility ("GEF"); Indigenous Peoples Rights International; Amazon Conservation Association; Earth League International; Environmental Investigation Agency US; Fisheries Transparency Initiative ("FiTI"); Global Initiative to End Wildlife Crime; Indigenous Peoples Rights International; Instituto Igarape; Mongabay; Rainforest Foundation UK; Sustainable Fisheries Partnership; TRAFFIC; Wildlife Conservation Society; Wildlife Justice Commission; and World Forest ID signed the joint statement. The statement follows.

* * * *

Today, we are joining together to form the Nature Crime Alliance– a new, multi-sector approach to fighting criminal forms of logging, mining, wildlife trade, land conversion, crimes associated with fishing, and the illegal activities with which they converge.

Nature crime constitutes one of the largest illicit economies in the world, inflicting devastation and destruction upon people and planet. We recognize that these crimes cannot be eradicated without multi-sector cooperation, and that there is a pressing need for greater coordination and collaboration among the diverse actors fighting nature crime. A new approach is needed.

We have formed the Alliance in recognition of this need, with members including representatives from governments, law enforcement, international organizations, civil society organizations, front line defenders including Indigenous Peoples and local communities, donors, and the private sector.

We will work together, through the Alliance, to raise political will, mobilize financial commitment, and strengthen operational capacity to fight nature crime. Through a range of initiatives – from solutions-focused working groups convening representatives across different sectors, to structured communications channels that enable open dialogue and the sharing of best practice – the Alliance is building a new, international, collaborative response to nature crime.

This is the first time that such a multi-sector approach to this global challenge has been developed on this scale, with the Alliance marking a key moment in the fight against nature crime. We encourage governments and organizations that share our determination to end environmental injustice and protect people and planet to join us in the Nature Crime Alliance.

* * * *

5. Global Health Security

a. Global Health Security and Diplomacy

On August 1, 2023, Secretary Blinken launched the new Bureau of Global Health Security and Diplomacy. The new Bureau consolidates the Office of International Health and Biodefense within the Bureau of Oceans and International Environmental and Scientific Affairs, the Coordinator for Global COVID-19 Response and Health Security, and the Office of the US Global AIDS Coordinator. Secretary Blinken's press statement is available at https://www.state.gov/launch-of-the-bureau-of-global-health-security-and-diplomacy/ and follows.

* * * *

Today the State Department is officially launching a new Bureau of Global Heath Security and Diplomacy. The Bureau's overarching mission is to fortify the global health security architecture to effectively prevent, detect, control, and respond to infectious diseases, including HIV/AIDS. By leveraging and coordinating U.S. foreign assistance, the Bureau aims to foster robust international cooperation, enhancing protection for the United States and the global community against health threats through strengthened systems and policies.

The COVID-19 pandemic underscored the vital role the United States must play in addressing global health and health security issues. To ensure U.S. leadership is sustained moving forward, the Bureau will provide a unified voice of leadership on global health security and diplomacy, combining strengths, functions, personnel, and resources from various offices.

Ambassador-at-Large Dr. John N. Nkengasong, will lead the bureau, serving as Ambassador-at-Large, U.S. Global AIDS Coordinator, and Senior Bureau Official for Global Health Security and Diplomacy, and reporting directly to me.

This new Bureau will seamlessly integrate global health security as a core component of U.S. national security and foreign policy, underscoring the Department of State's commitment to advancing human health worldwide.

* * * *

The position of the ambassador-at-large for Global Health Security and Diplomacy, as well as a U.S. Coordinator for Global Health Security at the National Security Council, were created by the U.S. Global Health Security and International Pandemic Prevention, Preparedness and Response Act of 2022, which was enacted as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. Pub. L. No. 117-263, 136 Stat. 2395.

b. The Global Health Response to the COVID-19 Pandemic

In 2023, the United States continued to support the negotiations of two legally binding instruments: an agreement that would address pandemic preparedness, prevention and response ("pandemic accord") and a suite of amendments to the International Health Regulations 2005 ("IHR 2005"). The main issue that cuts across both negotiating tracks is how to have a more equitable response during the next public health emergency. See

Digest 2022 at 580-83, *Digest 2021* at 562-66, and *Digest 2020* at 508-14 for background.

(i) Pandemic Accords

During 2023, there were multiple meetings of the Intergovernmental Negotiating Body ("INB") to draft and negotiate a pandemic accord. Details of the 2023 sessions are available at https://inb.who.int/.

On March 8, 2023, the State Department and the Department of Health and Human Services issued a joint update on the negotiations. The joint update is available as a media note at https://www.state.gov/joint-update-by-the-department-of-state-and-the-department-of-health-and-human-services-on-negotiations-toward-a-pandemic-accord/ and follows.

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* * * *

The Fourth Meeting at the World Health Organization of the Intergovernmental Negotiating Body working on a pandemic accord concluded last week. The United States used this meeting to underscore its commitment to the process, with a goal of developing an accord that builds on lessons learned during the COVID-19 pandemic and strengthens U.S. national security by establishing clear, agreed roles and responsibilities for the WHO and its member states and partners.

Lead U.S. negotiator Ambassador Pamela Hamamoto led the U.S. delegation to this meeting and engaged with a broad range of counterparts to promote an accord that would build capacity, reduce the threat posed by zoonotic disease, enable rapid and more equitable responses, and establish sustainable financing, governance, and accountability to break the cycle of pandemic panic and neglect.

Much work remains to be done on this accord to ensure that the text meets these complex needs and is ultimately implementable for the United States. The next meeting of the Negotiating Body will take place next month, with a target date for conclusion of May 2024.

While the United States is deeply committed to a process that should result in shared commitments and shared responsibilities among nations, we are also aware of concerns by some that these negotiations could result in diminished U.S. sovereignty. The United States will not support any measure at the World Health Organization, including in these negotiations, that in any way undermines our sovereignty or security.

Any accord resulting from these negotiations would be designed to increase the transparency and effectiveness of cooperation among nations during global pandemics and would in no way empower the World Health Organization or any other international body to impose, direct, or oversee national actions. It will not compromise the ability of American citizens to make their own health care decisions.

COVID-19 served as a stark reminder that infectious diseases do not stop at our borders. In order to protect Americans from current and future health threats, we must ensure that the lessons of COVID-19 and other infectious disease threats are reflected in a clear strategy rooted in global engagement.

* * * *

The initial proposal for the negotiating text of the WHO pandemic agreement, dated October 30, 2023, is available at https://apps.who.int/gb/inb/pdf_files/inb7/A_INB7_3-en.pdf.*

(ii) Amendments to International Health Regulations

On May 23, 2023, U.S. Ambassador Bathsheba Crocker delivered the U.S. Pillar Two statement: "Public health emergencies: preparedness and response" at the 76th World Health Assembly in Geneva. The statement is available at https://geneva.usmission.gov/2023/05/23/statement-by-ambassador-crocker-at-wha76/, and excerpted below.

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The United States continues to be fully committed to the negotiation of a new Pandemic Accord and amendments to International Health Regulations to build our collective capacities to prevent and respond to future pandemics and to do so in a way that expands equity for all.

This year's sobering report of the Independent Oversight and Advisory Committee for the WHO Health Emergencies Program (WHE IOAC) should serve as an urgent call to both the Secretariat and Member States to renew our focus on the fundamentals of the WHE.

We call on the Secretariat to take steps to implement the recommendations of the IOAC. In particular, to:

- Clarify roles and responsibilities across the three levels, in line with WHA decision 69(9);
- Develop and resource a staffing strategy for the WHE workforce;
- Ensure efforts to improve the resource base for WHO extend to WHE; and
- Address organization-wide issues such as gender , sexual misconduct , and institutional culture that are particularly important to WHO's emergency work.

The United States is committed to the IHR amendment process through the Working Group on amendments to the IHR 2005 and will continue to work with Member States to update the IHR to make it fit-for-purpose and able to address health emergencies at the earliest possible instance.

Member States must continue to improve IHR implementation and compliance by implementing core capacities and striving to improve communications, connectivity, and transparency.

The United States is committed to moving forward with a package of targeted amendments to the IHR at WHA77 and ask that all Member States dedicate time and effort to that important agreed outcome.

Regarding the HEPR proposal, much has already been done to create and evaluate the current global health architecture, such as the International Health Regulations (2005) (IHR) and its accompanying Monitoring and Evaluation Framework (MEF) that focuses on core capacities

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* Editor's note: Although the INB's mandate was to conclude at the 77th session of the World Health Assembly in 2024, the mandate has been extended to the 78th session of the World Health Assembly in 2025.

to prevent the spread of disease, and we must deconflict any potential issues that may interfere with current monitoring and evaluation.

At the 153rd session of the Executive Board, the United States will propose that the EB task the Sub-Committee on Health Emergency Prevention, Preparedness, and Response (SCHEPPR) to carefully consider the HEPR proposals, report to the 154th Executive Board on any area of potential confusion or overlap, and provide a recommendation to the EB on how to address the identified challenges.

On the Clinical Trials item, once the Secretariat releases the initial draft of the guidelines landscape of best practices for clinical trials, we request that an initial consultation be convened soon thereafter for Member States to provide feedback before the guidance is finalized.

For clinical research in outbreak response settings, we encourage the WHO to consult early and to coordinate with host countries, global experts and vaccine and therapeutic developers and providers on the development and execution of well-designed clinical trials, that respond to the needs of the country experiencing the outbreak.

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The first group of amendments to the IHR 2005 were adopted in May 2022, shortening the time for an amendment's entry into force from 2 years to 1 year. The IHR 2005, as amended in 2014 and 2022, are available at https://apps.who.int/gb/bd/pdf_files/IHR_2022-en.pdf. For countries such as the United States, that did not object to those amendments by October 1, 2023, they entered into force in 2024.** A summary of the amendments and the amendments are also available at https://www.who.int/news/item/01-06-2024-world-health-assembly-agreement-reached-on-wide-ranging--decisive-package-of-amendments-to-improve-the-international-health-regulations--and-sets-date-for-finalizing-negotiations-on-a-proposed-pandemic-agreement.

c. UN General Assembly High-Level Meetings on Health

In September 2023, the UN General Assembly convened three high-level meetings on health during its 78th session ("UNGA 78") in New York. The meetings focused on universal health coverage, tuberculosis, and pandemic prevention, preparedness and response.

On October 5, 2023, the United States joined consensus on the adoption of three Political Declarations of the UN General Assembly High-Level Meetings on Tuberculosis, Universal Health Coverage, and Pandemic, Prevention, Preparedness, and Response. Ambassador Linda Thomas-Greenfield delivered a statement on the adoption of the Political Declarations, which is available at https://usun.usmission.gov/statement-by-

** Editor's note: As a result, the suite of targeted amendments to IHR 2005 negotiated during 2023, that were finalized and adopted on June 1, 2024, will enter into force in 2025 for most countries (12 months from the official notification of the amendments in all UN languages).

ambassador-linda-thomas-greenfield-on-the-adoption-of-the-political-declarations-of-the-high-level-meetings-on-health/, and follows.

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Today, the United States commends the adoption of the Political Declarations of the United Nations General Assembly High-Level Meetings on Tuberculosis, Universal Health Coverage, and Pandemic Prevention, Preparedness, and Response.

The United States is a proud leader in global health, and we remain the largest donor to global public health efforts with over $10 billion of assistance provided annually. The United States has repeatedly reaffirmed its longstanding commitment to strengthen global health security and its recognition of the need to do more to prepare for future health threats and is committed to this end.

In pursuit of the 17 Sustainable Development Goals, the United States will remain devoted to the promotion and protection of human rights for all persons in all their diversity, which is fundamental to achieving universal health coverage, creating a strong pandemic prevention, preparedness, and response architecture, and combatting HIV/AIDS, malaria, and tuberculosis.

To this end, we must include the voices of all women, girls, adolescents, LGBTQIA+ persons, persons with disabilities, Indigenous peoples, and other marginalized and under-represented populations in our decision-making. And we must meaningfully include all persons in every aspect of planning, implementation, monitoring and accountability, and we must reject policies that hinder their access to care because of bias, discrimination or stigma. These actions are essential to meeting the Sustainable Development Goals, and to building a more resilient world in the face of threats such as climate change, future pandemics, and conflicts and crises around the world.

The United States remains dedicated to strengthening health systems and institutions and advancing global health security.

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Cross references

UN Third Committee on environment and human rights, **Ch. 6.A.3.a**
HRC on environment and human rights, **Ch. 6.A.4**
Impacts of COVID-19 on women, **Ch. 6.B.2**
Purported right to clean, healthy, and sustainable environment, **Ch. 6.N.3**
ICJ Advisory Opinion, Obligation of States in Respect to Climate Change, **Ch. 7.B.2.c**
ILC work on protection of the environment in relation to armed conflicts, **Ch. 7.C.1**
ILC draft articles on protection of persons in the event of disasters, **Ch. 7.C.2**
*Recognition of Cook Islands and Niue***, Ch. 9.A.3**

CHAPTER 14

Educational and Cultural Issues

A. CULTURAL PROPERTY: IMPORT RESTRICTIONS

In 2023, the United States entered into four agreements, pursuant to the 1970 UN Educational, Scientific and Cultural Organization ("UNESCO") Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("Convention"), to which the United States became a State Party in 1983, and in accordance with the Convention on Cultural Property Implementation Act ("CPIA"), which implements parts of the Convention. Pub. L. 97-446, 96 Stat. 2351, 19 U.S.C. §§ 2601-2613.

If the requirements of 19 U.S.C. § 2602(a)(1) and/or (e) are satisfied, the President has the authority to enter into bilateral agreements to apply import restrictions for up to five years on archaeological and/or ethnological material of a nation, the government of which has requested such protections and has ratified, accepted, or acceded to the Convention. Accordingly, the United States took steps in 2023 to protect the cultural property of Belize, Libya, Nepal, Cambodia, India, and Uzbekistan, by entering into new cultural property agreements; by extending or considering proposals to extend existing agreements; by considering requests for import restrictions; and/or by imposing unilateral emergency import restrictions pursuant to 19 U.S.C. § 2603. Current cultural property agreements and import restrictions pertaining to those agreements can be found at https://eca.state.gov/cultural-heritage-center/cultural-property/current-agreements-and-import-restrictions.

1. Peru

As discussed in *Digest 2022* at 596, the United States and Peru signed an agreement to protect Peruvian cultural property. The 2022 agreement, signed September 30, 2022, entered into force on April 27, 2023, and is available at https://www.state.gov/peru-23-427. U.S Customs and Border Protection ("CBP") published notice of the imposition of import restrictions on certain categories of ethnological material from the Republic of Peru pursuant to the agreement, effective September 13, 2023. 88 Fed. Reg. 62,696 (Sep. 13, 2023).

2. Belize

On December 15, 2022 and January 3, 2023, the United States and Belize agreed via exchange of diplomatic notes to further extend a memorandum of understanding ("MOU") on import restrictions, originally signed on February 23, 2018. CBP extended import restrictions on certain archaeological material of Belize, effective February 23, 2023, pursuant to the MOU, as extended. 88 Fed. Reg. 11,386 (Feb. 23, 2023). The extension, which entered into force January 3, 2023, is available at https://www.state.gov/belize-23-103.

3. Libya

On December 20, 2022 and January 8, 2023, the United States and Libya agreed via exchange of diplomatic notes to extend an MOU on import restrictions, originally signed on February 23, 2018. The 2023 MOU, entered into force January 8, 2023, with effect from February 23, 2023, is available at https://www.state.gov/libya-23-108. CBP extended import restrictions on certain archaeological material of Libya, effective February 23, 2023, pursuant to the MOU, as extended. 88 Fed. Reg. 11,388 (Feb. 23, 2023).

4. Bulgaria

On May 19, 2023, the State Department proposed to extend and amend the MOU concerning the imposition of import restrictions on categories of archaeological and ethnological materials between Bulgaria and the United States. The State Department published notification of the proposal in the Federal Register. 88 Fed. Reg. 32,265 (May 19, 2023).

5. China

On May 19, 2023, the State Department proposed to extend the MOU concerning the imposition of import restrictions on categories of archaeological materials between the People's Republic of China and the United States. The State Department published notification of the proposal in the Federal Register. 88 Fed. Reg. 32,264 (May 19, 2023).

6. Honduras

On August 8, 2023, the State Department proposed to extend the MOU concerning the imposition of import restrictions on categories of archaeological materials between Honduras and the United States. The State Department published notification of the proposal in the Federal Register. 88 Fed. Reg. 53,576 (August 8, 2023).

7. Nepal

Nepal made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention, which was received by the United States on May 23, 2023. Nepal's request seeks U.S. import restrictions on archaeological and ethnological material representing Nepal's cultural patrimony. The State Department published notification of the request in the Federal Register. 88 Fed. Reg. 53,575 (Aug. 8, 2023).

8. Yemen

On September 1, 2023, the United States and Yemen signed an agreement to renew and extend the emergency cultural property protections put in place in 2020. See *Digest 2020* at 522. See also State Department media note, available at https://www.state.gov/united-states-and-yemen-sign-cultural-property-agreement/, and includes the following:

> The signing of this agreement is a major milestone in the U.S.-Yemen bilateral relationship and is a framework for cooperation between the two countries to combat cultural property trafficking, while encouraging its legal exchange for cultural, educational, and scientific purposes. The agreement builds on the United States' long-term collaboration to preserve Yemen's cultural heritage through U.S. Ambassadors Fund for Cultural Preservation grants to NGO partners totaling more than $550,000 and ranging from the restoration of historic buildings to the preservation of ancient manuscripts. The signing of this agreement also builds on the Biden-Harris Administration's support for a durable resolution to the Yemen conflict and reaffirms U.S. support for Yemeni sovereignty.
>
> The United States has been unwavering in its commitment to protect and preserve cultural heritage around the world and to restrict trafficking in cultural property, which is often used to fund terrorist and criminal networks. The U.S.-Yemen cultural property agreement was negotiated by the State Department under the U.S. law implementing the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. With this agreement, Yemen joins 25 existing U.S. bilateral cultural property agreement partners. In addition, U.S. emergency import restrictions remain in place on cultural property from Afghanistan, Iraq, and Syria.

9. Cambodia

Cambodia and the United States entered into an MOU, extending and amending the existing MOU signed September 12, 2018. The 2023 MOU, signed August 30, 2023 at Phnom Penh, with entry into force August 30, 2023, is available at https://www.state.gov/cambodia-23-830.1. On September 19, 2023, CBP extended import restrictions on certain categories of archaeological and ethnological material of Cambodia pursuant to the MOU. 88 Fed. Reg. 64,372 (Sep. 19, 2023).

10. India

India made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention, which was received by the United States on September 12, 2023. India's request seeks U.S. import restrictions on archaeological and ethnological material representing India's cultural patrimony. The State Department published notification of the request in the Federal Register. 88 Fed. Reg. 86,437 (Dec. 13, 2023).

11. Uzbekistan

Uzbekistan and the United States entered into a new cultural property agreement. The agreement, signed at Tashkent November 7, 2023, which entered into force November 7, 2023, is available at https://www.state.gov/uzbekistan-23-1107.

12. Algeria

On December 13, 2023, the State Department proposed to extend the MOU concerning the imposition of import restrictions on categories of cultural property between the People's Democratic Republic of Algeria and the United States. The State Department published notification of the proposal in the Federal Register. 88 Fed. Reg. 86,437 (Dec. 13, 2023).

B. EXCHANGE PROGRAMS

1. Educational Cooperation with Japan

On May 21, 2023, the United States and Japan signed a nonbinding Memorandum of Cooperation ("MOC") to promote mutual cooperation and exchanges in the field of education. The text of the MOC is available at https://www.mext.go.jp/a_menu/kokusai/mext_00032.html. The State Department announced the MOC in a media note available at https://www.state.gov/memorandum-of-cooperation-in-education-signed-between-the-united-states-and-japan/, and includes the following:

> The Memorandum of Cooperation will initiate an annual high-level education dialogue between the United States and Japan supported by a joint education working group and an action plan. This is our first dedicated bilateral platform for policymakers to chart a pathway forward on education cooperation.
>
> Following the lifting of pandemic-related barriers, American and Japanese students are once again traveling abroad to study and learn about the world and each other. This resurgence in overseas study and research is a trend which we can take advantage of to positively shape the future of U.S.-Japan educational exchange.
>
> This Memorandum also enables our two governments to create opportunities for our students, faculty, and researchers to secure our positions as global leaders in creating safe and reliable technologies.

2. Special Student Relief Arrangement with Ukraine

The Assistant Secretary for Educational and Cultural Affairs extended and modified the Special Student Relief arrangement for J-1 visa Ukrainian post-secondary students adversely impacted by the Russian invasion of Ukraine. The arrangement was initially established through an exchange of notes on June 14, 2022 and August 18, 2022. See *Digest 2022* at 599. The arrangement temporarily modifies the requirements of the Exchange Visitor Program regulations at 22 CFR 62.23 that govern the College/University Student category. The extension and modification was effective on October 20, 2023 and will remain in effect until April 19, 2025. 88 Fed. Reg. 74,555 (Oct. 31, 2023).

3. Au Pair Rule

On October 30, 2023, the State Department issued a notice of proposed rulemaking (NPRM) to amend existing Exchange Visitor Program regulations to clarify and modernize the Au pair program. 88 Fed. Reg. 74,071 (Oct. 30, 2023). The NPRM details the following proposed changes:

> restructuring the child care and educational components, replacing the EduCare program with the part-time option, enhancing au pair and host family orientation requirements, formalizing standard operating procedures for rematching au pairs with new host families, and proposing new requirements to strengthen au pair protections.

4. Au Pair Litigation: *Posada v. Cultural Care, Inc.*

On April 26, 2023, the U.S. Court of Appeals for the First Circuit held that the State Department regulations and guidance documents could not establish that the

government authorized and directed a private company to take actions that au pairs claimed violated wage-and-hour laws. See *Posada v. Cultural Care, Inc.,* 66 F.4th 348. See *Digest 2022* at 599-602. Excerpts from the Court's opinion follow.

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D.

Against this legal backdrop, Cultural Care asserts that it enjoys protection under Yearsley because the plaintiffs-appellees' claims at issue seek to hold the company liable for merely "stepping into the State Department's shoes and 'perform[ing] exactly as' the government 'directed.' " See Cunningham v. Gen. Dynamics Info. Tech., Inc., 888 F.3d 640, 647 (4th Cir. 2018). We thus need to determine whether Cultural Care has made that showing. To do so, we must address the contentions that Cultural Care makes with respect to not only the plaintiffs-appellees' federal and state wage-and-hour claims but also their deceptive trade practices claims.

1.

With respect to the plaintiffs-appellees' federal and state wage-and-hour claims, Cultural Care contends that the plaintiffs-appellees seek to hold it "liable as an employer for supposed wage-and-hour violations" because it told host families that the minimum weekly "stipend" for au pairs is "$195.75" and "it screens, trains, monitors, and maintains certain records for au pairs." More specifically, Cultural Care contends that the plaintiffs-appellees allege in this regard that Cultural Care "is their 'employer' and thus is liable for their host families' alleged violations of state and federal wage-and-hour laws" because Cultural Care "monitors au pairs' welfare; has 'the right to reject any au pair application'; 'exercises control over the wages, hours and working conditions [of au pairs]'; 'maintains [ ] records regarding' au pairs; 'requires all its au pairs to attend four days of training'; and 'instructs' host families to pay" a weekly "stipend," which it currently describes as a "weekly payment of $195.75."

Cultural Care appears to be contending, in other words, that the plaintiffs-appellees' wage-and-hour claims seek to hold the company liable for performing "exactly as directed" because those claims seek to hold it liable merely for taking actions that DOS regulations and guidance documents required it to take as a "sponsor." See 22 C.F.R. §§ 62.10, 62.31(c)-(i). But, even if we were to assume that the relevant DOS regulations and guidance documents did "require ... Cultural Care to perform" any or even all the actions that we have just described, we cannot agree with Cultural Care's contention.

The DOS regulations and guidance documents referenced above do not purport to prevent Cultural Care from taking actions that would have brought the company into compliance with what the plaintiffs-appellees alleged the relevant wage-and-hour laws require. For example, those regulations and guidance documents do not purport to prevent Cultural Care from taking actions to ensure that the au pairs received the wages that they claim had to be paid to them under the relevant wage-and-hour laws. Thus, this is not a case like Cunningham in which the Fourth Circuit held that Yearsley protected a private party expressly authorized and directed by the Government to violate the liability-engendering laws that it was alleged to have

violated. See 888 F.3d at 647; cf. In re World Trade Ctr. Disaster Site Litig., 521 F.3d 169, 196–97 (2d Cir. 2008) (finding -- in applying in the "Stafford Act context" the protection recognized in Boyle v. United Techs. Corp., 487 U.S. 500, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988) -- that such protection "refined" the protection granted in Yearsley and "will not preclude recovery for injuries occasioned by violation of state statutes if the entity could have abided by those statutes while implementing the agency's specifications"). Accordingly, it is hard to see how we could conclude -- at least at this stage of the litigation -- that the plaintiffs-appellees seek to hold Cultural Care liable merely for acting as the regulations and guidance documents required.

Moreover, Yearsley does not establish that a private party is protected from liability for its actions so long as it was "authorized and directed" by the Government to act in ways that suffice only to bring it within the class of parties -- here, "employers" -- that are subject to the laws on which the plaintiffs' claims are premised. Yearsley protects parties from liability for acting in a way that gives rise to liability because so acting is unlawful. Cultural Care develops no argument -- and identifies no precedent to suggest -- that Yearsley indicates otherwise.

To be sure, Cultural Care does contend that DOS regulations and guidance documents provided that a "sponsor" "need only '[e]nforce and monitor [the] host family's compliance with [the State Department's] stipend and hours requirement,' " citing 22 C.F.R. § 52.31(n). And, for that reason, Cultural Care contends that the regulations and guidance documents "directed and certainly authorize[d]" it to act as it did -- in other words, to do only what it did and no more. (Emphasis added.)

But, insofar as Cultural Care means to shift from a contention that the plaintiffs-appellees' federal and state wage-and-hour claims seek to hold Cultural Care liable only for doing what it was "directed to do" to a contention that those claims seek to hold it liable for merely doing what it was "certainly authorized" to do, Cultural Care does not explain how the latter showing can in and of itself suffice to trigger protection under Yearsley. See Yearsley, 309 U.S. at 20, 60 S.Ct. 413. Moreover, even if an entity need do no more than Cultural Care did to meet the requirements of being a "sponsor," the regulations and guidance documents that set forth the requirements do not purport to bar such an entity from taking actions that (according to the plaintiffs-appellees) would have brought Cultural Care into compliance with the laws that underlie plaintiffs-appellees' claims. Indeed, as we explained in Capron v. Office of Attorney General of Massachusetts, the text of the regulations that govern the "exchange visitor program" make it "hard to draw" the "inference" that the regulations prohibit au pairs from being paid above the minimum amount required in the regulations. 944 F.3d 9, 29-30 (1st Cir. 2019); see 22 C.F.R. § 62.31(j).

Thus, Cultural Care at most has shown that a decision not to take the actions that the plaintiffs-appellees alleged would have brought it into compliance with the state and federal laws at issue was a decision that it could make without thereby failing to comply with the DOS regulations and guidance documents. Cultural Care develops no argument that in deciding not to comply with state and federal wage-and-hour laws it would have been acting as it had been "directed" to do. Nor does Cultural Care even develop an argument that any such decision not to comply was itself approved (rather than not prohibited) by the Government in supervising its actions as a "sponsor." See Taylor Energy Co., 3 F.4th at 175-76.

Of course, Cultural Care does argue that the plaintiffs-appellees' state wage-and-hour claims are preempted by the DOS regulations. But, Cultural Care rightly recognizes that the question of whether it has been "authorized and directed" by the Government for purposes of Yearsley is distinct from the question of whether it enjoys protection from liability based on

preemption. Thus, we do not see how Cultural Care's arguments regarding preemption suffice to show that it is entitled to protection under Yearsley on the ground that the federal and state wage-and-hour claims seek to hold it liable only for doing what the Government "authorized and directed" it to do.

2.

With respect to the plaintiffs-appellees' claims that Cultural Care violated deceptive trade practices laws, our reasoning is similar. Cultural Care contends in its briefing to us that DOS guidance documents and binding regulations state that "[s]ponsors shall require that au pair participants," 22 C.F.R. § 62.31(j), receive a weekly stipend "directly connected to the federal minimum wage" of at least "$195.75." Cultural Care further contends that DOS, in part via "Federal Minimum Wage Increase" "Notice" guidance documents issued by the Department, directed Cultural Care to inform host families that the minimum "weekly stipend" is "$195.75." Cultural Care then asserts that these directives, per Yearsley, protect it from the plaintiffs-appellees' claims that Cultural Care violated deceptive trade practices laws. Cultural Care contends that these regulations and guidance documents do so by giving "materially misleading" instructions to host families that the minimum weekly "stipend" for au pairs is "$195.75," which the plaintiffs-appellees contend "deceiv[ed] au pairs and host families by claiming it is legal to pay an au pair $195.75 per week for up to 45 hours of work" in select states where such payments are allegedly illegal.

But, the DOS regulations and guidance documents on which Cultural Care relies show only that the company was required as a "sponsor" to make sure that host families were informed of a minimum amount that they were required to pay. The regulations and guidance documents do not show that the Government directed Cultural Care as a "sponsor" to suggest to host families that they need compensate au pairs with only this amount to comply with federal and state wage-and-hour laws. See Capron, 944 F.3d at 29-30. Nor does Cultural Care identify any basis for our concluding at this stage of the litigation that, in directing Cultural Care's conduct as a "sponsor," the DOS specifically approved Cultural Care so suggesting. Indeed, Cultural Care develops no argument to us -- and, at the motion to dismiss stage, we do not see how we can conclude based on the DOS regulations and guidance documents, as written -- that the government "authorized and directed" Cultural Care to do such a thing.

Cultural Care does assert that it is entitled to Yearsley protection from plaintiffs-appellees' deceptive trade practices claims because the DOS regulations required the company to provide DOS with "[a] complete set of all promotional materials, brochures, or pamphlets distributed to either host family or au pair participants," which DOS reviewed for federal compliance every year. 22 C.F.R. § 62.31(m)(4), (6). But, Cultural Care does not contend that the DOS review process barred it from providing information to host families that would have informed them of what wage-and-hour laws would have required host families to pay (insofar as those laws would have required a higher payment than the minimum that the DOS regulations and guidance documents required Cultural Care to describe). We thus do not see how these DOS regulations support Cultural Care's claim of protection under Yearsley as to the plaintiffs-appellees' deceptive trade practices claims. See Cunningham, 888 F.3d at 647; cf. In re World Trade Ctr. Disaster Site Litig., 521 F.3d at 196–97 (explaining, in applying in the "Stafford Act context" the protection recognized in Boyle, 487 U.S. 500, 108 S.Ct. 2510, that such protection "refined" the protection granted in Yearsley and that, "if the government merely accepted, without substantive review or enforcement authority, decisions made by an entity, that entity would not be entitled" to Boyle protection).

Finally, as we noted above, neither Campbell-Ewald, see 577 U.S. at 166, 136 S.Ct. 663, nor Cultural Care's assertions of the separate defense of preemption have any bearing on the question that is critical here -- namely, whether Cultural Care was "authorized and directed" by the Government to act in the ways for which plaintiffs-appellees seek to hold it liable. Thus, just as we conclude that Cultural Care has not shown that it is entitled to Yearsley protection from the plaintiffs-appellees' federal and state wage-and-hour claims, we conclude that the same is true with respect to the plaintiffs-appellees' deceptive trade practices claims.

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C. INTERNATIONAL EXPOSITIONS

As discussed in *Digest 2022* at 602 and *Digest 2021* at 577, the Department announced the U.S. bid to host Expo 2027 in Minnesota. After a vote to select the host city for Expo 2027, the United States lost its bid to Serbia. See https://www.state.gov/hosting-the-worlds-fair/.

Cross References

Yemen, **Ch. 17.B.6**

CHAPTER 15

Private International Law

A. COMMERCIAL LAW/UN COMMISSION ON INTERNATIONAL TRADE LAW

On October 16, 2023, Elizabeth Grosso, Acting Deputy Legal Adviser, delivered the U.S. statement at the UN General Assembly Sixth Committee (Legal) on the report of the UN Commission on International Trade Law ("UNCITRAL") on the work of its 56th session. The U.S. statement is excerpted below and available at https://usun.usmission.gov/remarks-at-a-meeting-of-the-sixth-committee-on-agenda-item-77-report-of-the-un-commission-on-international-trade-law-on-the-work-of-its-56th-session/.

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The United States welcomes the Report of the 56th session of the United Nations Commission on International Trade Law and commends the efforts of UNCITRAL's Member States, observers, and Secretariat in continuing to promote the development and harmonization of international commercial law.

The recently concluded 56th Session of the Commission was very successful and productive. In addition to returning to in person meetings, we also welcome UNCITRAL's efforts to retain hybrid meeting formats that will facilitate the widest possible engagement with UNCITRAL's work and support its continuation.

Turning to the substance of UNCITRAL's work, the United States is pleased that the Commission adopted several instruments submitted by Working Group III concerning procedural reforms for investor-State dispute settlement. In particular, the adoption of the Code of Conduct for Arbitrators in International Investment Dispute Resolution marks a real achievement. The text and its accompanying commentary reflect a carefully balanced compromise among delegations with divergent views, but who worked in the spirit of compromise to conclude this important first reform. The resulting Code sets out clearly the expectation that arbitrators will act impartially and independently when called to decide international investment disputes, and that they will be diligent, competent, and efficient in doing so.

The Code also regulates two key areas of concern that have been expressed regarding arbitrator ethics – it sets out limits on arbitrators serving in multiple roles and requires broad disclosure of circumstances that could give rise to a conflict of interest. Both provisions will help promote standardization of practices among arbitrators and disputing parties and in doing so, address concerns about the legitimacy of the ISDS process and resulting awards.

The Code will also have an impact on the pool of arbitrators, which we expect will be positive in terms of encouraging arbitrators to think carefully when accepting appointments.

While this careful consideration is clearly welcome, we will be interested in seeing how the Code impacts the diversity of the arbitrator pool, in terms of profession, gender, geographical representation, and legal background.

We also welcome the Commission's adoption of documents relating to the use of mediation. In our view, the Model Provisions on Mediation in International Investment Dispute Resolution strike the right balance for encouraging the use of mediation. Similarly, the Guidelines on Mediation in International Investment Dispute Resolution are likely to be an important tool for disputing parties and their counsel by flagging key issues as they consider whether to pursue mediation. They may also be useful for mediators early in their career by identifying some key organizational issues that may facilitate successful mediation.

UNCITRAL also adopted the Guide on Access to Credit for Micro, Small and Medium Enterprises. This instrument will no doubt assist countries in determining the need for legal reform to facilitate credit for MSMEs, which often face unique challenges when trying to obtain reliable and affordable financing.

We look forward to Working Group I's consideration of the UNIDROIT Model Law on Warehouse Receipts. The work on this Model Law, which was developed by UNIDROIT in close collaboration with the UNCITRAL Secretariat, will no doubt demonstrate the success of joint coordination between UNIDROIT and UNCITRAL. We think having Working Group I review the draft Model Law will allow for a fuller policy debate on some of the issues left unaddressed during the UNIDROIT discussions.

We also look forward to the productive work this coming year in Working Groups with on-going projects. These include the expected completion of the work on adjudication and high-tech disputes and the results of the secretariat's stock-taking exercise on dispute resolution in the digital economy. We also expect substantial progress on the projects related to use of artificial intelligence and automation in contracting, data provision contracts, and negotiable cargo documents.

Finally, we congratulate the UNCITRAL Secretariat on holding a successful colloquium on climate change and international trade law during the Commission session in July. We look forward to UNCITRAL's future work on voluntary carbon credits, in cooperation with UNIDROIT, HCCH, and other organizations.

We look forward to continuing our productive engagement with UNCITRAL this year. We hope that UNCITRAL can maintain and improve upon its ability to develop and promote effective, usable instruments supporting stable and predictable legal outcomes for citizens and businesses of our country, and the world.

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B. FAMILY LAW

See Chapter 2 for discussion of adoption and abduction issues.

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

On November 14, 2023, the United States notified the Kingdom of the Netherlands as depositary for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("Child Support Convention") of its objection to the accession of Botswana to the Child Support Convention. The diplomatic notice is available at https://www.acf.hhs.gov/sites/default/files/documents/ocse/Article65_Notification_of_the_Convention_Nov_14_2023.pdf.

On November 29, 2023, the Office of Child Support Services of the U.S. Department of Health and Human Services published a Dear Colleague Letter to U.S. state and tribal directors of the notification. The letter is available at https://www.acf.hhs.gov/css/policy-guidance/us-objection-accession-botswana-hague-convention, and excerpted below.

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On November 14, 2022, Botswana deposited its instrument of accession to the Convention with the Convention depositary, the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The Contracting States were informed of the accession on November 15, 2022.

Since then, Botswana did not provide any of the information required by Article 57. Therefore, on November 14, 2023, the Embassy of the United States notified the Convention depositary that the United States objected to the accession of Botswana to the Convention.

Because the United States objected to the accession of Botswana, the Hague Child Support Convention does not apply between Botswana and the United States. This objection applies only to the relationship between the United States and Botswana. The Hague Convention is in force between Botswana and other Convention countries. If Botswana provides the information required by Article 57, the United States may revisit the objection.

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Cross References

Children's issues, **Ch. 2.B**

CHAPTER 16

Sanctions, Export Controls, and Certain Other Restrictions

This chapter discusses selected developments during 2023 relating to sanctions, export controls, and certain other restrictions relating to travel or U.S. government assistance. It does not cover developments in many of the United States' longstanding financial sanctions regimes, which are discussed in detail at https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx. It also does not cover comprehensively developments relating to the export control programs administered by the Commerce Department or the defense trade control programs administered by the State Department. Details on the State Department's defense trade control programs are available at https://pmddtc.state.gov/ddtc_public.

A. IMPOSITION, IMPLEMENTATION, AND MODIFICATION OF SANCTIONS AND OTHER RESTRICTIONS

1. UN Security Council resolutions

On May 24, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a side event during Protection of Civilians Week on the impact and implementation of UN Security Council Resolution 2664, which established a humanitarian carveout across UN Sanctions regimes. See *Digest 2022* at 614-16 for discussion on resolution 2664. U.N. Doc. S/RES/2664 is available at https://undocs.org/S/RES/2664(2022). The remarks are available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-side-event-on-the-impact-and-implementation-of-resolution-2664/ and excerpted below.

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In passing UN Security Council Resolution 2664, we heeded the call of our humanitarian partners, who have been advocating for a safe pathway through UN sanction regimes for over a decade. At a time when global humanitarian needs are at their highest, we were proud to alleviate what our partners saw as an obstacle to their work. But while the passage of the resolution was historic, we cannot rest until it is fully implemented.

Last December, the United States became the first country to apply Resolution 2664 to our UN-based sanctions programs and many of our autonomous sanctions programs. The U.S. Department of the Treasury took further steps to enable the flow of legitimate humanitarian assistance. These efforts will support the essential needs of vulnerable populations around the world, while continuing to deny resources to malicious actors.

We are encouraged that many of our partners are working to implement Resolution 2664. And we urge all Member States to fully implement this resolution as soon as possible. We also encourage all Member States to apply such carveouts to their own autonomous regimes outside the UN context to ensure a holistic approach. And we ask that our humanitarian partners work with us and brief us on the progress of implementation.

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On December 11, 2023, the United States and Ireland issued a joint statement on the one-year anniversary of the resolution 2664. The joint statement is available at https://usun.usmission.gov/joint-statement-by-the-united-states-and-ireland-on-the-one-year-anniversary-of-un-security-council-resolution-2664/ and included below.

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One year ago, the UN Security Council adopted Resolution 2664, and took a historic and groundbreaking step toward ensuring the timely delivery of humanitarian assistance, while implementing targeted sanctions designed to maintain or restore international peace and security. The United States and Ireland were proud to co-pen this Resolution, which created a carveout across UN sanctions regimes to facilitate humanitarian assistance and other activities that support basic human needs. The adoption of this Resolution sent a clear message: UN sanctions should not impede the delivery of critical humanitarian assistance by certain humanitarian organizations. The Resolution should diminish any unintended effects of sanctions, without undercutting the effectiveness of sanctions, including through ensuring aid is not diverted or abused by malicious actors.

Over the past year, we have heard that the Resolution has provided much-needed clarity to the international community, humanitarian assistance providers, and key commercial service providers, which is helping to facilitate the delivery of assistance that is critical to saving lives around the world. This goal is more important than ever as the world faces unprecedented levels of humanitarian need, with some 339 million people in need of humanitarian aid and nearly 50 million people on the verge of famine. By adopting this Resolution, the Security Council answered decades of advocacy by the humanitarian community. The international community must continue to help humanitarian organizations to reach those in need, regardless of where they live.

This Resolution fundamentally reforms targeted UN sanctions, and its implementation by Member States is key to its success. The United States and Ireland call on Member States and regional organizations to continue efforts to implement both the letter and the spirit of UNSCR 2664 into their legal systems.

The past year has shown that this Resolution can save lives. It has strengthened the ability of the humanitarian community to respond to crises and assist those living in the midst of conflict and humanitarian emergencies. We look forward to seeing how much more the Resolution and we as Member States can do to further facilitate the timely delivery of humanitarian assistance in the years to come.

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2. Iran

a. UN Security Council resolutions

On July 6, 2023, Ambassador Robert Wood delivered remarks at a UN Security Council briefing on Russia's use of Iranian drones against Ukraine in violation of Resolution 2231. The statement is available at https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-iran-nonproliferation/, and excerpted below.

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Thank you, Madam President. And thank you, Under-Secretary-General DiCarlo for the Secretariat's work on this report and your briefing to the Council today. And thank you to Ambassador Frazier for your facilitation of this report. I also wish to thank Ambassador Skoog for his presentation.

The United States remains gravely concerned with Russia's use of Iranian drones against Ukrainian cities and civilian infrastructure in its unprovoked war against Ukraine. Both Iran and Russia have violated their obligations under UN Security Council Resolution 2231 by participating in these transfers without obtaining advance approval from the UN Security Council.

Just last weekend, public reports indicate that Russia used eight Iranian-made Shahed-136 drones to terrorize Kyiv. The Ukrainian Air Force said it destroyed these drones, but three buildings were damaged by debris and one man was reportedly injured. This incident, along with several others, must be investigated as it clearly constitutes a violation of UN Security Council Resolution 2231, Annex B, Paragraph 4.

We urge the UN to address these violations and, consistent with the mandate in Resolution 2231, to report on implementation of the provisions of this resolution. Specifically, the UN Secretariat should, without any further delay, send a team of investigators to Kyiv to examine the debris from these weapons used by Russia against Ukraine. Moreover, the UN Secretariat should send, without any further delay, a team of investigators to review materiel recovered by the United Kingdom.

The mandate is clear and requires no less. Security Council resolutions are not optional, and they must be upheld. It is no secret that Iran's UAV development and proliferation pose a global threat. That is why the transfer of these items was prohibited under 2231.

Russia's acquisition of hundreds of Iranian drones and now production* of those drones on its own territory, however, dramatically changes the equation. This is a flagrant violation of Resolution 2231. We should not be shy about condemning this destabilizing and dangerous behavior.

We have seen evidence submitted to this Council and to the Secretary-General extensively detailing components of Iranian UAVs recovered on the battlefield in Ukraine. Despite proof of Iran's complete disregard for its obligations under Resolution 2231, Tehran continues to deny its role in the damage caused by its weaponry in Ukraine. These denials – in the face of such clear photographic evidence – suggest that even Iran's leaders are uncomfortable with Russia's brutal use of these weapons against civilian targets.

Also deeply troubling are Russia's attempts to undermine publicly available and verified information confirming Russia's use of Iranian UAVs in its war against Ukraine. Moscow even goes so far as to characterize evidence submitted to this Council by London and Kyiv as false and has rebuffed requests by Council members for the Secretary-General to examine the seized components, which falls under its reporting mandate.

In fact, were expert investigators to examine these components, the United States believes it would find that they appear to have design characteristics and markings similar to components previously recovered from the debris of ballistic missiles launched by the Houthis towards the Kingdom of Saudi Arabia and the United Arab Emirates.

This Council must address any and all violations of Resolution 2231 given the implications for not only peace and security in the Middle East, but also in Ukraine and the rest of the world. As such, we reiterate our previous calls for the Secretary-General to update the Council on his assessment of Iranian made UAVs recovered in Ukraine within the next 30 days.

Under-Secretary-General DiCarlo, there should be no higher priority for the Secretariat. A failure to act will only lead to further attacks on civilian infrastructure in Ukraine and potentially the loss of civilian lives. It is our responsibility in this Council to do whatever we can to avert those outcomes, even if it means confronting one of our own members over their violations.

Additionally, in May, Iranian state media announced the test of a medium range ballistic missile. This launch was inconsistent with Paragraph 3, which calls upon Iran not to undertake any activity involving ballistic missiles designed to be capable of delivering nuclear weapons, including launches using such ballistic missile technology. Iran's continued development and proliferation of such missiles pose serious threats to regional and international security, and the Council should view these actions with the seriousness they deserve.

Iran's ballistic missile activity – especially in light of Tehran's nuclear ambitions and its threatening rhetoric – is an enduring threat to regional and international peace and stability. Even after certain restrictions in Resolution 2231 terminate, the United States will continue to take vigorous measures to counter this threat and block the proliferation of sensitive ballistic missile-technology to and from Iran. We will also continue to sanction companies and traders contributing to this threat.

In addition, Iran has continued to expand its nuclear program and escalate tensions. Iran should take actions that build international confidence and deescalate tensions, not continue nuclear provocations that pose grave proliferation risks.

Meanwhile, Member States must fully implement the relevant measures in Annex B of Resolution 2231. Iran flagrantly continues to carry out activities related to ballistic missiles designed to be capable of delivering nuclear weapons in defiance of Paragraph 3 of Annex B to Resolution 2231.

The Security Council must be clear and united in condemning this activity. When Iran defies the Security Council repeatedly without consequence, it undermines the fundamental credibility of the Council itself.

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On October 18, 2023, certain restrictions on Iran's ballistic missile-related activities and transfers under UN Security Council Resolution 2231 expired. See *Digest 2022* at 618-22 for discussion of Resolution 2231. The United States and the Proliferation Security Initiative (PSI)-endorsing States issued a joint statement on UN Security Council Resolution 2231 on October 18, 2023, available at https://www.state.gov/joint-statement-on-un-security-council-resolution-2231-transition-day/, and excerpted below.

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The proliferation of WMD and their delivery systems continues to pose a significant threat to international security. In this environment, Iran's missile program remains one of the greatest challenges to international nonproliferation efforts. Today, Iran holds the largest inventory of ballistic missiles in the Middle East, and its ballistic missile programs continue to pose a threat to countries across the region and beyond. In addition, Iran's provision of missile and UAV technology to its partners and proxies endangers international stability and escalates regional tension.

On October 18, 2023, the restrictions set forth in UN Security Council resolution 2231 (2015) to constrain Iran's ballistic missile program are slated to expire. Resolution 2231 (2015) was based on the assumption that Iran would take the necessary steps towards restoring confidence in the exclusively peaceful nature of its nuclear program. This has not happened. In this context, it is imperative that all States continue to take steps to counter Iran's destabilizing ballistic missile-related activities through ongoing counterproliferation cooperation.

We, the Proliferation Security Initiative (PSI)-endorsing States listed below, will uphold the commitments enshrined in the PSI Statement of Interdiction Principles by continuing to counter destabilizing Iranian missile- and UAV-related activities, consistent with all other relevant national and international authorities and related commitments.

Specifically, with regard to Iran and consistent with the PSI principles, we affirm our commitment to take all necessary measures to prevent the supply, sale, or transfer of ballistic missile-related items, materials, equipment, goods, and technology, to protect peace and stability in the region and beyond including: (1) undertake effective measures to interdict the transfer to and from Iran of missile-related materials, including those related to UAVs; (2) adopt streamlined procedures for rapid exchange of relevant information concerning Iran's proliferation activities; (3) review and work to strengthen our relevant national legal authorities

to address Iranian missile- and UAV-related issues; and (4) take specific actions in support of interdiction efforts related to Iran's missile and UAV programs.

We further reaffirm our commitment to ensuring that domestic processes are in place to undertake such efforts. We call on all countries to ensure they have sufficient domestic legal authorities and capabilities to address Iran's missile program, and we stand united in our determination to address Iran's destabilizing missile-related activities.

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On October 18, 2023, Ambassador Linda Thomas-Greenfield issued a statement on the United States' continued commitment to counter Iran's proliferation of ballistic missile-related technologies. The statement is available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-the-u-s-commitment-to-counter-irans-proliferation-of-ballistic-missile-related-technologies/, and included below.

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Today, as United Nations restrictions on Iran's ballistic missile-related activities and transfers under Security Council Resolution 2231 expire, the United States reiterates its unwavering commitment to counter the range of threats these activities pose to international peace and security. We will continue to utilize a comprehensive set of multilateral and unilateral tools – including sanctions authorities, export controls, bilateral and multilateral engagement with partners, diplomacy and interdictions, to restrict Iran's dangerous development and proliferation of missiles and missile-related technologies, including unmanned aerial vehicles (UAVs).

As evidenced by the more than 45 Proliferation Security Initiative (PSI) endorsing countries who joined the United States today in affirming their commitment to counter Iran's destabilizing missile-related activities, we are coordinating closely with a range of allies and partners on additional counterproliferation efforts. Moving forward, we will continue to work with and through the UN and with our allies and partners to use all available tools to counter Iran's destabilizing development, procurement, and proliferation of missiles, UAVs, and other dangerous weapons.

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b. U.S. sanctions and other controls

Further information on Iran sanctions is available at https://www.state.gov/iran-sanctions/ and https://ofac.treasury.gov/sanctions-programs-and-country-information/iran-sanctions.

(1) Section 1245 of FY-2012 NDAA and E.O. 13846

On January 30, 2023, the President determined under Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012 (FY-2012 NDAA), Public Law 112–81 "that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions." 88 Fed. Reg. 8347 (February 8, 2023). The determination is based on reports submitted to the U.S. Congress by the Energy Information Administration, and other relevant factors. The President made the determination again on May 11, 2023 and November 11, 2023. See 88 Fed. Reg. 32,619 (May 19, 2023) and 88 Fed. Reg. 82,775 (November 24, 2023), respectively.

On February 9, 2023, OFAC designated nine entities involved in Iran's petrochemical and petroleum products trade pursuant to E.O. 13846, issued in 2018 and entitled, "Reimposing Certain Sanctions With Respect to Iran." 88 Fed. Reg. 9593 (Feb. 14, 2023). OFAC also designated six Iran-based companies, two Singapore-based entities, and one Malaysia-based entity involved in the sale and distribution of petrochemicals. Secretary Blinken's press statement is available at https://www.state.gov/designating-entities-involved-in-the-iranian-petrochemical-and-petroleum-products-trade/ and includes the following:

> Amir Kabir Petrochemical Company has produced and sold millions of dollars' worth of low-density polyethylene to U.S.-designated Triliance Petrochemical Company. Simorgh Petrochemical Company is owned by Amir Kabir Petrochemical Company. Laleh Petrochemical Company, Marun Tadbir Tina Company, Marun Sepehr Ofogh Company, and Marun Supplemental Industries Company are owned by Marun Petrochemical Company, which was previously designated for providing material support to Triliance.
>
> The Treasury Department is also designating two Singapore-based entities, Asia Fuel PTE. Ltd. and Unicious Energy PTE. Ltd., which have facilitated Triliance's sale of petroleum products to customers in East Asia.
>
> Finally, the Treasury Department is designating Malaysia-based Sense Shipping and Trading SDN. BHD., a front company that has facilitated the shipment of tens of thousands of metric tons of petrochemicals for Triliance.

On March 1, 2023, OFAC designated 39 entities (not listed herein) pursuant to E.O. 13846. 88 Fed. Reg. 19,367 (Mar. 31, 2023).

On April 24, 2023, OFAC designated individuals, Seyyed Mohammad Amin AGHAMIRI pursuant to E.O. 13846. 88 Fed. Reg. 26,377 (Apr. 28, 2023).

On June 2, 2023, OFAC designated two individuals—Farhad FATEMI and Pouya PIRHOSSEINLOO—and two entities—ARVANCLOUD GLOBAL TECHNOLOGIES L.L.C. and NAVYAN ABR ARVAN PRIVATE LIMITED COMPANY—pursuant to E.O. 13846. 88 Fed. Reg. 37,311 (June 7, 2023).

On September 15, 2023, "the eve of the first anniversary of the death of Mahsa Amini at the hands of Iranian security forces, the United States designated 25 individuals, three Iranian state-backed media outlets, and one Iranian internet research firm in connection with the Iranian regime's violent suppression of nationwide protests following her death." See Secretary Blinken's press statement available at https://www.state.gov/united-states-imposes-sanctions-on-the-anniversary-of-mahsa-zhina-aminis-death/, which includes the following:

> One year ago, Mahsa's tragic and senseless death in the custody of Iran's so-called "Morality Police" sparked demonstrations across Iran that were met with unspeakable violence, mass arrests, systemic internet disruptions and censorship by the Iranian regime. We will continue to take appropriate action, alongside our international partners, to hold accountable those who suppress Iranians' exercise of human rights.

The State Department took steps to impose visa restrictions on 13 Iranian officials and other individuals. At the same time, OFAC designated three individuals—Alireza ABEDINEJAD, Soheila KASAEI, and Mohammad ABDOLLAHPOUR—and two entities—PRESS TV and YAFTAR PAZHOHAN PISHTAZ RAYANESH LIMITED COMPANY—pursuant to E.O. 13846. 88 Fed. Reg. 64,973 (Sept. 20, 2023). OFAC also designated individuals and entities pursuant to E.O. 13553, discussed at section A.2.b (3), *infra*, and E.O. 13224 discussed at section A.9.a (2), *infra*. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1733.

(2) Nonproliferation sanctions

E.O. 13382, entitled "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters," authorizes sanctions on persons for their material contribution to proliferation of weapons of mass destruction ("WMDs") and their means of delivery by persons or countries of proliferation concern or for their ties to, or support for, persons previously designated under the E.O. See *Digest 2005* at 1125-31.

On January 6, 2023, OFAC designated seven individuals—Vali ARLANIZADEH, Ghassem DAMAVANDIAN, Seyed Hojatollah GHOREISHI, Reza KHAKI, Majid Reza NIYAZI-ANGILI, Hamidreza SHARIFI-TEHRANI, and Nader Khoon SIAVASH—under E.O. 13382. 88 Fed. Reg. 1627 (Jan. 11, 2023). See State Department press statement available at https://www.state.gov/new-sanctions-targeting-irans-uav-and-ballistic-missile-industries/, which includes the following:

> The Iranian regime's military support to Russia not only fuels the conflict in Ukraine but has also resulted in violations of UN Security Council resolution 2231 through its provision of military UAVs without advance, case-by-case approval of the UN Security Council. Iran has now become Russia's top military backer. Iran must cease its support for Russia's unprovoked war of aggression in Ukraine, and

we will continue to use every tool at our disposal to disrupt and delay these transfers and impose costs on actors engaged in this activity.

On February 3, 2023, OFAC designated eight Iranian individuals linked to Iran's UAV program. Secretary Blinken's press statement is available at https://www.state.gov/u-s-sanctions-leadership-of-iranian-uav-manufacturer/.

On March 21, 2023, OFAC designated three individuals—Asghar MAHMOUDI, Amanallah PAIDAR, and Murat BUKEY—and four entities-- DEFENSE TECHNOLOGY AND SCIENCE RESEARCH CENTER, FARAZAN INDUSTRIAL ENGINEERING, INC., SELIN TECHNIC CO., and OZONE AVIATION —pursuant to E.O. 13382. 88 Fed. Reg. 17,927 (Mar. 24, 2023). Secretary Blinken's press statement is available at https://www.state.gov/united-states-imposes-sanctions-on-iranian-military-procurement-network/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1355.

On April 19, 2023, OFAC designated one individual—Mehdi KHOSHGHADAM—and six entities—AMVAJ NILGOUN BUSHEHR CO., ARTTRONIX INTERNATIONAL HK LIMITED, JOTRIN ELECTRONICS LIMITED, PASNA INTERNATIONAL GROUP SND. BHD, VOHOM TECHNOLOGY HK CO., LIMITED, and YINKE HK ELECTRONICS COMPANY LIMITED—under E.O. 13382. 88 Fed. Reg. 24,847 (Apr. 24, 2023). See State Department press statement available at https://www.state.gov/united-states-imposes-sanctions-on-iranian-military-procurement-network-2/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1423

On June 6, 2023, OFAC designated seven individuals—Davoud DAMGHANI, Jiao GONG, Ghasem HAGHIGHAT, Zeming LI, Xutong QIN, Weisheng SHEN, and Zunyi WEI--and six entities—BEIJING SHINY NIGHTS TECHNOLOGY DEVELOPMENT CO., LTD, BLUE CALM MARINE SERVICES COMPANY, HONG KONG DO INTERNATIONAL TRADE CO., LIMITED, LINGOE PROCESS ENGINEERING LIMITED, QINGDAO ZHONGRONGTONG TRADE DEVELOPMENT CO., LTD., and ZHEJIANG QINGJI IND. CO., LTD—pursuant to E.O. 13382. 88 Fed. Reg. 37,937 (June 9, 2023).

On June 9, 2023, the State Department, Department of Commerce, Department of Justice, and Department of the Treasury issued an advisory to industry on Iran's unmanned aerial vehicle (UAV)-related activities. The Advisory is available at https://www.state.gov/guidance-to-industry-on-irans-uav-related-activities/. A State Department media note announcing publication of the advisory is available at https://www.state.gov/united-states-publishes-advisory-to-industry-on-irans-uav-related-activities/, and excerpted below.

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Today, the Department of State, Department of Commerce, Department of Justice, and Department of the Treasury issued an advisory to alert the international community, private sector, and public to the threat posed by Iran's procurement, development, and proliferation of unmanned aerial vehicles (UAVs).

The Advisory informs private industry of key UAV-related components Iran seeks to develop its UAV program and entities involved in the procurement, production, and proliferation of Iranian UAVs. The Advisory also provides recommendations to exporters, manufacturers, distributors, and financial institutions in implementing effective due diligence and internal controls specifically relevant to Iran's UAV-related activities to ensure compliance with applicable legal requirements across the entire supply chain and to avoid unintentionally contribute to Iran's UAV programs.

It is critical that the private sector be vigilant in meeting its legal obligations vis-a-vis Iran's development of UAVs and associated components procurement and doing its part to prevent any activities that would further the development of Iran's destabilizing and dangerous UAV program. Russia is continuing to use Iran-produced UAVs in attacks against civilians and civilian infrastructure in Ukraine. This advisory is another example of how the United States is working to disrupt and delay the transfers of UAVs from Iran to Russia.

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On September 19, 2023, OFAC designated seven individuals—Husayn A'INI, Alaaddin AYKUT, Wenbo DONG, Mehdi GOGERDCHIAN, Hamid Reza NOORI, Chunpeng SU, and Mehmet TOKDEMIR—and four entities-- DELTA–AERO TECHNICAL SERVICE CENTER LLC, JOINT STOCK COMPANY SCIENTIFIC PRODUCTION ENTERPRISE AEROSILA, JOINT STOCK COMPANY STAR, and SHENZHEN JIASIBO TECHNOLOGY CO., LTD.— pursuant to E.O. 13382. 88 Fed. Reg. 65,425 (Sept. 22, 2023).The State Department's press release is available at https://www.state.gov/united-states-imposes-sanctions-on-a-multinational-network-supporting-irans-uav-procurement-activities/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1745.

On September 27, 2023, OFAC designated two individuals – Hamid Reza JANGHORBANI and FAN Yang – and five entities PISHGAM ELECTRONIC SAFEH COMPANY, HONGKONG HIMARK ELECTRON MODEL LIMITED, FARHAD GHAEDI WHOLESALERS LLC, DAL ENERJI MADENCILIK TURIZM SANAYI VE TICARET ANONIM SIRKET, AND ANKA PORT IC VE DIS TICARET INSAAT LOJISTIK SANAYI LIMITED SIRKETI – pursuant to E.O. 13382. 88 Fed. Reg. 68,284 (Oct. 3, 2023). The Department's press statement is available at https://www.state.gov/united-states-imposes-sanctions-on-transnational-procurement-network-supporting-irans-one-way-attack-uav-program/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1766.

On October 18, 2023, certain restrictions on Iran's missile-related activities under UN Security Council Resolution 2231 expired. See section A.2.a *supra* for discussion. OFAC designated six individuals—Alireza MATINKIA, Armin Ghorsi ANBARAN, Hosein HEMSI, Lin JINGHE, Yongxin LI, and Yiu Wa YUNG, —and seven entities-- ELECTRO OPTIC SAIRAN INDUSTRIES CO., SABERIN KISH COMPANY, FANAVARAN SANAT ERTEBATAT COMPANY, SARMAD ELECTRONIC SEPAHAN COMPANY, NANXIGU TECHNOLOGY CO., LIMITED, DALI RF TECHNOLOGY CO., and LIMITED, ICGOO ELECTRONICS LIMITED —pursuant to E.O. 13382. 88 Fed. Reg. 73,075 (Oct. 24, 2023). In addition, the State Department designated two individuals – Amir RADFAR and Vahid

SOLEIMANI under E.O. 13382.* See also section A.2.b (5) *infra* for additional sanctions imposed under E.O. 13949. Secretary Blinken issued a press statement on October 18, 2023 announcing these actions and U.S. commitment to countering Iranian weapons development and proliferation. The statement is available at https://www.state.gov/the-united-states-commitment-to-countering-iranian-weapons-development-and-proliferation/, and included below.

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Iran's development, procurement, and proliferation of missiles and missile-related technology remains one of the greatest challenges to international peace and security. We see the horrific impact of Iran's provision of missiles and unmanned aerial vehicles (UAVs) to designated terrorist organizations and militant proxies that directly threaten the security of Israel and our Gulf partners. We see the destructive result of Iran's transfer of lethal UAVs to Russia to target critical civilian infrastructure and kill civilians in Ukraine. We remain focused on addressing Iran's destabilizing proliferation activities, in particular its missile and UAV programs and the threats they pose to the world.

Today, as the United Nations' restrictions on Iran's missile-related activities under UN Security Council Resolution 2231 expire, the United States reaffirms our commitment to utilize every tool at our disposal to counter Iran's development, procurement, and proliferation of missiles, UAVs, and other dangerous weapons. Such tools include but are not limited to sanctions, export controls, diplomatic engagement, cooperation with private industry, and interdictions as appropriate and provided by law. We and our partners will also continue to raise our concerns at the United Nations and demand that Iran be held accountable for the destabilizing impacts of its proliferation.

As part of our longstanding efforts to counter Iran's missile-related activities and other destabilizing conduct, the United States is taking a number of new actions today. While the United States has already sanctioned all possible entities and individuals contained within Security Council Resolution 2231, today we are announcing additional designations on individuals and entities related to Iran's missile, conventional arms, and UAV activities, including such activities involving Russia, the People's Republic of China, Venezuela, and elsewhere. In coordination with the Departments of Commerce, Justice, and the Treasury, we are additionally issuing new public guidance to private industry regarding Iranian missile procurement and related U.S. sanctions and export restrictions.

We are joined today by a broad grouping of 47 countries in the Proliferation Security Initiative in expressing our shared commitment to taking all necessary measures to prevent the supply, sale, or transfer of ballistic missile-related items, materials, equipment, goods, and technology by Iran. Further, we fully support the decision made by the European Union to retain nuclear, conventional arms, and missile-related restrictions on Iran.

The United States has worked to disrupt Iran's missile program since long before the UN Security Council imposed restrictions on it. We will continue to do so, using every tool at our

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* Editor's note: The designations of Amir RADFAR and Vahid SOLEIMANI were published in the Federal Register in 2024. See 89 Fed. Reg. 22,467 (Apr. 1, 2024).

disposal, so long as Iran poses a threat to security and stability in the Middle East region and around the world.

Today's actions were taken pursuant to Executive Order (E.O.) 13382 and E.O. 13949. For more information on today's actions, see the State ***Fact Sheet****, the* ***industry advisory****, the Proliferation Security Initiative* ***joint statement****, and the Department of the Treasury's* ***press release***

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On December 19, 2023, OFAC designated four individuals—Gholamreza Ebrahimzadeh ARDAKANI, Hossein Hatefi ARDAKANI, Agung Surya DEWANTO, and Mehdi Dehghani MOHAMMADABADI—and 10 entities—ARTA WAVE SDN BHD, BASAMAD ELECTRONIC POUYA ENGINEERING LIMITED LIABILITY COMPANY, DIRAC TECHNOLOGY HK LIMITED, INTEGRATED SCIENTIFIC MICROWAVE TECHNOLOGY SDN BHD, KAVAN ELECTRONICS BEHRAD LIMITED LIABILITY COMPANY, NAVA HOBBIES SDN BHD, SAMAN INDUSTRIAL GROUP, SKYLINE ADVANCED TECNOLOGIES SDN BHD, SURABAYA HOBBY CV, and TEYF TADBIR ARYA ENGINEERING COMPANY—pursuant to E.O. 13382. 88 Fed. Reg. 89,495 (Dec. 27, 2023). See State Department press statement available at https://www.state.gov/imposing-sanctions-on-those-supporting-irans-unmanned-aerial-vehicle-uav-production/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy2004.

(3) Human Rights, Cyber, and other sanctions programs (CISADA, TRA, E.O. 13553, E.O. 13606, E.O. 13608, and E.O. 13846, CAATSA)

See also section A.11 *infra* for discussion of other human rights-related designations of Iranians. Executive Order 13553 implements Section 105 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 ("CISADA") (Public Law 111-195), as amended by the Iran Threat Reduction and Syria Human Rights Act of 2012 ("TRA"). See *Digest 2010* at 656-60. E.O. 13606 of April 22, 2012, is entitled "Blocking the Property and Suspending the Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria Via Information Technology." See *Digest 2012* at 496-97.

On January 23, 2023, OFAC designated 10 Iranian individuals and one Iranian entity, BONYAD TAAVON SEPAH, in connection with the crackdown on peaceful demonstrators since nationwide protests began in 2022 pursuant to E.O. 13553. See 88 Fed. Reg. 19,363 (Mar. 31, 2023). The designated individuals are Yahya ALA'ODDINI, Jamal BABAMORADI, Ahmad KARIMI, Aliasghar NOROUZI, Seyyed Aminollah Emami TABATABAI, Mojtaba FADA, Naser RASHEDI, Hossein TANAVAR, Kourosh ASIABANI, and Mohammad Nazar AZIMI. *Id*. The United States took this action concurrently with the United Kingdom and the European Union. Secretary Blinken's press statement is available at https://www.state.gov/designations-in-connection-with-human-rights-abuses-in-iran/.

On March 8, 2023, OFAC designated eight individuals—Bahram ABDOLLAHINEJAD, Reza ASGHARIAN, Gholamreza RAMEZANIAN SANI, Mahdi AMIRI, Sayyed Abdolrahim MOUSAVI, Habib SHAHSAVARI, Dariush BAKHSHI, and Ali CHAHARMAHALI—and three entities—ENTEBAGH GOSTAR SEPEHR COMPANY, NAJI PARS AMIN INSTITUTE, and NAJI PAS COMPANY—pursuant to E.O. 13553. See 88 Fed. Reg. 19,363 (Mar. 31, 2023). The State Department press statement is available at https://www.state.gov/sanctioning-those-connected-to-human-rights-abuses-in-iran/, and excerpted below.

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Today – on International Women's Day – the United States is taking action in coordination with the European Union, United Kingdom, and Australia to promote accountability for the Iranian regime's continued human rights abuses, particularly those against women and girls, including those conducted in the course of the brutal crackdown on protests that erupted after the death of Mahsa Amini. To that end, the United States is designating two Iranian officials overseeing prisons in Iran, two senior Iranian security leaders, three companies that supply Iranian law enforcement, and the heads of these companies, as well as a high ranking law enforcement official.

The U.S. Department of the Treasury is imposing sanctions on Ali Chaharmahali, the Director General of Prisons in Alborz Province, and Dariush Bakhshi, the Head of Orumiyeh Central Prison. Both officials were complicit in the mistreatment of inmates in their custody by security forces, including through rape, torture, or other cruel, inhumane, or degrading treatment. Treasury is also sanctioning the Technical Director of the Cyberspace Affairs Deputy of the Prosecutor General's Office of Iran, Mahdi Amiri, for acting on behalf of an entity that has engaged in censorship or other activities that prohibit, limit, or penalize the exercise of freedom of expression or assembly.

Further, Treasury is sanctioning Sayyed Abdolrahim Mousavi, the Commander-in-Chief of the Iranian Army, and Habib Shahsavari, Commander of the Islamic Revolutionary Guard Corps (IRGC) Shohada Provincial Corps in West Azerbaijan Province. IRGC forces under the command of Shahsavari are alleged to have routinely detained and tortured individuals at IRGC detainment facilities in West Azerbaijan Province, and Iranian army personnel under Mousavi's command reportedly fired machine guns at protestors in November 2019.

Finally, Treasury is sanctioning Naji Pas Company, an Iranian firm that supplies the Law Enforcement Forces of Iran (LEF), Iran's national police force, with specific equipment and goods; its CEO, Reza Asgharian; Entebagh Gostar Sepehr Company, a company that produces riot control equipment used by LEF units tasked with crowd suppression and cracking down on protestors; its CEO, Gholamreza Ramezanian Sani; Naji Pars Amin Institute, a company that provides security and protection services under the supervision of the LEF; and its CEO, Bahram Abdollahinejad.

The United States remains deeply concerned that Iranian authorities continue to suppress dissent and peaceful protest, including through mass arrests, sham trials, hasty executions, the detention of journalists, and the use of sexual violence as a means of protest suppression.

Together with allies and partners around the world, we continue to take action to support the people of Iran in the face of these and other human rights abuses by the Iranian regime.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1327.

On April 24, 2023, OFAC designated four individuals--Parviz ABSALAN, Salman ADINEHVAND, Amanollah GOSHTASBI, and Ahmad Khadem SEYEDOSHOHADA—pursuant to E.O. 13553. 88 Fed. Reg. 26,377 (Apr. 28, 2023). In addition, the State Department took steps to impose visa restrictions pursuant to Immigration and Nationality Act section 212(a)(3)(C) on 11 Iranian government officials "who are believed to be responsible for, or complicit in, the abuse, detention or killing of peaceful protestors or inhibiting their rights to freedom of expression or peaceful assembly." See State Department press statement, available at https://www.state.gov/designating-iranian-officials-in-connection-with-serious-human-rights-abuses-or-censorship-in-iran/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1436.

On September 15, 2023, on the eve of the one-year anniversary of the death of Mahsa Amini, OFAC designated 21 individuals (not listed herein) and the following two entities pursuant to E.O. 13553: FARS NEWS AGENCY and TASNIM NEWS AGENCY. 88 Fed. Reg. 64,973 (Sept. 20, 2023). See section A.2.b (1), *supra*, and section A.9.a (2), *infra*, for additional discussion.

On December 8, 2023, OFAC designated the following two individuals pursuant to E.O. 13553: Mohammad Mahdi Khanpour ARDESTANI and Majid Dastjani FARAHANI. 88 Fed. Reg. 87,838 (Dec. 19, 2023).

(4) E.O. 13599

On June 8, 2023, OFAC identified the following fifteen vessels as blocked property pursuant to E.O. 13599: ARK III, NAROON, CASPIA, DANIEL, HAWK, NASHA, SEVIN, SEA CLIFF, SEA STAR III, SERENA, SILVIA, SANAN, SONIA, STARK I, and STARLA. 88 Fed. Reg. 39,508 (June 16, 2023).

(5) E.O. 13949

E.O. 13949 of September 21, 2020, "Blocking Property of Certain Persons With Respect to the Conventional Arms Activities of lran,"provides authority to counter Iran's conventional arms acquisitions, manufacturing programs, and ability to support paramilitary operations with arms and materiel.

On October 18, 2023, OFAC designated five individuals—Mohammad-Reza ASHTIANI, Ghassem DAMAVANDIAN, Seyed Hamzeh GHALANDARI, Seyed Hojatollah GHOREISHI, and Jaber REIHANI—and one entity-- QODS AVIATION INDUSTRIES—pursuant to E.O. 13949. 88 Fed. Reg. 73,075 (Oct. 24, 2023). In addition, on the same

day, the Department of State designated six entities – Iran Aircraft Manufacturing Industrial Company, Islamic Republic of Iran Air Force, Rosoboroneksport OAO 924th State Center for Unmanned Aviation, Russian Aerospace Forces, and Command of the Military Transport Aviation -- pursuant to E.O. 13949 The Department of State Fact Sheet announcing the sanctions is available here: Fact Sheet on Department of State Designations - United States Department of State. See section A.2.b (2), *supra* for additional sanctions imposed under E.O. 13382.

3. People's Republic of China

a. Relating to human rights abuses, including in Xinjiang

See also section A.11 *infra* for discussion of designations relating to violations of human rights, including designations of officials of the People's Republic of China ("PRC") .

On August 1, 2023, the Department of Homeland Security-led Forced Labor Enforcement Task Force (FLETF), which comprised of seven member agencies, including the State Department, published an updated Uyghur Forced Labor Prevent Act (UFLPA) Strategy to Prevent the Importation of Goods, Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China. See press release from the Office of the United States Trade Representative, available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/august/forced-labor-enforcement-task-force-publishes-updated-uyghur-forced-labor-prevention-act-strategy, which includes the following:

> The updated UFLPA Strategy highlights enforcement of the UFLPA's rebuttable presumption, which prohibits goods from being imported into the United States that are either produced in Xinjiang, or by entities identified on the UFLPA Entity List, unless the importer can prove, by clear and convincing evidence, the goods were not produced with forced labor. In the first year of enforcement under the new law, U.S Customs and Border Protection (CBP) reviewed more than 4,000 shipments valued at over $1.3 billion.
>
> Additionally, the strategy highlights an expanded UFLPA Entity List, which as of August 2, 2023 will include four new companies. Goods produced by Xinjiang Zhongtai Chemical Co., Ltd., Ninestar Corporation, including eight of its Zhuhai-based subsidiaries, Camel Group Co., Ltd., and Chenguang Biotech Group Co., Ltd., including one subsidiary, will be restricted from entering the United States because of their work with the PRC government to recruit, transport, transfer, harbor or receive forced labor or members of persecuted groups, including Uyghur minorities, out of the Xinjiang Uyghur region.

The updates are available at https://www.dhs.gov/sites/default/files/2023-08/23_0728_plcy_uflpa-strategy-2023-update-508.pdf. The UFLPA Entity List is available at https://www.dhs.gov/uflpa-entity-list.

On September 26, 2023, the Department announced the issuance of an addendum to the 2021 Updated Xinjiang Supply Chain Business Advisory in a press statement, available at https://www.state.gov/issuance-of-an-addendum-to-the-xinjiang-supply-chain-business-advisory/. The addendum comes from the State Department, Treasury Department, Commerce Department, Department of Homeland Security, Office of the U.S. Trade Representative, and is available at https://www.state.gov/xinjiang-supply-chain-business-advisory/. The press statement further explains:

> … to call attention to the People's Republic of China's (PRC) ongoing genocide and crimes against humanity in Xinjiang and the evidence of widespread use of forced labor there.
>
> The Addendum highlights the following:
>
> - Reports from both governmental and non-governmental sources that contain information about the ongoing, widespread, and pervasive risks in supply chains posed by state-sponsored forced labor and other human rights abuses in Xinjiang.
> - The urgency for businesses to undertake appropriate human rights due diligence measures as described in the Strategy to Prevent the Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China. This guidance is issued pursuant to the Uyghur Forced Labor Prevention Act.

b. Nonproliferation Sanctions

On March 9, 2023, OFAC designated individual Yun Xia YUAN and five entities—GULAN ALPHA RUBER & PLASTICS TECHNOLOGY CO., LTD, HANGZHOU FUYANG KOTO MACHINERY CO., LTD, S&C TRADE PTY CO. LTD, SHENZHEN CASPRO TECHNOLOGY CO. LTD., and RAVEN INTERNATIONAL TRADE LIMITED—pursuant to E.O. 13382. 88 Fed. Reg. 18,217 (Mar. 27, 2023).

On September 27, 2023, OFAC designated individual Yan FAN pursuant to E.O. 13382. 88 Fed. Reg. 68,284 (Oct. 3, 2023). The Department's press statement is available at https://www.state.gov/united-states-imposes-sanctions-on-transnational-procurement-network-supporting-irans-one-way-attack-uav-program/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1766.

On October 18, 2023, OFAC designated the following two individuals pursuant to E.O. 13382: Jinghe LIN and Yongxin LI. 88 Fed. Reg. 73,075 (Oct. 24, 2023).

c. Relating to Hong Kong

On September 27, 2023, OFAC designated entity HONGKONG HIMARK ELECTRON MODEL LIMITED pursuant to E.O. 13382. 88 Fed. Reg. 68,284 (Oct. 3, 2023).

On October 18, 2023, OFAC designated individual You Wa YUNG and two entities--DALI RF TECHNOLOGY CO., LIMITED and ICGOO ELECTRONICS LIMITED—pursuant to E.O. 13382. 88 Fed. Reg. 73,075 (Oct. 24, 2023).

4. Russia

a. Executive Order 14024

Executive Order ("E.O.") 14024, ''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation,'' was issued in 2021. See *Digest 2021* at 619.

On January 26, 2023, OFAC designated six individuals, 12 entities, and four aircraft as blocked property with tail numbers RA-76842, RA-76502, RA-76846, and RA-78765, all linked to Russia's paramilitary Wagner Group, under E.O. 14024. The designated individuals are Alan Valeryevich LUSHNIKOV, Rustam Nurgaliyevich MINNIKHANOV, Gulsina Akhatovna MINNIKHANOVA, Aleksandr Dmitrievich KHARTCHEV, Boris Yakovlevich RAPOPORT, and Yan Valentinovich NOVTKOV. The designated entities are LIMITED LIABILITY COMPANY TKKH-INVEST, OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU LUCHANO, JOINT STOCK COMPANY NATIONAL AVIATION SERVICE COMPANY, JSC A VIACON ZITOTRANS, AO URAL CNIL AVIATION FACTORY, JOINT STOCK COMPANY TERRA TECH, CHANGSHA TIANYI SPACE SCIENCE AND TECHNOLOGY RESEARCH INSTITUTE CO. LTD, SPACETY LUXEMBOURG S.A., JOINT STOCK COMPANY RESEARCH AND PRODUCTION CONCERN BARL, FEDERAL STATE UNITARY ENTERPRISE SCIENTIFIC AND PRODUCTION ENTERPRISE GAMMA, LLC RESEARCH & PRODUCTION ENTERPRISE PRIMA, and JOINT STOCK COMPANY AEROSPACE DEFENSE CONCERN ALMAZANTEY. 88 Fed. Reg. 6363 (Jan. 31, 2023). Secretary Blinken's press statement is available at https://www.state.gov/countering-the-wagner-group-and-degrading-russias-war-efforts-in-ukraine/, which also discusses concurrent actions under other authorities, including the imposition of visa restrictions. See State Department's fact sheet available at https://www.state.gov/actions-to-counter-wagner-and-degrade-russias-war-efforts-in-ukraine/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1220.

On February 1, 2023, OFAC designated 10 individuals—Igor Vladimirovich ZIMENKOV, Jonatan ZIMENKOV, Maks Borisovich PIFLAKS, Gilad PIFLAKS, Alexander VOLFOVICH, Igor PALNYCHENKO, Stanislav VOLFOVICH, Ariel VOLFOVICH, Serena Bee Lin NG, and Marks BLATS--and 12 entities—GBD LIMITED, KLIOSA LIMITED, MATEAS LIMITED, U-STONE LIMITED EOOD, GMI GLOBAL MANUFACTURING & INTEGRATION LTD, PITARON LIMITED, TERRA-AZ LIMITED, VFC SOLUTIONS LTD, D.E.S. DEFENSE ENGINEERING SOLUTIONS LTD, ASIA TRADING & CONSTRUCTION PTE LTD, ELEKTROOPTIKA SIA, and TEXEL F.C.G. TECHNOLOGY 2100 LTD--connected to a sanctions evasion network supporting Russia's defense sector, under E.O. 14024. 88 Fed. Reg. 8041 (Feb. 7, 2023). Secretary Blinken's press statement, including additional designations, is available at https://www.state.gov/sanctioning-evasion-network-

supporting-russias-military-industrial-complex/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1241.

On February 24, 2023, on the one-year anniversary of Russia's war against Ukraine, OFAC designated over 60 individuals and entities (not listed herein), pursuant to E.O. 14024. 88 Fed. Reg. 14,445 (Mar. 8, 2023). In addition, the State Department imposed visa restrictions on 1,219 members of the Russian military (not listed herein). See section A.11.b, *infra*, for additional designations Russian miliary officials under Section 7031(c). The State Department released a fact sheet detailing these actions, which is available at https://www.state.gov/the-united-states-takes-sweeping-actions-on-the-one-year-anniversary-of-russias-war-against-ukraine/. Secretary Blinken issued two press statements on February 24. One press statement is available at https://www.state.gov/russias-war-against-ukraine-one-year-later/. Another press statement is available at https://www.state.gov/the-united-states-imposes-additional-sweeping-costs-on-russia/, which is excerpted below.

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One year ago today, Russia launched its brutal and unprovoked full-scale war against Ukraine. We remain committed to supporting the people of Ukraine and are redoubling our efforts to promote accountability for the Kremlin's war.

Our economic sanctions, export controls, and tariffs announced this week, in coordination with the G7, demonstrate that we will continue to work with our allies and partners to increase the pressure on President Putin, make it harder for him to wage his brutal war, and continue degrading the Russian economy's ability to fuel continued aggression.

As a part of today's actions, the Department of State is designating over 60 individuals and entities complicit in the administration of Russia's government-wide operations and policies of aggression toward Ukraine and in the illegitimate administration of occupied Ukrainian territories for the benefit of the Russian Federation. These targets include government ministers, governors, and high-level officials in Russia, as well as six individuals and three entities operating in parts of Ukraine occupied by Russia, facilitating grain theft, and governing on behalf of Russia.

Additionally, the Department is designating three entities involved in expanding Russia's future energy production and export capacity. These designations include entities involved in the design and construction of the Sever Bay Terminal as part of the Vostok oil projects. These actions are tailored in a way to avoid restricting current production to minimize market disruption.

Today's sanctions also include four individuals and 22 entities in Russia's advanced technology sector. In particular, the Department is targeting manufacturers and developers of hardware and software for Russia's intelligence collection capabilities through its System for Operational-Search Measures as part of our efforts to degrade Russia's capacity to violently expand its imperial project around the globe.

Further, the Department is designating three key enterprises that develop and operate Russia's nuclear weapons as well as three Russian civil nuclear entities under the Rosatom

organizational structure. In taking these actions, we highlight that Russia uses energy resources, including in the nuclear sector, to exert political and economic pressure on its customers globally. We are also designating those engaged in Russia's illegitimate control of Ukraine's Zaporizhzhya Nuclear Power Plant (ZNPP). Russia's military attacks on, and subsequent seizure of the ZNPP, have only underscored the global concerns related to nuclear energy security and undermine the Kremlin's efforts to portray itself as a responsible supplier of nuclear energy products.

To further degrade Putin's ability to wage war, the Department of the Treasury is imposing sanctions on financial institutions—including additional banks—propping up Russia's economy, dozens of Russian defense entities, and dozens of third-country actors connected to sanctions evasion activities. Furthermore, to increase pressure on Russia's war machine, Treasury is also identifying the metals and mining sector of Russia's economy as exposed to sanctions and designating four entities for operating or having operated in the metals and mining sector.

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Finally, the Department of State is announcing steps to impose visa restrictions on 1,219 members of the Russian military, including officers, for actions that threaten or violate the sovereignty, territorial integrity, or political independence of Ukraine. This effort is pursuant to a policy under Section 212(a)(3)(C) of the Immigration and Nationality Act, which restricts visa issuance to those who are believed to have supported, been actively complicit in, or been responsible for ordering or otherwise directing or authorizing these actions.

Russian military officials Artyom Igorevich Gorodilov, Aleksey Sergeyevich Bulgakov, and Aleksandr Aleksandrovich Vasilyev are being designated under Section 7031(c) for their involvement in gross violations of human rights perpetrated against Ukrainian civilians and prisoners of wars. Under this authority, Gorodilov, Bulgakov, and Vasilyev, and their immediate family members, are ineligible for entry into the United States.

The United States continues to rally the world to support Ukraine. Our actions today are made even more powerful because we are taking them in coordination with G7 partners, demonstrating our ongoing unity in working to ensure Russia bears costs for its brutal war. Ukraine is a symbol of freedom for us all. The United States will continue to stand with Ukraine for as long as takes.

For more information on today's action, please see:

- The White House's Fact Sheet
- The Department of State's Fact Sheet
- The Department of the Treasury's press release
- The Department of Commerce's press release
- The United States Trade Representative's press release

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Also on February 24, 2023, the Leaders of the Group of Seven (G7) issued a statement covering a number of issues, including sanctions. The statement is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/24/g7-leaders-statement-5/, and excerpted below.

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We reaffirm our commitment to strengthening the unprecedented and coordinated sanctions and other economic measures the G7 and partner countries have taken to date to further counter Russia's capacity to wage its illegal aggression. We remain committed to presenting a united front through the imposition of new coordinated economic actions against Russia in the days and weeks ahead. Specifically, we are taking the following new measures, consistent with our respective legal authorities and processes and international law:

(i) We will maintain, fully implement and expand the economic measures we have already imposed, including by preventing and responding to evasion and circumvention through the establishment of an Enforcement Coordination Mechanism to bolster compliance and enforcement of our measures and deny Russia the benefits of G7 economies. We call on third-countries or other international actors who seek to evade or undermine our measures to cease providing material support to Russia's war, or face severe costs. To deter this activity around the world, we are taking actions against third-country actors materially supporting Russia's war in Ukraine. We also commit to further aligning measures, such as transit or services bans, including to prevent Russian circumvention.

(ii) We are committed to preventing Russia from finding new ways to acquire advanced materials, technology, and military and industrial equipment from our jurisdictions that it can use to develop its industrial sectors and further its violations of international law. To this end, we will adopt further measures to prevent Russia from accessing inputs that support its military and manufacturing sectors, including, among others, industrial machinery, tools, construction equipment, and other technology Russia is exploiting to rebuild its war machine.

(iii) We will continue to reduce Russia's revenue to finance its illegal aggression by taking appropriate steps to limit Russia's energy revenue and future extractive capabilities, building on the measures we have taken so far, including export bans and the price cap for seaborne Russian-origin crude oil and refined oil products. We commit to taking action in a way that mitigates spillover effects for energy security, in particular for the most vulnerable and affected countries.

(iv) Given the significant revenues that Russia extracts from the export of diamonds, we will work collectively on further measures on Russian diamonds, including rough and polished ones, working closely to engage key partners.

(v) We are taking additional measures in relation to Russia's financial sector to further undermine Russia's capacity to wage its illegal aggression. While coordinating to preserve financial channels for essential transactions, we will target additional Russian financial institutions to prevent circumvention of our measures.

(vi) We continue to impose targeted sanctions, including on those responsible for war crimes or human rights violations and abuses, exercising illegitimate authority in Ukraine, or who otherwise are profiting from the war.

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On April 12, 2023, OFAC designated 25 individuals (not listed herein) and 29 entities (not listed herein) pursuant to E.O. 14024. 88 Fed Reg. 32,278 (May 19, 2023). The Department released a fact sheet detailing these designations, available at https://www.state.gov/further-curbing-russias-efforts-to-evade-sanctions-and-perpetuate-its-war-against-ukraine-2/, and includes the following:

> The United States will continue to take action against Russia and those supporting its war in Ukraine, including further implementing the G7's commitment to impose severe consequences on third country actors who support Russia's war in Ukraine. As part of a continued effort, and to reaffirm our commitment to working alongside our allies, the Department of State is imposing sanctions on April 12 on more than 80 entities and individuals that continue to enable and facilitate Russia's aggression. All targets are being designated pursuant to **Executive Order (E.O.) 14024** , which authorizes sanctions with respect to specified harmful foreign activities of the Government of the Russian Federation.

On May 19, 2023, OFAC designated 22 individuals (not listed herein) and 104 entities (not listed herein) pursuant to E.O. 14024. 88 Fed. Reg. 40,374 (June 21, 2023). The Department released a fact sheet detailing concurrent designations on multiple entities, available at https://www.state.gov/united-states-imposes-additional-sanctions-and-export-controls-on-russia/, which includes the following:

> The United States will continue to take actions against Russia until it ends its brutal and illegal war against Ukraine. The United States is implementing commitments made at the G7 Leaders' Summit to increase costs for Russia and those who support its war effort. Among others, these commitments include further disrupting Russia's ability to source inputs for its war, closing evasion loopholes, further reducing reliance on Russian energy, squeezing Russia's access to the international financial system, and keeping its sovereign assets immobilized.
>
> As part of that continued effort, and working alongside our Allies and partners, the Department of State is today imposing sanctions on individuals and entities complicit in: sanctions evasion and circumvention; maintaining Russia's capacity to wage its war of aggression; and supporting Russia's future energy revenue sources. Along with these actions, the Department is also designating several individuals and entities to further promote accountability of those supporting Russia's war, including Russia-installed puppet occupation

> authorities, those involved in theft of Ukrainian grain, and in the systematic and unlawful transfer and/or deportation of Ukraine's children. All targets are being designated pursuant to Executive Order (E.O.) 14024, which authorizes sanctions with respect to specified harmful foreign activities of the Government of the Russian Federation.

On May 25, 2023, OFAC designated individual Ivan Aleksandrovich MASLOV, MASLOV, the leader of the Wagner Group in Mali, pursuant to E.O. 14024. 88 Fed. Reg. 34,928 (May 31, 2023). See the State Department press statement, available at https://www.state.gov/promoting-accountability-for-human-rights-abuses-and-violations-in-moura-mali/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1502.

On June 5, 2023, OFAC designated seven individuals--Konstantin Prokopyevich SAPOZHNIKOV, Yury Yuryevich MAKOLOV, Gleb Maksimovich KHLOPONIN, Vasiliy Viktorovich GROMOVIKOV, Aleksey Vyacheslavovich LOSEV, Svetlana Andreyevna BOYKO, and Anna TRAVNIKOVA—and one entity—PERKO JULLEUCHTER—pursuant to E.O. 14024. 88 Fed. Reg. 37,600 (June 8, 2023).

On June 23, 2023, OFAC designated the following two individuals pursuant to E.O. 14024: Yegor Sergeyevich POPOV and Aleksei Borisovich SUKHODOLOV. 88 Fed. Reg. 42,132 (June 29, 2023).

On June 27, 2023, OFAC designated one individual—Nikolayevich Andrey IVANOV—and five entities—DIAMVILLE SAU, INDUSTRIAL RESOURCES GENERAL TRADING, LIMITED LIABILITY COMPANY DM, and MIDAS RESOURCES SARLU—pursuant to E.O. 14024. 88 Fed. Reg. 42,815 (Jul. 3, 2023).

On July 20, 2023, OFAC designated two individuals-- Tatyana Grigoryevna IVANOVA and Ivan CVETIC—and 66 entities (not listed herein) pursuant to E.O. 14024. 88 Fed. Reg. 53,595 (Aug. 8, 2023). Secretary Blinken's press statement is available at https://www.state.gov/imposing-additional-sanctions-on-those-supporting-russias-war-against-ukraine-2/, and includes the following:

> The Departments of State and Treasury are imposing sanctions on nearly 120 individuals and entities today to further hold Russia accountable for its illegal invasion of Ukraine and degrade its capability to support its war efforts. These sanctions will restrict Russia from accessing critical materials, inhibit its future energy production and export capabilities, curtail its use of the international financial system, and crack down on those complicit in sanctions evasion and circumvention.

The Department released a fact sheet detailing these designations, available at https://www.state.gov/imposing-additional-sanctions-on-those-supporting-russias-war-against-ukraine/, and excerpted below.

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CONTINUED DEGRADATION OF RUSSIA'S FUTURE ENERGY PRODUCTION AND EXPORT CAPABILITIES

The Department of State (The Department) is designating multiple entities involved in expanding Russia's ability to finish construction of key future energy projects, as well as entities engaged in exploratory drilling throughout Russia.

- **AO Nipigazpererabotka (Nipigaz)** is being designated pursuant to section 1(a)(i) for operating or having operated in the engineering sector of the Russian Federation economy. Nipigaz is a leading Russian engineering, procurement, and construction (EPC) entity that is directing construction activities and purchasing material for the development of future Russian energy export projects.

The following entities are subsidiaries of Nipigaz and are being designated pursuant to section 1(a)(vii) for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, Nipigaz, an entity whose property and interests in property are blocked:

- **Obshestvo S Ogranichennoj Otvetstvennostyu Nipigaz IT** is a subsidiary of Nipigaz that performs computer software development and designs, advises, and examines computer systems and technology.
- **Obshestvo S Ogranichennoj Otvetstvennostyu Nipigaz Aktiv** is a subsidiary of Nipigaz that rents and manages real estate.

The following entities are being designated pursuant to section 1(a)(i) for operating or having operated in the metals and mining sector of the Russian Federation economy:

- **Burovaya Kompaniya Eurasia Limited Liability Company (BKE)** is a Russian oilfield services company involved in the provision of drilling equipment and services related to exploring and drilling new oil and gas well sites. BKE also performs well intervention services.
- **Joint Stock Company Siberian Service Company (Siberian Service Company)** is a Russian oilfield services company involved in the provision of drilling services related to exploring and drilling new oil and gas well sites.

TARGETING SHIPPING AND LOGISTICAL SUPPORT TO FUTURE ENERGY PROJECTS

The Department is also designating **Sakhalin Shipping Company (SASCO)**, a Russian shipping company that has provided key logistical support to multiple Russian future energy projects. SASCO has provided support for future energy projects by delivering construction material and equipment via sea to the Taimyr Peninsula. SASCO is also involved in expanding Russia's trade routes to new jurisdictions as the Russian Federation looks to backfill economic connections it has lost due to the invasion of Ukraine. SASCO is being designated pursuant to section 1(a)(i) for operating or having operated in the marine sector of the Russian Federation economy.

The following entities are subsidiaries of SASCO and are being designated pursuant to section 1(a)(vii) for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, SASCO:

- **OOO MPL Vanino Sakhalin** is responsible for facilitating the renting and leasing of maritime transport equipment for SASCO.
- **AO Vostok Treid Invest** is responsible for buying and selling real estate for SASCO.

The following vessels are being identified as blocked property in which SASCO has an interest:

- **SASCO ALDAN**
- **SASCO AVACHA**
- **SASCO ANGARA**
- **SASCO ANIVA**
- **PATRIA**
- **ZEYA**
- **KUNASHIR**
- **PARAMUSHIR**
- **SELENGA**
- **SHANTAR**
- **SIMUSHIR**
- **SAKHALIN 8**
- **SAKHALIN 9**
- **SAKHALIN 10**

CONTINUING PRESSURE ON ROSATOM

This is the fourth Russia sanctions action in a row that includes designations of State Atomic Energy Corporation Rosatom (Rosatom) subsidiaries. The following subsidiaries of Rosatom are being designated pursuant to section 1(a)(vii) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation:

- **AEM Propulsion** is involved in the production and supply of elements of propulsion systems for ships of various purposes and classes.
- **NPO KIS** was established in October 2022, and is involved in the production and procurement of various microelectronics.

DEFENSE INDUSTRIAL BASE AND TECHNOLOGY PROCUREMENT

The Department is designating multiple defense entities and procurement companies working to acquire goods in support of Russia's war effort. These designations underscore our commitment to combatting sanctions evasion and key procurement networks that Russia is trying to establish in order to maintain its defense industrial base and support its illegal war against Ukraine.

The Department is designating the following entities pursuant to section 1(a)(i) for operating or having operated in the technology sector of the Russian Federation economy:

- **Limited Liability Company Fivel** is a Russian tech company that carries out wholesale deliveries of electronic components to Russian clients.
- **Limited Liability Company Fifth Element Trading** is a Russian supplier of electronic components and devices.
- **Radiant EK AO** is a Moscow-based distributor of computer chips and other electronic parts.
- **Limited Liability Company AB Optiks** is a Russian optics manufacturer and supplier, providing infrared cameras and diagnostic systems.
- **Limited Liability Company Fortap** is a Russian tech company that has imported millions of dollars of electronics, including U.S.-made computer parts, into Russia.

The following entity is being designated pursuant to section 1(a)(i) for operating or having operated in the transportation sector of the Russian Federation economy:

- **Limited Liability Company IMEX Expert (IMEX Expert)** is a Russian logistics company working to procure non-Russian goods and circumvent sanctions.

The following entities are being designated pursuant to section 1(a)(i) for operating or having operated in the defense and related materiel sector of the Russian Federation economy:

- **Vityaz Machine Building Company Joint Stock Company (Vityaz)** is a Russian defense company that is engaged in the development, production, operation, and repair of armored vehicles that are designed for operation in difficult road and climate conditions.
- **Closed Joint Stock Company Kilmovskiy Specialized Ammunition Plant (KSPZ AO)** is a Russian defense company that manufactures naval, aircraft, tank, coast, and field artillery and is responsible for manufacturing and selling firearms and ammunition.
- **Federal State Enterprise YA M Sverdlov Plant (Sverdlov Plant)** is a large Federal State-owned enterprise in Russia that produces explosives, industrial chemicals, detonators and ammunition.
- **Joint Stock Company Concern Kalashnikov (Kalashnikov Concern)** is Russia's leading manufacturer of automatic and sniper combat firearms, guided artillery munitions, and a wide range of weapons. It is the flagship company of Russia's weapons industry. Kalashnikov Concern was previously designated in 2015 pursuant to E.O. 13661.
    - **Vladimir Nikolaevich Lepin (Lepin)** is being designated pursuant to section 1(a)(iii)(C) for being or having been a leader, official, senior executive officer, or member of the board of directors of JSC Kalashnikov Concern, an entity whose property and interests in property are blocked. Lepin is the General Director of Kalashnikov Concern.

The following entity is being designated pursuant to section 1(a)(i) for operating or having operated in the aerospace sector of the Russian Federation economy:

- **Limited Liability Company Kosmosavia (Kosmosavia)** operates or has operated in the aerospace sector of the Russian Federation economy. Kosmosavia is a Russian supplier of aviation equipment and spare parts for Russian civil helicopters and cargo aircraft.

RUSSIAN PRIVATE MILITARY COMPANIES (PMCs)

The Department is also taking action to further target PMCs supporting Russia's war against Ukraine and other harmful activities of the Russian government outside of Russia.

- **Limited Liability Company Private Security Organization Gazpromneft Okhrana (Okhrana)** is being designated pursuant to section 1(a)(vii) for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation. Okhrana is a security company established by PJSC Gazprom, which is subject to Directive 4 under E.O. 13662 and Directive 3 under E.O. 14024.
- **Limited Liability Company Vega Strategic Services (PMC Vega)** is being designated pursuant to section 1(a)(i) for operating or having operated in the defense and related materiel sector of the Russian Federation economy. PMC Vega is a Russian private military company that has operated in Syria and Venezuela.
    - **Anatoliy Anatolievich Smolin** is the publicly identified leader of PMC Vega and is being designated pursuant to section 1(a)(iii)(C) for being or having been a leader, official, senior executive officer, or member of the board of directors of PMC Vega, an entity whose property and interests in property are blocked.

- **IRBIS SKY TECH** is being designated pursuant to section 1(a)(i) for operating or having operated in the defense and related materiel sector of the Russian Federation economy. IRBIS SKY TECH is a Russian unmanned aerial vehicle (UAV) production and development company. IRBIS SKY TECH UAVs are utilized in combat by Russian Armed Forces in Ukraine.
- **Igor Mikhailovich Stramilov (Stramilov)** is being designated pursuant to section 1(a)(i) for operating or having operated in the defense and related materiel sector of the Russian Federation economy. Stramilov is the founder and ultimate owner of PMC Vega. Stramilov is involved in the supply of combat UAVs and other military equipment for the Russian Armed Forces, as well as their performance on the battlefield in Ukraine.

The following entities are designated pursuant to section 1(a)(vii) for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Stramilov, a person whose property and interests in property are blocked.

- **Limited Liability Company Legion** is a private security company owned by Stramilov.
- **Limited Liability Company Legat** is a private security company owned by Stramilov.

CONSTRAINING MOSCOW'S MILITARY SPACE ENDEAVORS

Together with the Department of the Treasury, the Department of State is designating a number of targets that are part of Russia's military space program. These designations further our efforts to degrade Russia's ability to develop aerospace technologies, which could be deployed in support of its ground forces fighting in Ukraine.

- **The Central Research Institute of the Russian Air and Space Forces (TsNII VVKO)** is being designated pursuant to section 1(a)(i) for operating or having operated in the defense and related materiel sector of the Russian Federation economy. TsNII VVKO conducts research and development of aerospace defense systems for the Russian Federation.
- **Center for Operation of Space Ground-Based Infrastructure (AO Tsenki)** is being designated pursuant to section 1(a)(i) for operating or having operated in the aerospace sector of the Russian Federation economy. AO Tsenki is responsible for the maintenance of Russia's ground-based space infrastructure.
- **JSC Aviation Electronics and Communication Systems (AVEKS)** is being designated pursuant to section 1(a)(i) for operating or having operated in the aerospace sector of the Russian Federation economy. AVEKS is engaged in the design and manufacture of power supply systems for spacecraft and control systems of electronic propulsion systems.

IMPOSING COSTS ON THE WAGNER GROUP's LEADER YEVGENIY PRIGOZIN

The Department is designating two individuals linked to Wagner Group leader Yevgeniy Prigozhin, both of whom have been involved in the shipment of munitions to the Russian Federation.

- **Valeriy Yevgenyevich Chekalov (Chekalov)** is designated pursuant to section 1(a)(vii) for acting or purporting to act for or on behalf of, directly or indirectly, Yevgeniy Viktorovich Prigozhin, a person whose property and interests in property are blocked. Chekalov has acted for or on behalf of Prigozhin and has facilitated shipments of munitions to the Russian Federation.
- **Yong Hyok Rim (Rim)** is designated pursuant to section 1(a)(vi)(B) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Yevgeniy Viktorovich Prigozhin, a person

whose property and interests in property are blocked. Rim, a North Korea national, has assisted or provided support for Prigozhin and has facilitated shipments of munitions to the Russian Federation.

RUSSIAN FEDERATION ELITES, GOVERNMENT OFFICIALS, AND MALIGN ACTORS

The Department is also designating multiple senior Russian government officials and malign actors as part of continued efforts to impose costs on and promote accountability for the bureaucratic enablers of Russia's illegal war. The Department is additionally designating certain targets acting for the benefit of Russia in areas that it has temporarily occupied in Ukraine, involved in infrastructure projects that attempt to help cement Russia's occupation of parts of Ukraine's territory.

Russian Federation Elites and Government Officials

- **Aleksey Leonidovich Kudrin (Kudrin)** is a Russian technology firm corporate development advisor with close ties to Vladimir Putin. Kudrin is being designated pursuant to section 1(a)(i) for operating or having operated in the technology sector of the Russian Federation economy.
- **Pavel Alekseevich Marinychev (Marinychev)** is the CEO of PJSC Alrosa (Alrosa), a diamond mining company that is majority-owned by the Government of the Russian Federation. Alrosa and its former CEO were designated by the United States in April 2022. Marinychev is being designated pursuant to section 1(a)(i) for operating or having operated in the metals and mining sector of the Russian Federation economy.

The following individuals are being designated pursuant to section 1(a)(iii)(A) for being or having been leaders, officials, senior executive officers, or members of the board of directors of the Government of the Russian Federation:

- **Ilya Eduardovich Torosov** is a Deputy Minister of Economic Development of the Russian Federation.
- **Aleksey Igorevich Khersontsev** is a Deputy Minister of Economic Development of the Russian Federation.
- **Vasiliy Sergeevich Osmakov** is a Deputy Minister of Industry and Trade of the Russian Federation.
- **Pavel Nikolaevich Snikkars** is a Deputy Minister of Energy of the Russian Federation.
- **Leonid Vladimirovich Gornin** is a Deputy Finance Minister of the Russian Federation.
- **Pavel Yurevich Sorokin** is a Deputy Minister of Energy of the Russian Federation.
- **Sergey Borisovich Korolev** is the First Deputy Director of Russia's Federal Security Service (FSB).
- **Vasiliy Nikolaevich Anokhin** is the Governor of Russia's Smolensk region.

Malign Actors

- **State Unitary Enterprise of the Donetsk People's Republic Republican Center Trading House Vtormet (Vtormet)** is being designated pursuant to section 1(a)(ii)(F) for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation. Vtormet is a so-called Donetsk Peoples Republic "state enterprise," which buys and sells ferrous and non-ferrous scrap metal and is involved in infrastructure projects that attempt to help cement Russia's occupation of parts of Ukraine's territory.

- **Maksim Valeriovych Soldatov (Soldatov)** is being designated pursuant to section 1(a)(iii)(C) for being or having been a leader, official, senior executive officer, or member of the board of directors of, Vtormet, an entity whose property and interests in property are blocked. Soldatov is the CEO and General Director of Vtormet.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1636.

On July 24, 2023, OFAC designated the following three individuals pursuant to E.O. 14024: Adama BAGAYOKO, Sadio CAMARA, and Alou Boi DIARRA. 88 Fed. Reg. 48,503 (Jul. 27, 2023). See Secretary Blinken's press statement available at https://www.state.gov/imposing-sanctions-on-malian-officials-in-connection-with-the-wagner-group/, which includes the following:

> Today, the United States is designating three Malian officials who have worked closely with the Wagner Group to facilitate and expand Wagner's presence in Mali since December 2021. Civilian fatalities have surged by 278 percent since Wagner forces deployed to Mali in December 2021. Many of those deaths were the result of operations conducted by Malian Armed Forces alongside members of the Wagner Group.
>
> The United States will continue to take action against those who facilitate the Wagner Group's destabilizing activities, which pose threats to peace and security in Mali and the region. As the largest bilateral donor of development and humanitarian assistance to Mali, the United States supports the people of Mali in their aspirations for peace, prosperity, and democracy.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1645.

On August 11, 2023, OFAC designated four individuals—Alexey Viktorovich KUZMICHEV, German Borisovich KHAN, Petr Olegovich AVEN, and Mikhail Maratovich FRIDMAN—and one entity, RUSSIAN ASSOCIATION OF EMPLOYERS THE RUSSIAN UNION OF INDUSTRIALISTS AND ENTREPRENEURS, pursuant to E.O. 14024. 88 Fed. Reg. 55,821 (Aug. 16, 2023). Secretary Blinken's press statement is available at https://www.state.gov/united-states-sanctions-russian-financial-elites-and-a-russian-business-association/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1690.

On August 24, 2023, the Department designated individuals and entities pursuant to E.O. 14024 to promote accountability for forced transfer and deportation of children during Russia's war against Ukraine. The fact sheet is available at https://www.state.gov/imposing-sanctions-and-visa-restrictions-on-individuals-and-entities-to-promote-accountability-for-forced-transfer-and-deportation-of-children-during-russias-illegal-war-against-ukraine/, and excerpted below.

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The following individuals are being designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been leaders, officials, senior executive officers, or members of the board of directors of the Government of the Russian Federation:

- GALINA ANATOLEVNA PYATYKH is the advisor to the Governor of Belgorod and Commissioner for Children's Rights in the Belgorod region and has been involved in facilitation of the deportation of Ukrainian children to Russia and their adoption by Russian families.
- IRINA ANATOLYEVNA AGEEVA is the Commissioner for Children's Rights in the Kaluga region and has been involved in facilitation of the deportation of Ukrainian children to Russia and their adoption by Russian families.
- IRINA ALEKSANDROVNA CHERKASOVA is the Commissioner for Children's Rights in Rostov region and has been involved in facilitation of the deportation of Ukrainian children to Russia and their adoption by Russian families.
- MANSUR MUSSAEVICH SOLTAEV (SOLTAEV) is the Commissioner for Human Rights in the Chechen Republic and is reportedly associated with human rights violations and abuses and the suppression of protests against the Russian mobilization of troops. Additionally, Soltaev has been involved in facilitation of the transfer of civilians of the so-called "Donetsk People's Republic" and the so-called "Luhansk People's Republic", to include the deportation of Ukrainian children to camps in the Chechen Republic.
- MUSLIM MAGOMEDOVICH KHUCHIEV is the Chairman of the government of the Chechen Republic and has been involved in facilitation of the deportation of Ukrainian children to Russia and their adoption by Russian families.

The following entity is being designated pursuant to section 1(a)(ii)(F) of E.O. 14024 for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation:

- FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTE INTERNATIONAL CHILDREN CENTER ARTEK (ARTEK) is a Government of Russia-owned "summer camp" located in Russia-occupied Crimea that has received Ukrainian children who are subsequently placed in extensive "patriotic" re-education programs and are prevented from returning to their families.

The following individual is being designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of Artek, an entity whose property and interests in property are blocked:

- KONSTANTIN ALBERTOVICH FEDORENKO is the director of Artek.

The Department is designating the following individuals and entity that have been involved in the transfer of children from Russia-occupied areas of Ukraine to Russia, including youth camps in Russia, and Russia-occupied areas of Ukraine.

Pursuant to section 1(a)(ii)(F) of E.O. 14024, the following individuals and entity are being designated for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political

stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation:

- ZAMID ALIEVICH CHALAEV is a special police battalion commander in the Russian Ministry of Internal Affairs who took part in the storming of the Azovstal Iron and Steel Works during the siege of Mariupol and was involved in the transfer of Ukrainian children to camps in the Chechen Republic.
- OLENA OLEKSANDRIVNA SHAPUROVA is the Russia-appointed, so-called "Minister of Education and Science" in Russia-controlled portions of the Zaporizhzhia region in Ukraine and has implemented pro-Russia educational curriculums in schools in these areas threatening to remove children from Ukrainian families if they do not attend pro-Russia schools.
- AKHMAT KADYROV FOUNDATION (AKF) is used by the Kadyrov family to oversee the "re-education" of Ukrainian children in camps outside of Grozny in the Chechen Republic. AKF was also previously designated pursuant to E.O. 13818 in 2020 for being owned or controlled by Ramzan Kadyrov, who was designated pursuant to E.O. 13818 in December 2020. Ramzan Kadyrov was also designated pursuant to the Russia Magnitsky Act in December of 2017, and E.O. 14024 in September 2022.
- AYMANI NESIEVNA KADYROVA (AYMANI KADYROVA) is a member of the board of directors of AKF. AYMANI Kadyrova is the mother of U.S.-designated Ramzan Kadyrov and the president of AKF, who is involved in efforts to transfer children from Ukraine to military camps outside of Grozny in Chechnya. AYMANI Kadyrova is being designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of AKF.
- VLADIMIR VLADISLAVOVICH KOVALENKO (KOVALENKO) is a member of the board of directors of the All Russian Children and Youth Patriotic Public Movement Youth Army, an entity designated pursuant to E.O. 14024 in April 2023. Youth Army is an initiative created by Russia's Defense Minister Sergei Shoigu responsible for militarizing, propagandizing, and Russifying schoolchildren in Russia-controlled areas of Ukraine. Kovalenko is the Chief of Staff of the Sevastopol Branch of Youth Army, which is responsible for organizing Russian military and patriotic camps for Ukrainian children in Crimea. Kovalenko was designated by the European Union in June 2023 and the United Kingdom in July 2023. Kovalenko is being designated pursuant to section 1(a)(iii)(C) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the All Russian Children and Youth Patriotic Public Movement Youth Army.

Pursuant to section 1(a)(ii)(F) of E.O. 14024, the following individual is being designated for being responsible for or complicit in, or having directly or indirectly engaged or attempted to engage in, activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners, for or on behalf of, or for the benefit of, directly or indirectly, the Government of the Russian Federation:

- VLADIMIR DMITRIEVICH NECHAEV is the Russia-appointed head of Sevastopol State University in Crimea, overseeing a Russian cultural, historical, and patriotic reeducation program for Ukrainian children transported from the Luhansk region to Crimea.

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In addition, the Department imposed visa restrictions on three individuals for their involvement in human rights abuses of Ukrainian minors. The August 24, 2023 fact sheet includes the following:

This action is taken under the Immigration and Nationality Act 212(a)(3)(C) visa policy approved by Secretary Blinken in May 2022 to restrict visa issuance to Russian Federation military officials and Russia-backed or Russia-installed purported authorities who are believed to have been involved in human rights abuses, violations of international humanitarian law, or public corruption in Ukraine, and immediate family members of such individuals, as appropriate.

Two of the three individuals were found to be involved in the forced transfer of Ukrainian children from the Russia-occupied Kherson Region to Crimea. In most cases, the Ukrainian minors were taken and kept in camps in Russia-occupied territory. The third individual was involved in the ill-treatment of Ukrainian children in camps in Crimea, where they were subjected to physical abuse and confinement.

On September 14, 2023, OFAC blocked pending investigation the property and interests in property of the following four entities whose names will be placed on the SDN List pursuant to E.O. 14024 and in accordance with Note 2 to section 587.201 of the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587: BOIS ROUGE SARLU, FIRST INDUSTRIAL COMPANY SAU, LIMITED LIABILITY COMPANY BROKER EXPERT, AND LOGISTIQUE ECONOMIQUE ESTRANGERE SARLU. 88 Fed. Reg. 64,520 (Sept. 19, 2023).

Also on September 14, 2023, OFAC designated 18 individuals—Ekaterina Vladimirovna KRIVORUCHKO, Aleksei Yurievich KRIVORUCHKO, Katarzyna Ewa PAWLOWSKA HANAFIN, Aleksey Sergeyevich CHUBAROV, Iskandar Kakhramonovich MAKHMUDOV, Dzhakhangir Iskandarovich MAKHMUDOV, Andrei Rostislavovich KHOKHLUN, Ilya Andreevich BUZIN, Gabriel TEMIN, Catherine Esther TEMIN, Andrei Removich BOKAREV, Olga Vladimironva SYROVATSKAYA, Alla Fedorovna BABAN, Anna Mkrtichevna OKROYAN, Andranik Mkrtichovich OKROYAN, Arutyun Okroevich OKROYAN, Mkritch Okroevich OKROYAN, and Vitalij Viktorovic PERFILEV--and 75 entities (not listed herein) pursuant to E.O. 14024. 88 Fed. Reg. 66,939 (Sept. 28, 2023). Secretary Blinken's press statement is available at https://www.state.gov/imposing-further-sanctions-in-response-to-russias-illegal-war-against-ukraine-2/, and is excerpted below.

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The Departments of State and the Treasury are imposing further sanctions on over 150 individuals and entities in connection with Russia's unlawful invasion of Ukraine. As part of today's action, the U.S. government is targeting individuals and entities engaged in sanctions evasion and circumvention, those complicit in furthering Russia's ability to wage its war against Ukraine, and those responsible for bolstering Russia's future energy production.

The Department of State is imposing sanctions on over 70 entities and individuals involved in expanding Russia's energy production and export capacity, operating in Russia's metals and mining sectors, and aiding Russian individuals and entities in evading international sanctions. The Department of State is also designating one Russian Intelligence Services officer and one Georgian-Russian oligarch whom the FSB has leveraged to influence Georgian society and politics for the benefit of Russia. Additionally, the Department is designating numerous entities producing and repairing Russian weapon systems, including the Kalibr cruise missile used by Russian forces against cities and civilian infrastructure in Ukraine, and an individual affiliated with the Wagner Group involved in the shipment of munitions from the Democratic People's Republic of Korea to the Russian Federation.

Concurrently, the Department of the Treasury is imposing nearly one hundred sanctions on Russia's elites and its industrial base, financial institutions, and technology suppliers, including one official of the Wagner Group for advancing Russia's malign activities in the Central African Republic. This action comes after the Wagner Group helped ensure the passage of a July 30 constitutional referendum that undercut the country's democracy.

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The Department issued a fact sheet detailing these designations, available at https://www.state.gov/imposing-further-sanctions-in-response-to-russias-illegal-war-against-ukraine/. Treasury's press release if available at https://home.treasury.gov/news/press-releases/jy1731.

Also on September 14, 2023, OFAC removed from the SDN List the following individual, who was subject to prohibitions imposed pursuant to E.O. 14024: Hlaing Moe MYINT. 88 Fed. Reg. 66,939 (Sept. 28, 2023).

On October 12, 2023, OFAC designated two entities—ICE PEARL NAVIGATION CORP and LUMBER MARINE SA—and identified as blocked property the following two vessels pursuant to E.O. 14024: SCF PRIMORYE and YASA GOLDEN BOSPHORUS. 88 Fed. Reg. 74,232 (Oct. 30, 2023). The State Department press statement is available at https://www.state.gov/designating-entities-transporting-oil-sold-above-the-price-cap/, and excerpted below.

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Today, the United States is imposing sanctions on two entities that own vessels which used Price Cap Coalition service providers while carrying Russian crude oil traded above the price cap. The United States is also identifying those vessels as blocked property. This action demonstrates our vigilance in monitoring compliance with the price cap policy. That policy promotes global market stability while limiting Russian government oil revenue as Russia carries out its unjust war against Ukraine, which drove up global energy prices. We will continue to take action to uphold the price cap and support compliance.

Additionally, the Price Cap Coalition has issued an Advisory for the Maritime Oil Industry and Related Sectors, directed at both governments and private-sector actors. The

Advisory provides actionable recommendations, and reflects our commitment to promote responsible practices in the industry and enhance compliance with the price caps on crude oil and petroleum products of Russian Federation origin, put in place by the G7, the European Union, and Australia.

Since our Coalition implemented the price cap policy, our objectives have been clear: reduce Russian revenues used for its war against Ukraine while promoting global energy market stability. Nearly ten months into implementation of the price cap, we are confident it is achieving these twin goals.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1795.

On November 2, 2023, OFAC designated 16 individuals—Berk TURKEN, Andrei GOLOVTCHENKO, Anton GAREVSKIKH, Georgios GEORGIOU, Dmitry Ivanovich ZHARIKOV, Boris Gennadiyevich VORONTSOV, Liam Eoin FRAHER, Beyshen Kasymovich ISAEV, Dermot O'REILLY, Donats SKUTELIS, Natalia Vladimirovna SOLOZHENTSEVA, Aegli TAMANI-PHELLA, Artur Aleksandrovich PETROV, Vadim Sergeevich DOBROV, Maksim Yuryevich ERMAKOV, and Aleksandr Aleksandrovich VYALOV—and 114 entities (not listed herein)—pursuant to E.O. 14024. 88 Fed. Reg. 89,028 (Dec. 26, 2023). The State Department issued a fact sheet available at https://www.state.gov/taking-additional-sweeping-measures-against-russia/.

On November 16, 2023, OFAC designated the following three entities pursuant to E.O. 14024: GALLION NAVIGATION INCORPORATED, KAZAN SHIPPING INCORPORATED, and PROGRESS SHIPPING COMPANY LIMITED.[**] In addition, OFAC identified the following three vessels as blocked property pursuant to E.O. 14024: NS CENTURY (A8IJ8) and KAZAN (A8CE6). *Id*. The State Department press statement is available at https://www.state.gov/sanctioning-entities-and-vessels-transporting-russian-oil-sold-above-the-price-cap/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1915.

Also on November 16, 2023, OFAC designated individual Savo CVIJETINOVIC pursuant to E.O. 14024. 88 Fed. Reg. 82,502 (Nov. 24, 2023).

In addition, on November 16, 2023, the Department, in coordination with Treasury, imposed sanctions on two individuals and 12 entities in the Western Balkans pursuant to E.O. 14024. The Department released a fact sheet detailing the designations, available at https://www.state.gov/countering-corruption-and-russian-malign-influence-in-the-western-balkans/.

On December 1, 2023, OFAC designated the following three entities pursuant to E.O. 14024: HS ATLANTICA LIMITED, STERLING SHIPPING INCORPORATED, and STREYMOY SHIPPING LIMITED. 88 Fed. Reg. 84,874 (Dec. 6, 2023). Also on December 1, 2023, OFAC identified the following three vessels as blocked property pursuant to E.O.

[**] Editor's note: The designations of GALLION NAVIGATION INCORPORATED, KAZAN SHIPPING INCORPORATED, and PROGRESS SHIPPING COMPANY LIMITED were published in the Federal Register in 2024. See 89 Fed. Reg. 37,281 (May 6, 2024).

14024: HS ATLANTICA (5LIP5), NS CHAMPION (A8FD9), and VIKTOR BAKAEV (D5BN6). *Id*. This follows previous designations in October 2023 and November 2023 related to upholding Price Cap Coalition policy. The State Department press statement is available at https://www.state.gov/taking-additional-actions-to-uphold-coalition-price-cap-policy/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1940.

On December 5, 2023, OFAC designated five individuals—Tom DE GEETERE, Hans DE GEETERE, Vladimir KULEMEKOV, Sergey SKVORTSOV, and Kimberley Catriona Lucinda BEUN—and nine entities-- HASA NEDERLAND B.V., AHETEI LIMITED, ERINER LIMITED, EUROPEAN TECHNICAL TRADING, EUROPEAN TRADING TECHNOLOGY B.V., KNOKKE HEIST SUPPORT CORPORATION MANAGEMENT, LAR VORTO SERVICES LIMITED, M AND S TRADING, and THE MOTHER ARK LTD—pursuant to E.O. 14024. 88 Fed. Reg. 86,015 (Dec. 11, 2023).

Also on December 5, 2023, OFAC designated individual Dzmitry Yauhenievich SHAUTSOU pursuant to E.O. 14024. 88 Fed. Reg. 86,208 (Dec. 12, 2023).

On December 12, 2023, the State Department designated over 100 individuals and entities (not listed herein) pursuant to E.O. 14024. The Department released a fact sheet detailing the designations, available at https://www.state.gov/taking-additional-sweeping-measures-against-russia-3/, which includes the following.

> The Department is designating over 100 individuals and entities targeting Russia's future energy export and production capabilities, Russia's metals and mining sector, and third country networks facilitating sanctions evasion and circumvention. We are also designating several shipping companies that have been involved in the transfer of munitions between the Democratic People's Republic of Korea (DPRK) and Russia.

In addition, OFAC designated more than 150 individuals and entities supplying Russia's military-industrial base. Treasury's press release detailing these designations is available at https://home.treasury.gov/news/press-releases/jy1978.

On December 20, 2023, OFAC designated four entities—BELLATRIX ENERGY LIMITED, COVART ENERGY LIMITED, SUN SHIP MANAGEMENT D LTD, and VOLITON DMCC—and identified vessel SANAR 15 (UALW)—pursuant to E.O. 14024. See State Department press statement available at https://www.state.gov/taking-further-actions-in-support-of-the-coalition-price-cap-policy/. See also Treasury press statement available at https://home.treasury.gov/news/press-releases/jy2008.

b. New Executive Order 14114

On December 22, 2023, President Biden issued new executive order, E.O. 14114, "Taking Additional Steps With Respect to the Russian Federation's Harmful Activities,' which amends E.O. 14024. 88 Fed. Reg. 89,271 (Dec. 26, 2023). Section 1 of E.O. 14114 is excerpted below.

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I, JOSEPH R. BIDEN JR., President of the United States of America, in view of the Russian Federation's continued use of its military-industrial base to aid its effort to undermine security in countries and regions important to United States national security, including its reliance on the international financial system for the procurement of dual-use and other critical items from third countries, and in order to take additional steps with respect to the national emergency declared in Executive Order 14024 of April 15, 2021, expanded by Executive Order 14066 of March 8, 2022, and relied on for additional steps taken in Executive Order 14039 of August 20, 2021, Executive Order 14068 of March 11, 2022, and Executive Order 14071 of April 6, 2022, hereby order:

Section 1. Amendments to Executive Order 14024. Executive Order 14024 is hereby amended by redesignating section 11 of that order as section 12 and adding a new section 11 to read as follows:

"Sec. 11. (a) The Secretary of the Treasury, in consultation with the Secretary of State, and with respect to subsection (a)(ii) of this section, in consultation with the Secretary of State and the Secretary of Commerce, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section, upon determining that the foreign financial institution has:

(i) conducted or facilitated any significant transaction or transactions for or on behalf of any person designated pursuant to section 1(a)(i) of this order for operating or having operated in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian Federation economy, or other such sectors as may be determined to support Russia's military-industrial base by the Secretary of the Treasury, in consultation with the Secretary of State; or

(ii) conducted or facilitated any significant transaction or transactions, or provided any service, involving Russia's military-industrial base, including the sale, supply, or transfer, directly or indirectly, to the Russian Federation of any item or class of items as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce.

(b) With respect to any foreign financial institution determined to meet the criteria set forth in subsection (a) of this section, the Secretary of the Treasury, in consultation with the Secretary of State, may:

(i) prohibit the opening of, or prohibit or impose strict conditions on the maintenance of, correspondent accounts or payable-through accounts in the United States; or

(ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

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The White House issued a fact sheet on E.O. 14114, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/22/fact-sheet-biden-administration-expands-u-s-sanctions-authorities-to-target-financial-facilitators-of-russias-war-machine/, and excerpted below.

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With this E.O., the United States is taking action consistent with the G7 Leaders' statement of December 6, 2023, which warned that we will work to further curtail Russia's efforts to use the international financial system to facilitate expansion of its military industrial base.

Targeting financial institutions that support Russia's military industrial base

As Russia creates cutouts and front companies to circumvent our restrictions and uses both witting and unwitting financial intermediaries, the new E.O. provides additional tools to root out Russia's procurement networks. This E.O. amends Executive Order 14024 to expand U.S. authority to sanction:

- Financial institutions determined to have conducted or facilitated any significant transaction for or on behalf of companies or individuals the United States has sanctioned for operating in sectors of the Russian economy that support its military industrial base; and
- Financial institutions determined to have conducted or facilitated any significant transaction, or provided any service, involving Russia's military industrial base, including the sale, supply, or transfer to Russia of certain critical items.

The Department of the Treasury will issue a determination that includes a list of critical items. A financial institution sanctioned under one of these criteria will face either full blocking sanctions or the loss of, or strict conditions on, their U.S. correspondent accounts.

Diamonds imports

To curtail Russia's revenue from other sectors, the E.O. will also make it more difficult for specific Russian goods to enter the United States after being modified in a third country. In the coming months, the United States and our partners intend to introduce import restrictions on certain diamonds mined, processed, or produced in Russia, building on an existing U.S. ban on the importation of Russian-origin diamonds. Today's E.O. amends Executive Order 14068 to provide the authority to ban, following a determination from appropriate U.S. departments and agencies, the importation of certain products mined, extracted, produced, or manufactured wholly or in part in Russia, even if these products are then transformed in a third country.

Seafood imports

Similarly, the amendment to E.O. 14068 provides the authority to ban, following a determination from appropriate U.S. departments and agencies, the importation of certain products harvested in Russian waters or by Russia-flagged vessels, even if these products are then transformed in a third country. The Department of the Treasury intends to issue a determination identifying specific types of seafood that will be subject to this prohibition.

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c. Executive Order 14071

On May 19, 2023, OFAC issued a determination pursuant to E.O. 14071, prohibiting the exportation from the United States of architecture services or engineering services to any person located in the Russian Federation, in coordination with the G7 and other international partners. Treasury's press release detailing this determination is available at https://home.treasury.gov/news/press-releases/jy1494.

d. Relating to the Poisoning of Aleksey Navalny

On August 17, 2023, OFAC designated four Russian Federal Security Service (FSB) operatives, Alexey Alexandrovich ALEXANDROV, Konstantin KUDRYAVTSEV, Ivan Vladimirovich OSIPOV, and Vladimir Alexandrovich PANYAEV, pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012 for their involvement in the 2020 poisoning of Russian opposition leader Aleksey Navalny. See 88 Fed. Reg. 57,176 (Aug. 22, 2023). The State Department's press statement is available at https://www.state.gov/designating-individuals-involved-in-the-poisoning-of-aleksey-navalny/. The Treasury Department press release is available at https://home.treasury.gov/news/press-releases/jy1700. See section A.11.b, *infra*, for a discussion of further designation under section 7031(c).

e. Executive Order 13662

E.O. 13662, "Blocking Property of Additional Persons Contributing to the Situation in Ukraine" was issued on March 20, 2014. See 79 Fed. Reg. 16,169 (Mar. 24, 2014); see also *Digest 2014* at 647-49.

On May 12, 2023, OFAC determined that the entity SKODA JS A.S., previously designated pursuant to E.O. 13662, should be removed from the Sectoral Sanctions Identification List (SSI List). 88 Fed. Reg. 32,278 (May 19, 2023).

5. Belarus

On January 17, 2023, the State Department announced action to impose visa restrictions on 25 individuals under Presidential Proclamation 8015 of May 12, 2006, "Suspension of Entry as Immigrants and Nonimmigrants of Persons Responsible for Policies or Actions That Threaten the Transition to Democracy in Belarus." See 71 Fed. Reg. 28,541 (May 16, 2006). Secretary Blinken's press statement is available at https://www.state.gov/responding-to-continued-repression-by-the-lukashenka-regime-in-belarus/, and follows.

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The Lukashenka regime continues to repress the Belarusian people and their democratic aspirations, including with the politically motivated trial in absentia of democratic opposition leader Svyatlana Tsikhanouskaya and other democratic activists on baseless charges. To respond to these human rights abuses, the State Department is announcing action to impose visa restrictions on 25 individuals under Presidential Proclamation 8015 for their involvement in undermining democracy.

These politically motivated trials are the latest examples of the Lukashenka regime's efforts to intimidate and repress those who seek justice, respect for human rights, and a democratic Belarus. Ms. Tsikhanouskaya leads the pro-democracy movement from exile in Vilnius, defends human rights, and continues to press for a democratic transition in Belarus. She is on trial along with other pro-democracy leaders, including Volha Kavalkova, head of the Coordination Council, the body tasked with facilitating Belarus' democratic transition. Separately, the regime last month convicted and sentenced to 12 years in prison Belarusian Sports Solidarity Foundation founder Alex Apeikin and Belarusian Olympian Alyaksandra Herasimenia. The Lukashenka regime also continues to hold as a political prisoner Nobel Peace Prize laureate Ales Bialiatski, who has dedicated his life to defending human rights and advancing democratic change in Belarus.

We will not stand by as this regime continues to harass and repress peaceful protesters, the democratic opposition, journalists, unionists, activists, human rights defenders, and everyday Belarusians. Those regime officials targeted in today's action include members of the National Assembly of Belarus for their role in passing legislation to authorize the death penalty for persons convicted of supposed "attempted acts of terrorism," a charge used to repress and intimidate the democratic opposition and civil society. Some of these individuals have also supported legislation revoking citizenship from those outside the country charged with "extremism," and confiscating property for taking "unfriendly actions towards Belarus" – similarly aimed at repressing and intimidating the democratic opposition and civil society.

Including today's announcement, the State Department has taken steps to impose visa restrictions on 322 individuals for undermining democracy in Belarus since the fraudulent 2020 presidential election. We will continue to use all appropriate tools to hold to account those in Belarus standing in the way of their fellow citizens' democratic aspirations.

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On March 24, 2023, OFAC designated nine individuals—Alena Antolieuna BALDOUSKAYA, Dzyanis Uladzimiravich DUK, Katsyaryna Alyaksandrauna FEDASENKA, Ihar Vasilyevich KARPENKA, Alena Kanstantsinauna KUNTSEVICH, Alyaksandr Henadzievich TKACHOU, Alyaksandr Uladzimiravich YUZHYK, Sergei Olegovich NIKIFOROVICH, and Valery Valerievich IVANKOVICH—and three entities—CENTRAL ELECTION COMMISSION OF THE REPUBLIC OF BELARUS, OPEN JOINT STOCK COMPANY BELARUSIAN AUTOMOBILE PLANT, and OPEN JOINT STOCK COMPANY MINSK AUTOMOBILE PLANT—as well as one aircraft (EW-001PA), pursuant to E.O. 14038. 88 Fed. Reg. 19,359 (Mar. 31. 2023). Concurrently, the State Department announced actions to impose visa restrictions on an additional 14 individuals under Presidential Proclamation 8015 for their involvement in undermining democracy in Belarus. Secretary Blinken's press statement is available at https://www.state.gov/taking-additional-actions-to-hold-the-lukashenka-regime-to-account/, and follows.

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The United States continues to promote accountability for the Lukashenka regime's violence surrounding the fraudulent August 2020 presidential election in Belarus, its ongoing brutal crackdown against the pro-democracy movement and other elements of Belarusian society, its flagrant human rights abuses, and its facilitation of the Russian Federation's illegal war against Ukraine.

Specifically, the U.S. Department of the Treasury is designating today two state-owned enterprises; Open Joint Stock Company Belarusian Automobile Plant and Open Joint Stock Company Minsk Automobile Plant.

Further, Treasury is re-designating the Central Election Commission of the Republic of Belarus and designating seven members of the Commission.

The Department of State is announcing actions to impose visa restrictions on an additional 14 individuals under Presidential Proclamation 8015 for their involvement in undermining democracy in Belarus. Specifically, these individuals include regime officials involved in policies to threaten and intimidate brave Belarusians exercising their human rights and fundamental freedoms at great personal cost.

Today's actions further align the United States with actions taken by our partners and Allies. The United States will continue to impose costs on the regime and those who support it for their repression of the people of Belarus, and the regime's ongoing support for Russia's unprovoked and illegal war against Ukraine.

For more information about these Treasury designations, please see Treasury's **press release**.

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On August 9, 2023, the three-year anniversary of the fraudulent August 2020 presidential election in Belarus, the United States expanded sanctions on the Belarusian regime. OFAC designated eight individuals and five entities pursuant to E.O. 14038. See Treasury's press release, available at https://home.treasury.gov/news/press-releases/jy1682. Concurrently, the State Department imposed visa restrictions on 101 regime officials and their affiliates. See Secretary Blinken's press statement, available at https://www.state.gov/imposing-sanctions-and-visa-restrictions-to-hold-the-lukashenka-regime-to-account-on-the-third-anniversary-of-the-fraudulent-presidential-election-in-belarus/, excerpted below.

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Today marks three years since the fraudulent presidential election in Belarus and the Alyaksandr Lukashenka regime's crackdown on the Belarusian people's demands for freedom. The United States continues to stand with the brave people of Belarus as they seek a country grounded in the rule of law, respect for human rights, and an accountable, democratically-elected government.

Today, the United States is sanctioning eight individuals and five entities for enabling Lukashenka's domestic repression and facilitating Russia's war against Ukraine. Additionally, we are imposing visa restrictions on 101 regime officials and their affiliates for undermining or harming democratic institutions in Belarus, including several judges responsible for issuing politically-motivated sentences against Belarusians for exercising their fundamental freedoms.

We reiterate our call for the immediate and unconditional release of all 1,500 political prisoners held by the Lukashenka regime, including Ales Bialiatski, Viktar Babaryka, Maria Kalesnikava, Ihar Losik, and Siarhei Tsikhanouski. Since 2020, the Lukashenka regime has repressed Belarusian citizens, arrested peaceful protesters and community leaders, cracked down on opposition groups and civil society organizations, and subjected those detained to sham trials, all to maintain Lukashenka's illegitimately acquired authority. The United States will continue to support the people of Belarus in their pursuit of a democratic future in free Belarus where human rights are respected.

The Department of the Treasury is designating the "Department of Financial Investigations of the State Control Committee of Belarus" and four members of its board of directors; three family members of U.S.-designated Aliaksey Ivanavich Aleksin; three entities owned or controlled by the Government of Belarus: Open Joint Stock Company Belavia Belarusian Airlines (Belavia), Open Joint Stock Company Minsk Civil Aviation Plant 407, Joint Stock Company Byelorussian Steel Works Management Company (BSW); one entity, Bel-Kap-Steel LLC, for being owned or controlled by BSW; and is identifying one aircraft owned by Belavia as blocked property. Treasury is taking these actions pursuant to ***Executive Order 14038*** *"Blocking Property of Additional Persons Contributing to the Situation in Belarus." For more information about these designations, see Treasury's* ***press release****.*

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On December 5, 2023, OFAC designated seven individuals—Viktor Evgenievich PETROVICH, Pavel Georgievich TOPUZIDIS, Aliaksandr Vasilevich SHAKUTSIN, Nikolai Nikolaevich GAICHUK, Alexander Ivanovich MOROZ, Alexei Petrovich SHKADAREVICH, and Vadim Aleksandrovich BABARTKIN—and 11 entities—OPEN JOINT STOCK COMPANY ALEVKURP, OPEN JOINT STOCK COMPANY AMKODOR MANAGEMENT HOLDING COMPANY, TABAK INVEST LLC, REPUBLICAN PRODUCTION AND TRADE UNITARY ENTERPRISE MANAGEMENT COMPANY OF THE HOLDING BELARUSIAN CEMENT COMPANY, BELARUSIAN PRODUCTION AND TRADE CONCERN OF TIMBER WOODWORKING AND PULP AND PAPER INDUSTRY, JSC MINSK MECHANICAL PLANT NAMED AFTER S.I. VA VILOV MANAGEMENT COMPANY OF BELOMO HOLDING, JSC ZENIT BELOMO, SCIENTIFIC TECHNICAL CENTER LEMT BELOMO, REPUBLICAN UNITARY ENTERPRISE BEL TAMOZHSER VICE, OJSC HORIZONT HOLDING MANAGEMENT COMPANY, and PLANAR RESEARCH AND PRODUCTION HOLDINGS FOR PRECISION ENGINEERING—pursuant to E.O. 14038. 88 Fed. Reg. 86,208 (Dec. 12, 2023). See State Department press statement available at https://www.state.gov/taking-additional-

sweeping-actions-against-the-belarusian-regime/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1949.

6. Syria and Syria-Related Executive Orders and the Caesar Act

E.O. 13894 of 2019 authorizes sanctions on persons involved in actions that endanger civilians or lead to further deterioration of the situation in northeast Syria. See *Digest 2019* at 498-500. E.O. 13582 of 2011 is entitled, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria." See *Digest 2011* at 513-14. E.O. 13573 of 2011 is entitled, "Blocking Property of Senior Officials of the Government of Syria." See *Digest* 2011 at 513. E.O. 13572 of 2011 is entitled, "Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria." See *Digest 2011* at 512-13. The Caesar Syria Civilian Protection Act of 2019 ("the Caesar Act") also provides for sanctions and visa restrictions on those who provide various types of support to the Assad regime or foreign forces associated with it. See *Digest 2019* at 497-98.

On February 9, 2023, OFAC issued Web General License 23 (GL 23) pursuant to the Syrian Sanctions Regulations, 31 CFR part 542. GL 23 authorized for 90 days all transactions related to earthquake relief efforts in Syria that would otherwise be prohibited by the Syrian Sanctions Regulations. 88 Fed. Reg. 17,727 (Mar. 24, 2023). On February 10, 2023, the White House issued a fact sheet entitled, "The Biden-Harris Administration's Response to the Earthquakes in Türkiye and Syria." The fact sheet is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/10/fact-sheet-the-biden-harris-administrations-response-to-the-earthquakes-in-turkiye-and-syria/, and includes the following:

> Yesterday, to underscore that U.S. sanctions will not prevent or inhibit providing humanitarian assistance in Syria, the Department of the Treasury issued a broad General License to provide additional authorizations for disaster relief assistance to the Syrian people. This license will be in effect for six months. U.S. humanitarian assistance is delivered directly to the Syrian people, no matter where they live.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1261.

On March 28, 2023, OFAC designated two individuals—Imad ABU ZUREIK and Khalid QADDOUR—pursuant to E.O. 13572. 88 Fed. Reg. 20,943 (Apr. 7, 2023). OFAC also designated two individuals—Samer Kamal AL-ASSAD and Wassim AL-ASSAD—pursuant to E.O. 13582. *Id*.

On May 25, 2023, OFAC designated three individuals—Muhammad Ma'ruf BALWI, Mut'i Ma'ruf BALWI, and Fadel Ma'ruf BALWI—and two entities—AL-ADHAM EXCHANGE COMPANY and AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY—pursuant to E.O. 13582 and the Caesar Syria Civilian Protection Act. 88 Fed. Reg. 36,646

(June 5, 2023). Secretary Blinken's press statement is available at https://www.state.gov/imposing-sanctions-on-syrian-financial-facilitators/, and includes the following:

> Today, the United States is designating under Caesar Act authorities two Syrian money service businesses and affiliated three individuals that provide financial support to the Assad regime. These two Damascus-based exchange companies have facilitated millions of dollars in transfers since 2021 to accounts at the U.S.-designated Central Bank of Syria to benefit the Assad regime. U.S.-designated Hizballah has also used these exchange companies to transfer money from other regional countries to Syria. These actions build on the broader efforts to deny Hizballah and Iran the financial resources used to sustain their malign activities in the region.
>
> Our actions today further demonstrate that the United States' commitment to promoting accountability for the Assad regime's abuses and justice for victims is unwavering. Any foreign person who knowingly provides significant financial, material, or technological support to, or engages in a significant transaction with the Government of Syria, puts themselves at risk of U.S. sanctions.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1508.

On August 8, 2023, OFAC released an OFAC Compliance Communique entitled Guidance for the Provisions of Humanitarian Assistance to Syria to provide humanitarian assistance to Syria while complying with OFAC sanctions. The communique is available at https://ofac.treasury.gov/media/931236/download?inline, and excerpted below (footnotes omitted).

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The Syrian Sanctions Regulations, 31 CFR part 542, contain several exemptions and general licenses (GLs) authorizing humanitarian-related activities in Syria:

NGO Activities: Section 542.516 (the "Syria NGO general license") authorizes certain services, transactions, and activities in support of nongovernmental organization (NGO) not-for-profit activities. See FAQs 231, 937 and 938. As explained in FAQ 937, U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters can process such transactions and may rely on the statements of their customers that such transactions are authorized unless they know or have reason to know a transaction is not authorized.

International Organizations (IO): 31 CFR § 542.513 (the "Syria IO general license") authorizes all transactions and activities that are for the conduct of the official business of the United Nations (UN), including its Specialized Agencies, Programmes, Funds, and Related

Organizations (see FAQ 1107) and for such conduct by employees, contractors, or grantees thereof, subject to certain limitations.

U.S. Government Official Business: Pursuant to the exemption at 31 CFR § 542.211 and the general license at 31 CFR § 542.522 (the "USG general license"), transactions for the conduct of the official business of the United States government by employees, grantees, or contractors thereof are exempt or authorized.

Certain Economic Activity in Non-Regime Held Areas: Beyond humanitarian aid, GL 22 authorizes transactions ordinarily incident and necessary to activities in 12 economic sectors in certain non-regime held areas in northeast and northwest Syria.4 See FAQs 1041, 1042, 1043, 1044, and 1045.

Noncommercial, Personal Remittances: 31 CFR § 542.512 (the "Syria Remittances general license") authorizes U.S. persons to send noncommercial, personal remittances to Syria or individuals ordinarily resident in Syria, subject to certain conditions. Please note the Syria Remittances general license does not authorize charitable donations to Syria.

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Also on August 8, 2023, OFAC amended one Syria Frequently Asked Question (FAQ 937). On August 17, 2023, OFAC designated two Syria-based armed militias—Suleiman SHAH BRIGADE and THE HAMZA DIVISION—and three members of the groups' leadership structures--Mohammad Hussein AL-JASIM (Abu Amsha), Walid Hussein AL-JASIM, and Sayf Boulad Abu BAKR—pursuant to E.O. 13894 for serious human rights abuses against the Syrian people. In addition, OFAC designated AL-SAFIR OTO, a car dealership owned by Abu Amsha. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1699.

7. Burma

On January 31, 2023, in advance of the second anniversary of the February 1, 2021 military coup in Burma, OFAC designated the following under E.O. 14014: individuals—Htun AUNG, Hla, SWE, Htoo Htwe TAY ZA, Aung MIN, Myo Myint OO, and Than MIN—and entities— MINING ENTERPRISE NO 1, MINING ENTERPRISE NO 2, and UNION ELECTION COMMISSION. 88 Fed. Reg. 7538 (Feb. 3, 2023). Secretary Blinken's press statement is available at https://www.state.gov/marking-two-years-since-the-military-coup-in-burma/, and includes the following:

> Today, the United States is imposing sanctions on six individuals and three entities linked to the regime's efforts to generate revenue and procure arms, including senior leadership of Burma's Ministry of Energy, Myanma Oil and Gas Enterprise (MOGE), and Burma's Air Force, as well as an arms dealer and a family member of a previously designated business associate of the military. We are also sanctioning the Union Electoral Commission, which the regime has deployed to advance its plans for deeply flawed elections that would subvert the will of

> the people of Burma. We are taking today's action in conjunction with actions also being taken by the United Kingdom and Canada. To date, we have sanctioned, under Executive Order 14014, 80 individuals and 32 entities to deprive the regime of the means to perpetuate its violence and to promote the democratic aspirations of Burma's people.
>
> The United States remains firm in our position that the regime's planned elections cannot be free or fair, not while the regime has killed, detained, or forced possible contenders to flee, nor while it continues to inflict brutal violence against its peaceful opponents. Many key political stakeholders have announced their refusal to participate in these elections, which will be neither inclusive nor representative, and which almost certainly will fuel greater bloodshed. The United States will continue to support the pro-democracy movement and its efforts to advance peace and multiparty governance in Burma. We commend those working to strengthen unity and cohesion among diverse groups who share a vision of a genuine and inclusive democracy in Burma.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1233.

On March 24, 2023, OFAC designated two individuals—Tun Min LATT and Win Min SOE—and six entities-- ASIA SUN GROUP, ASIA SUN TRADING CO. LTD., CARGO LINK PETROLEUM LOGISTICS CO. LTD., STAR SAPPHIRE GROUP OF COMPANIES, STAR SAPPHIRE GROUP PTE. LTD., and STAR SAPPHIRE TRADING COMPANY LIMITED—pursuant to E.O. 14014. 88 Fed. Reg. 18,630 (Mar. 29, 2023).

On June 21, 2023, OFAC designated the following three entities pursuant to E.O. 14041: MINISTRY OF DEFENSE OF BURMA, MYANMA FOREIGN TRADE BANK, and MYANMA INVESTMENT AND COMMERICAL BANK. 88 Fed. Reg. 41,464 (June 26, 2023). Also on June 21, 2023, OFAC determined that individual Than MIN, previously designated on January 31, 2023 pursuant to E.O. 14014, should be removed from the SDN List. *Id*.

On August 23, 2023, OFAC designated two individuals—Zaw Min TUN and Khin Phyu WIN—and three entities-- SHOON ENERGY PTE. LTD., PEIA PTE. LTD., and P.E.I ENERGY PTE. LTD.—pursuant to E.O. 14014. 88 Fed. Reg. 58,635 (Aug. 28, 2023).

On September 25, 2023, OFAC determined that the following individual is no longer subject to the blocking provisions of E.O. 14014: Hlaing Moe MYINT. 88 Fed. Reg. 66,959 (Sept. 28, 2023).

On October 31, 2023, OFAC designated five individuals—Swe Swe AUNG, Zaw MIN, Charlie THAN, Maung Maung AYE, and Kan ZAW—and three entities—SKY ROYAL HERO COMPANY LIMITED, SUNTAC TECHNOLOGIES COMPANY LIMITED, AND SUNTAC INTERNATIONAL TRADING COMPANY LIMITED—pursuant to E.O. 14014. 88 Fed. Reg. 75,638 (Nov. 3, 2023). At the same time, OFAC determined the following entity to be subject to Directive 1 under E.O. 14014, "Prohibitions Related to Financial Services to or for the Benefit of Myanma Oil and Gas Enterprise:" MYANMA OIL AND GAS ENTERPRISE. *Id*. Secretary Blinken's press statement is available at https://www.state.gov/sanctions-

against-the-myanma-oil-and-gas-enterprise-and-concerted-pressure-with-partners/, and, excerpted below.

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Today, the United States is imposing targeted sanctions on the Myanma Oil and Gas Enterprise (MOGE). As Burma's most lucrative state-owned enterprise, MOGE provides hundreds of millions of dollars in foreign revenues every year to the military regime's coffers, which the regime uses to purchase weapons and military materiel from abroad. Through the issuance of a financial services directive against MOGE, the United States seeks to disrupt the regime's access to the U.S. financial system and curtail its ability to perpetrate atrocities.

Additionally, the United States is coordinating with Canada and the United Kingdom to align our sanctions on the military regime. The United States is designating three entities and five individuals who have supported the Burma regime's perpetration of human rights violations and abuses since the February 2021 military coup d'etat against the country's democratically elected government. Today's designations close avenues for sanctions evasion and strengthen our efforts to impose costs and promote accountability for the regime's atrocities. We continue to encourage all countries to take tangible measures to halt the flow of arms, aviation fuel, and revenue to the military regime.

The United States, Canada, and United Kingdom unequivocally condemn the Burma military's ongoing assaults on those in the country striving for genuine peace and democracy. We urge the international community to step up action to address the worsening human rights, humanitarian, political, and economic crisis in Burma. Today's actions support and advance the efforts of the Association of Southeast Asian Nations, the UN Security Council, and countries in the region to pursue a just resolution to the conflict in Burma. The international community must deploy all diplomatic tools at its disposal to push the regime to end its atrocities and violence, release those unjustly detained, allow unhindered humanitarian assistance, and support the will of the people of Burma for genuine and inclusive democracy.

* * * *

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1856.

8. Nonproliferation

a. Country-specific sanctions

See each country listings in this chapter for sanctions related to proliferation activities.

b. Iran, North Korea, and Syria Nonproliferation Act ("INKSNA")

The Iran, North Korea, and Syria Nonproliferation Act ("INKSNA") authorizes the imposition of sanction on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from North Korea since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction ("WMD") or cruise or ballistic missile systems. The sanctions, which are authorized under Section 3 of INKSNA, include restrictions on U.S. government procurement, U.S. government assistance, U.S. government sales, and exports, for a period of two years.

On July 19, 2023, the U.S. Government applied the measures authorized in Section 3 of INKSNA against the following foreign persons (and their succesors, sub-units, or subsidiaries): Sinobright Import and Export Company (China), Wisdom Import & Export (Shanghai) Co., Ltd. (China), Seyed Taba (Turkish individual), EuroAsia (Turkiye), and Mirel Makina Elektronik Teks (Turkiye). 88 Fed. Reg. 53,574 (Aug. 8, 2023).

9. Terrorism

a. United States targeted financial sanctions

(1) Department of State designations

In 2023, numerous entities and individuals (including their known aliases) were designated pursuant to State Department authorities in E.O. 13224 as amended by E.O. 13886. For an up-to-date list of State Department terrorism designations, see https://www.state.gov/terrorist-designations-and-state-sponsors-of-terrorism/.

On February 6, 2023, the State Department designated Sami Mahmud Mohammed al-Uraydi, a leader of Hurras al-Din, as a Specially Designated Global Terrorist (SDGT). 88 Fed. Reg. 24,258 (Apr. 19, 2023).

On May 5, 2023, the State Department designated Maxamed Siidow, Cali Yare, Maxamed Dauud Gaabane, Suleiman Cabdi Daoud, and Mohamed Omar Mohamed as SDGTs. 88 Fed. Reg. 38,118 (June 12, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/terrorist-designation-of-al-shabaab-leaders-2/, and excerpted below.

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* * * *

The United States continues to support Somalia and our other East African partners in their efforts to disrupt al-Shabaab's operations. Countering one of al-Qa'ida's most dangerous affiliates, which has killed thousands of people, including Americans, in Somalia and across East Africa remains a shared priority with the Somali government.

Today, the Department of State is designating five al-Shabaab leaders as Specially Designated Global Terrorists under Executive Order (E.O.) 13224, as amended:

- Maxamed Siidow is a finance emir and a commander in the group's armed wing, the Jabha. Siidow oversees illicit taxation operations in Aliyow Barrow in the Lower Shabelle, Somalia. He has also led al-Shabaab fighters in attacks and participated in attack planning operations utilizing improvised explosive devices (IEDs).
- Cali Yare is a finance emir who oversees al-Shabaab's illicit taxation operations for the village of Beled Amin, Lower Shabelle. Yare is responsible for consolidating all religious taxation and illegal taxes collected from civilians and clan elders. Yare directed and claimed responsibility for the November 14, 2018, IED attack on Somali Armed Forces near the village of Calagaad, Lower Shabelle.
- Maxamed Dauud Gabaane is a finance emir, responsible for all al-Shabaab finance operations in Wanlaweyn District and Beled Amin, Lower Shabelle. Gabaane also serves as the head of the group's intelligence wing, the Amniyat, in Wanlaweyn District. Gabaane operates an extensive early warning and informant network that regularly collects information on coalition forces and Somalis who work at the Baledogle Military Airfield.
- Suleiman Cabdi Daoud is a finance emir, and wali (commissioner) of Beled Amin. Daoud also oversees al-Shabaab's illicit taxation operations in the Lower Shabelle, responsible for collecting religious taxation from villagers. He also assists in overseeing an al-Shabaab "court" that stores fines collected from civilians in the region. Daoud previously served as an Amniyat official.
- Mohamed Omar Mohamed is the wali of the al-Shabaab group in the Diinsor District, Bay Region, Somalia, and has been responsible for a series of attacks targeting civilians. Mohamed was previously the wali and Jabha commander of the Berdaale District, Bay Region.

Additionally, the Department of the Treasury is concurrently designating 15 al-Shabaab financial facilitators and operatives, four charcoal smugglers, and seven of their associated companies. These combined designations reflect the United States' counterterrorism priorities in Somalia and support the dynamic relationship we have established with the Somali government to counter the terrorist threats endangering their people and undermining their communities.

* * * *

On June 6, 2023, the State Department designated Abdallah Makki Muslih al-Rufay'i and Abu Bakr ibn Muhammad ibn 'Ali al-Mainuki as SDGTs. 88 Fed. Reg. 39,501 (June 16, 2023).

On June 20, 2023, the State Department designated Arkan Ahmad 'Abbas al-Matuti and Nawaf Ahmad Alwan al-Rashidi as SDGTs for conflict-related sexual violence. 88 Fed. Reg. 41,997 (June 28, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/designating-and-promoting-accountability-for-conflict-related-sexual-violence/, includes the following:

> Today, the Department of State is designating two ISIS leaders as Specially Designated Global Terrorists, under Executive Order 13224. Both individuals have committed sexual violence against Yezidis and were responsible for the abduction and enslavement of Yezidi women and girls. More than 2,700 women and children, mainly Yezidis, remain unaccounted for.
>
> - Arkan Ahmad 'Abbas al-Matuti (aka Abu Sarhan) is a senior field military commander in Wilayat al-Jazirah, having held several positions within ISIS, including the wali of the Bulayj, Syria sector. Al-Matuti was involved in selling Yezidi women and girls, taking several Yezidi captives as sexual slaves for himself.
> - Nawaf Ahmad Alwan al-Rashidi (aka Abu Faris) manages ISIS financial payments to members and widows and works in the group's smuggling operations. Al-Rashidi was involved in planning, coordinating, and conducting several attacks in Syria between 2018-2019. Al-Rashidi was also responsible for the sexual slavery and rape of Yezidi women and girls in Sinjar, Iraq.

On November 6, 2023, the State Department designated Akram al-Ajouri as an SDGT. 88 Fed. Reg. 83,200 (Nov. 28, 2023).

On November 16, 2023, the State Department designated Kata'ib Sayyid al-Shuhada and Hashim Finyan Rahim al-Saraji as SDGTs. 88 Fed. Reg. 83,201 (Nov. 28, 2023).

On December 6, 2023, the State Department designated Mohamed Ali Nkalubo and Ahmed Mahamud Hassan Aliyani as SDGTs. 88 Fed. Reg. 88,209 (Dec. 20, 2023).

(2) OFAC designations

OFAC designated numerous individuals (including their known aliases) and entities pursuant to Executive Order 13224, as amended, during 2023. The individuals and entities designated by OFAC are typically owned or controlled by, act for or on behalf of, or provide support for or services to, individuals or entities the United States has designated as Specially Designated Global Terrorists pursuant to the order.

In the first quarter of 2023, OFAC designated several individuals and entities pursuant to E.O. 13224.

On January 5, 2023, OFAC designated four individuals—Abd Al Hamid Salim Ibrahim Ismail Brukan AL-KHATUNI, Lu'ay Jasim Hammadi AL-JUBURI, Umar Abdul Hamid Salim Brukan AL-KHATUNI, and Muhammad Abdul Hamid Salim Brukan AL-KHATUNI—and two entities—SHAM EXPRESS and WADI ALRRAFIDAYN FOR FOODSTUFFS—belonging to an ISIS financial facilitation network. 88 Fed. Reg. 17,298 (Mar. 22, 2023). These actions were taken concurrently with Türkiye. See State Department press statement available at https://www.state.gov/the-united-states-and-turkiye-take-joint-action-to-disrupt-isis-financing/.

On January 24, 2023, OFAC designated three individuals—Hassan Ahmed

MOUKALLED, Rani Hassan MOUKALLED, Rayyan Hassan MOUKALLED—and three entities--CTEX EXCHANGE, LEBANESE COMP ANY FOR INFORMATION AND STUDIES SARL, and LEBANESE COMP ANY FOR PUBLISHING, MEDIA, AND RESEARCH—in a Hizballah money exchange network. 88 Fed. Reg. 5415 (Jan. 27, 2023). The State Department's press statement is available at https://www.state.gov/sanctioning-a-hizballah-money-exchange-network/.

On March 28, 2023, OFAC designated two individuals—Hassan Muhammad DAQQOU and Noah ZAITAR and two entities—AL-ISRAA ESTABLISHMENT FOR IMPORT AND EXPORT and HASSAN DAQQOU TRADING—pursuant to E.O. 13224. 88 Fed. Reg. 20,943 (Apr. 7, 2023).

In the second quarter of 2023, OFAC designated several individuals and entities pursuant to E.O. 13224.

On April 18, 2023, OFAC designated 20 individuals and 32 entities (not listed herein), pursuant to E.O. 13224. These actions were taken on the 40th anniversary of the Embassy Beirut bombing. See Secretary Blinken's press statement on the 40th anniversary, available at https://www.state.gov/40th-anniversary-of-the-embassy-beirut-bombing/. Secretary Blinken's video remarks are available at https://www.state.gov/40th-anniversary-of-the-u-s-embassy-beirut-bombing/. In addition, Secretary Blinken's press statement, available at https://www.state.gov/targeting-hizballah-sanctions-evasion-network/, includes the following:

> Today, the Department of State and the Department of Treasury are taking actions against a global sanctions evasion network that facilitates the payment, shipment, and delivery of cash, art, and luxury goods for the benefit of Hizballah financier and Specially Designated Global Terrorist Nazem Said Ahmad. The Treasury Department is designating this network and the State Department is re-advertising its reward offer of up to $10 million for information on Hizballah's financial mechanisms, including Ahmad.
>
> These actions are being coordinated among the Departments of State, the Treasury, Justice, Homeland Security, and Commerce, as well as with the United Kingdom, to target on elements of the network. Today's actions highlight the tactics used by sanctions evaders, trade-based money launderers, and supporters of terrorism, as well as the risks of conducting business in permissive industries, such as the art, diamond, and precious gems markets. We will continue to hold accountable those who would seek to harm the United States and our partners.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1422.

On May 2, 2023, OFAC designated two individuals, Omar ALSHEAK and Kubilay SARI, pursuant to E.O. 13224. 88 Fed. Reg. 29,178 (May 5, 2023).

On May 24, 2023, OFAC designated 15 individuals pursuant to E.O. 13224: Siyaat

AYUTO, Macalin BURHAN, Maxamed CALI, Mumin DHEERE, Mohamed Abdullah HIREY, Ahmed KABADHE, Cabdi ROOBOW, Hasaan XUUROOW, Hassan Yariisow AADAN, Siciid Abdullahi AADAN, Cumar GUHAAD, Ali Ahmed HUSSEIN, Aadan Yusuf Saciid IBRAHIM, Aadan Daaru Salaam JISS, and Shiek Aadan Abuukar MALAYLE. 88 Fed. Reg. 34,559 (May 30, 2023).

On June 1, 2023, OFAC designated five individuals—Hossein Hafez AMINI, Mohammad Reza ANSARI, Rouhollah BAZGHANDI, Shahram POURSAFI, and Reza SERAJ—and one entity—REY HAVACILIK ITHALAT IHRACAT SANAYI VE TICARET ANONIM SIRKETI—pursuant to E.O. 13224. 88 Fed. Reg. 37,309 (June 7, 2023). Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1513.

In the third quarter of 2023, OFAC designated several individuals and entities pursuant to E.O. 13224.

On July 27, 2023, OFAC designated individual Abdiweli Mohamed YUSUF pursuant to E.O. 13224. 88 Fed. Reg. 50,952 (Aug. 2, 2023). See State Department press statement available at https://www.state.gov/designating-senior-isis-somalia-financier/, which includes the following:

> The United States is designating Abdiweli Mohamed Yusuf, the head of finance for ISIS-Somalia, an ISIS affiliate in Africa that generates revenue ISIS distributes across the continent.
>
> ISIS-Somalia engages in extortion of financial institutions, local businesses, and mobile money service providers, exploiting vulnerabilities in Somalia's institutions to finance its activities, including through mobile money and hawalas.
>
> We remain committed to using our authorities in support of the Federal Government of Somalia and its efforts to counter terrorist financing activities that undermine Somalia's national security and threaten regional stability.

On July 31, 2023, OFAC designated 20 individuals (not listed herein) and 28 entities (not listed herein) pursuant to E.O. 13224. 88 Fed. Reg. 51,889 (Aug. 4, 2023). See State Department press release available at https://www.state.gov/designating-leaders-and-financial-facilitators-of-isis-and-al-qaida-cells-in-maldives/, which includes the following:

> Today, the United States is designating Maldivian supporters of ISIS and al-Qa'ida, including 18 ISIS and ISIS-Khorasan (ISIS-K) facilitators and two al-Qa'ida operatives, along with 29 associated companies.
>
> The individuals designated today include leaders and members of Maldives-based terrorist cells and an affiliated criminal gang, in addition to individuals and a company associated with key ISIS-K recruiter Mohamad Ameen who was designated by the United States in 2019. Several of the designated individuals have also planned or carried out attacks that targeted journalists and local authorities.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1659.

On August 16, 2023, OFAC designated individual Zuhair Subhi NAHLA and entity GREEN WITHOUT BORDERS pursuant to E.O. 13224. 88 Fed. Reg. 57,174 (Aug. 22, 2023). The Department's press statement is available at https://www.state.gov/counter-terrorism-designations-of-one-hizballah-affiliated-entity-and-its-leader/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1698.

On September 12, 2023, OFAC designated four individuals-- Ali Ismail AJROUCH, Mahdy Akil HELBAWI, Amer Mohamed Akil RADA, and Samer Akil RADA—and three entities-- BCI TECHNOLOGIES C.A., BLACK DIAMOND SARL, and ZANGA S.A.S. pursuant to E.O. 13224. 88 Fed. Reg. 63,673 (Sept. 15, 2023). See State Department press statement available at https://www.state.gov/designating-hizballah-operatives-and-financial-facilitators-in-south-america-and-lebanon/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1726.

On September 15, 2023, on the eve of the one-year anniversary of the death of Mahsa Amini, OFAC designated individual Abdolreza ABEDZADEH pursuant to E.O. 13224. 88 Fed. Reg. 64,973 (Sept. 20, 2023). See section A.2.b (1), and section A.2.b. (3), *supra*, for additional discussion.

OFAC designated additional individuals and entities pursuant to E.O. 13224 in the fourth quarter of 2023.

On October 18, 2023, OFAC designated nine individuals-- Muhammad Ahmad 'ABD-AL-DAYIM NASRALLAH, Ayman NOFAL, Ahmed M.M. ALAQAD, Musa Muhammad Salim DUDIN, Aiman Ahmad AL-DUWAIK, Ahmed Sadu JAHLEB, Abdelbasit Hamza Elhassan Mohamed KHAIR, Walid Mohammed Mustafa JADALLAH, and Amer Kamal Sharif ALSHAWA—and one entity-- BUY CASH MONEY AND MONEY TRANSFER COMPANY pursuant to E.O. 13224. 88 Fed. Reg. 72,814 (Oct. 23, 2023). Secretary Blinken's press statement is available at https://www.state.gov/designating-hamas-operatives-and-financial-facilitators/, and includes the following.

> …These individuals have supported Hamas and other terrorist organizations, enabling Hamas to conduct its brutal terrorism and carry out acts like the vicious attack on Israel.
>
> Today's actions are directed at Hamas terrorists and their support network, not Palestinians. Hamas alone is responsible for the carnage its militants have inflicted on the people of Israel, and it should immediately release all hostages in its custody. The United States will not relent in using all the tools at our disposal to disrupt Hamas terrorist activity.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1816.

On October 26, 2023, OFAC designated eight individuals—Masoud KARBASIAN, Ali Akbar PUREBRAHIM, Nasrollah SARDASHTI, Viyan ZANGANEH, Bijan ZANGANEH, Behzad MOHAMMADI, Alireza SADIQABADI, and Mahmoud MADANIPOUR—and 15 entities—ATLANTIC SHIP MANAGEMENT COMPANY, ATLAS SHIP MANAGEMENT,

MINISTRY OF PETROLEUM, NATIONAL IRANIAN OIL COMPANY, NATIONAL IRANIAN TANKER COMPANY, ABADAN OIL REFINING COMPANY, IMAM KHOMEINI SHAZAND OIL REFINING COMPANY, IRANIAN OIL PIPELINES AND TELECOMMUNICATION CO., NATIONAL IRANIAN OIL ENGINEERING AND CONSTRUCTION COMPANY, NATIONAL IRANIAN OIL PRODUCTS DISTRIBUTION COMPANY, NATIONAL IRANIAN OIL REFINING AND DISTRIBUTION COMPANY, NATIONAL PETROCHEMICAL COMPANY, MOBIN HOLDING LIMITED, MOBIN INTERNATIONAL LIMITED, and OMAN FUEL TRADING LTD—pursuant to E.O. 13224. 88 Fed. Reg. 72,818 (Oct. 23, 2023). At the same time, OFAC identified the following two vessels as blocked property pursuant to E.O. 13224: LONGBOW LAKE and WU XIAN. *Id*.

On November 14, 2023, OFAC designated seven individuals--Nabil Khaled Halil CHOUMAN, Khaled CHOUMAN, Reda Ali KHAMIS, Ma'ad Ibrahim Muhammad Rashid AL-ATILI, Mahmoud Khaled ZAHHAR, Nasser ABU SHARIF, and Jamil Yusuf Ahmad 'ALIYAN—and two entities--NABIL CHOUMAN & CO and MUHJAT ALQUDS FOUNDATION—pursuant to E.O. 13224. 88 Fed. Reg. 80,383 (Nov. 17, 2023). Secretary Blinken's press statement is available at https://www.state.gov/designating-additional-hamas-and-palestinian-islamic-jihad-officials-and-supporters/, and excerpted below.

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* * * *

The United States is announcing today its third round of sanctions targeting Hamas-affiliated individuals and entities in connection with the October 7 terrorist attacks on Israel. The Department of State is designating Akram al-Ajouri as a Specially Designated Global Terrorist for being a leader of the Palestinian Islamic Jihad (PIJ). Ajouri is the PIJ Deputy Secretary General and leader of its militant wing, the Al-Quds Brigade. The Department of the Treasury is also designating seven individuals and two entities that have provided support to or acted on behalf of Hamas or PIJ.

Iran's support, primarily through its Islamic Revolutionary Guard Corps, enables Hamas and PIJ's terrorist activities, including through the transfer of funds and the provision of both weapons and operational training. Iran has trained PIJ fighters to produce and develop missiles in Gaza while also funding groups that provide financial support to PIJ-affiliated fighters.

We are taking these actions in coordination with the United Kingdom to protect the international financial system from abuse by Hamas and its enablers. We will continue to work with our partners and allies to disrupt Hamas' terrorist financing channels.

* * * *

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1907.

On November 17, 2023, OFAC designated the following six individuals pursuant to E.O. 13244: Imad Naji AL-BAHADLI, Ja'far AL-HUSAYNI, Khalid Kadhim Jasim ALSKENI, Habib Hasan Mughamis DARRAJI, Mojtaba JAHANDUST, and Basim Mohammad Hasab AL-MAJIDI. 88 Fed. Reg. 83,618 (Nov. 30, 2023).

On December 7, 2023, OFAC designated four individuals—Fadi DENIZ, Ahmet DURI, Bilal HUDROJ, and Khaled Yahya Rageh ALODHARI—and nine entities-- ABU SUMBOL GENERAL TRADING L.L.C., DENIZ CAPITAL LLP, DENIZ CAPITAL MARITIME TNC, 000 RUSSTROI-SK, PIRLANT ISTANBUL KUYUMCULUK TICARET LIMITED SIRKETI, VANES SA GROUP LIMITED, VANESSA IMEX GROUP ITHALAT IHRACAT VE DIS TICARET LIMITED SIRKETI, HODROJ EXCHANGE S.A.R.L., and DAVOS EXCHANGE AND REMITTANCES COMPANY KHALED AL ATHARI AND PARTNER GENERAL PARTNERSHIP—pursuant to E.O. 13224. 88 Fed. Reg. 86,214 (Dec. 12, 2023). See State Department press statement available at https://www.state.gov/taking-actions-in-response-to-houthi-regional-attacks/, which includes the following:

> The United States is today designating 13 individuals and entities responsible for providing funds generated from the sale and shipment of Iranian commodities to the Houthis in Yemen through a complex network of exchange houses and companies in multiple jurisdictions.
>
> The Iranian regime's support to the Houthis has enabled unprovoked attacks on civilian infrastructure in Israel and on commercial shipping in the Red Sea and Gulf of Aden. Attacks launched from Houthi-controlled areas have also threatened U.S. warships operating in international waters. Such attacks disrupt maritime security and impede freedom of navigation for commercial vessels, increase regional instability, and risk broadening the conflict between Israel and Hamas.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1961.

On December 13, 2023, OFAC designated the following eight individuals pursuant to E.O. 13224: Hassan AL-WARDIAN, Nizar Mohammed AWADALLAH, Ali Abed Al Rahman BARAKA, Maher Rebhi OBEID, Mehmet KAYA, Jihad Muhammad Shaker YAGHMOUR, Haroun Mansour Yaqoub Nasser AL-DIN, and Ismail Musa Ahmad BARHUM. 88 Fed. Reg. 87,839 (Dec. 19, 2023).

On December 14, 2023, OFAC designated individual Majid ZAREE pursuant to E.O. 13224. 88 Fed. Reg. 87,838 (Dec. 19, 2023).

On December 28, 2023, OFAC designated one individual and three entities pursuant to E.O. 13224 for facilitating the transfer of money to the Houthis at the direction of U.S.-designated Sa'id al-Jamal, an Islamic Revolutionary Guard Corps-Qods Force-backed Houthi financial facilitator based in Iran. OFAC's press releases is available at https://home.treasury.gov/news/press-releases/jy2014. See also State Department media note available at https://www.state.gov/countering-houthi-maritime-attacks/.

(3) OFAC removals

On January 19, 2023, OFAC determined that the following individual is no longer subject to the blocking provisions of E.O. 13224, as amended by E.O. 13886: Hanna Elias KHALIFEH. 88 Fed. Reg. 4293 (Jan. 24, 2023).

On April 18, 2023, OFAC determined that the following person is no longer subject to the blocking provisions of E.O. 13224, as amended by E.O. 13886: Manoj SABHARWAL. 88 Fed. Reg. 25,055 (Apr. 25, 2023).

b. Annual certification regarding cooperation in U.S. antiterrorism efforts

See Chapter 3 for discussion of the Secretary of State's 2023 determination regarding countries not cooperating fully with U.S. antiterrorism efforts.

10. Cyber Activity

For background on E.O. 13694 of April 1, 2015, ''Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities," see *Digest 2015* at 677–78. Executive Order 13757 of December 28, 2016, ''Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities,'' amended E.O. 13694.

On February 9, 2023, OFAC designated seven individuals who are part of the Russia-based cybercrime gang Trickbot under E.O. 13694. The designated individuals are Mikhail ISKRITSKY, Valentin Olegovich KARYAGIN, Maksim Sergeevich MIKHAILOV, Dmitry PLESHEVSKIY, Valery SEDLETSKI, Ivan Vasilyevich VAKHROMEYEV, and Vitaly Nikolayevich KOVALEV. 88 Fed. Reg. 9592 (Feb. 14, 2023). The United States took this action in coordination with the United Kingdom. See State Department press statement available at https://www.state.gov/taking-joint-action-against-cybercriminals/, which includes the following:

> Russia is a safe haven for cybercriminals, where groups such as Trickbot freely perpetrate malicious cyber activities against the United States, the United Kingdom, and our allies and partners. These activities have targeted critical infrastructure, including hospitals and medical facilities.
>
> The United States and the United Kingdom are leaders in the global fight against cybercrime and are committed to using all available authorities to defend against cyber threats. Today's action, the first under the UK's new cyber sanctions authority, demonstrates our continued commitment to collaborating with partners and allies to address Russia-based cybercrime, and to countering ransomware attacks and their perpetrators. As Russia's illegal war against Ukraine continues, cooperation with our allies and partners is more critical than ever to protect our national security.

On April 5, 2023, OFAC designated entity GENESIS MARKET under E.O. 13694. 88 Fed. Reg. 21,231 (Apr. 10, 2023). Secretary Blinken's press statement is available at https://www.state.gov/sanctioning-illicit-darknet-marketplace/, and includes the following:

> Today, the United States designated Genesis Market, a hacking group that is also one of the world's largest illicit marketplaces for stolen device credentials and related sensitive information. Genesis Market is believed to operate out of Russia and sells stolen credentials from leading U.S. companies and facilitates cybercrimes against them.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1388.

On May 16, 2023, OFAC designated individual Mikhail Pavlovich MATVEEV pursuant to E.O. 13694. 88 Fed. Reg. 33,666 (May 24, 2023).

On August 23, 2023, OFAC designated individual Roman SEMENOV, co-founder of virtual currency mixer Tornado Cash, pursuant to E.O. 13694. 88 Fed. Reg. 59,572 (Aug. 29, 2023). See *Digest 2022* at 679-680 and 712 for 2022 sanctions on Tornado Cash. See also State Department press statement, which is available at https://www.state.gov/united-states-takes-actions-to-combat-illicit-activity-utilizing-virtual-currency/, and includes the following:

> Pyongyang's aggressive cyber theft campaign plays a key role in generating funds for the DPRK's unlawful weapons of mass destruction and ballistic missile programs. Today's actions demonstrate the United States' commitment to protecting the integrity of our financial system, including the virtual currency ecosystem, and to disrupting the ability of the DPRK to raise funds through illicit activity.

On September 7, 2023, OFAC designated the following 11 individuals pursuant to E.O. 13694: Mikhail Vadimovich CHERNOV, Maksim GALOCHKIN, Maksim Marselevich KHALIULLIN, Artem KUROV, Sergey LOGUNTSOV, Alexander Vyacheslavovich MOZHAEV, Dmitry Sergeyevich PUTILIN, Maksim RUDENSKIY, Mikhail Mikhailovich TSAREV, Vadym Firdavysovych VALIAKHMETOV, and Andrey ZHUYKOV. 88 Fed. Reg. 69,989 (Oct. 10, 2023).

On December 7, 2023, OFAC designated the following two individuals pursuant to E.O. 13694: Andrey Stanislavovich KORINETS and Ruslan Aleksandrovich PERETYATKO. 88 Fed. Reg. 86,218 (Dec. 12, 2023).

11. The Global Magnitsky Sanctions Program and Other Measures Aimed at Corruption, Human Rights Violations and Abuses, and Related Conduct

a. The Global Magnitsky Sanctions Program

On December 23, 2016, the Global Magnitsky Human Rights Accountability Act (Pub. L. No. 114–328, Subtitle F) (the "Global Magnitsky Act" or ''Act'') was enacted, authorizing the President to impose financial sanctions and visa restrictions on foreign persons in response to certain human rights violations and acts of corruption. On December 20, 2017, the President issued E.O. 13818, "Blocking the Property of Persons Involved in

Serious Human Rights Abuse or Corruption." 82 Fed. Reg. 60,839 (Dec. 26, 2017). E.O. 13818 implements and builds upon the Global Magnitsky Act. See *Digest 2017* at 669–71 for background on E.O. 13818. See section A.11.d, *infra*, for additional designations under E.O. 13818 imposed on International Anti-Corruption Day and on the eve of Human Rights Day.

On January 26, 2023, OFAC designated two individuals—Horacio Manuel CARTES JARA, the former President of Paraguay, and Hugo Adalberto VELAZQUEZ MORENO, the current Vice President of Paraguay—and four entities owned and controlled by Cartes, under E.O. 13818 for significant corruption. The entities are BEBIDAS USA INC., DOMINICANA ACQUISITION S.A., FRIGORIFICO CHAJHA S.A.E., and TABACOS USA INC. 88 Fed. Reg. 6812 (Feb. 1, 2023). The State Department press statement is available at https://www.state.gov/sanctioning-senior-paraguayan-officials-for-corruption/, which includes the following:

> Cartes, one of the wealthiest individuals in Paraguay, was President of Paraguay from 2013 to 2018 and is currently the leader of the Colorado Party. During his tenure as President and since, Cartes has engaged in a concerted pattern of corruption, including widespread bribery of government officials and legislators. For more than a decade, Cartes leveraged his illicitly acquired wealth and influence to expand his political and economic power over Paraguayan institutions.
>
> Velazquez has engaged extensively in corrupt practices, including influence peddling and bribery. While serving as Vice President of Paraguay, Velazquez has worked to interfere with legal processes to protect himself and criminal associates from investigations and threatened those who could expose his criminal activity.

On February 10, 2023, OFAC designated five individuals--Nikolay Simeonov MALINOV, Vladislav Ivanov GORANOV, Ivan Kirov GENOV, Aleksandar Hristov NIKOLOV, and Rumen Stoyanov OVCHAROV—and five entities--INTER TRADE 2021 EOOD, MS KONSUL T 2016 EOOD, RUSSOPHILES FOR THE REVIVAL OF THE FATHERLAND POLITICAL PARTY, RUSSOPHILES NATIONAL MOVEMENT, and TRILEMMA CONSULTING LTD EOOD, pursuant to E.O. 13818. 88 Fed. Reg. 10,211 (Feb. 16, 2023). See Section A.11.b, *infra* for Treasury's concurrent designations pursuant to Section 7031(c) of the Department of State's annual appropriations act. See Treasury's press release, available at https://home.treasury.gov/news/press-releases/jy1264.

On March 3, 2023, OFAC designated three individuals, Elena Anatolievna LENSKAYA, Danila Yurievich MIKHEEV, and Andrei Andreevich ZADACHIN, pursuant to E.O. 13818. 88 Fed. Reg. 15,120 (Mar. 10, 2023).

On March 31, 2023, OFAC designated one entity, TABACALERA DEL ESTE S.A., pursuant to E.O. 13818. 88 Fed. Reg. 21,748 (Apr. 11, 2023).

On April 5, 2023, OFAC designated one individual, Gary BODEAU, pursuant to E.O. 13818. 88 Fed. Reg. 21,747 (Apr. 11, 2023).

On August 3, 2023, OFAC determined that the following person, previously designated pursuant to E.O. 13818, would be removed from the SDN List: Satish SEEMAR. 88 Fed. Reg. 55,502 (Aug. 15, 2023).

On December 1, 2023, OFAC designated individual Luis Miguel MARTINEZ MORALES pursuant to E.O. 13818. 88 Fed. Reg. 85,731 (Dec. 8, 2023).

On December 8, 2023, OFAC designated the following 10 individuals pursuant to E.O. 13818: Johnson ANDRE, Renel DESTINA, Vitel'homme INNOCENT, Wilson JOSEPH, Jefferson KOIJEE, Lianhe HU, Johnson BYABASHAIJA, Khalid HANAFI, Fariduddin MAHMOOD, and Qi GAO. 88 Fed. Reg. 89,812 (Dec. 28, 2023). See Treasury's press release available at https://home.treasury.gov/news/press-releases/jy1972.

On December 11, 2023, OFAC designated two individuals—Ajmal RAHMANI and Mir Rahman RAHMANI—and 44 entities (not listed herein)—pursuant to E.O. 13818. 88 Fed. Reg. 87,482 (Dec. 18, 2023).

b. Designations under Section 7031(c) of the Annual Consolidated Appropriations Act

The Department of State acts pursuant to Section 7031(c) of the Department of State's annual appropriations act (the original provision having been enacted in the Fiscal Year 2008 appropriations act and continued and expanded in subsequent appropriations acts) to designate foreign government officials involved in gross violations of human rights ("GVHRs") or significant corruption, and their immediate family members. Officials and their immediate family members designated under Section 7031(c) are generally ineligible for entry into the United States. The following summarizes public designations by the Secretary of State in 2023 pursuant to Section 7031(c). See section A.11.e, *infra*, for additional designations under Section 7031(c) made on International Anti-Corruption Day and on the eve of Human Rights Day.

On January 25, 2023, the State Department announced the designation of former President of Panama Ricardo Alberto Martinelli Berrocal under Section 7031(c) for his involvement in significant corruption. Secretary Blinken's press statement is available at https://www.state.gov/designation-of-former-president-of-panama-ricardo-alberto-martinelli-berrocal-for-involvement-in-significant-corruption/.

On January 27, 2023, the State Department announced the designation of former Serbian National Assembly Representatives Verica Radeta and Petar Jojić for their involvement in significant corruption and Jojić's son, Gojko Jojić, under Section 7031(c). The State Department's press statement is available at https://www.state.gov/designation-of-former-representatives-of-the-national-assembly-of-serbia-verica-radeta-and-petar-jojic-for-involvement-in-significant-corruption/.

On February 10, 2023, the State Department announced the designation of several former Bulgarian officials under Section 7031(c), for involvement in significant corruption. See Section A.11.a, *supra* for Treasury's concurrent designations pursuant to E.O. 13818. The State Department's press statement is available at https://www.state.gov/countering-systemic-corruption-in-defense-of-bulgarian-democratic-institutions/, and excerpted below.

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The United States, in coordination with the United Kingdom, is taking action to counter systemic corruption in Bulgaria by designating five former Bulgarian government officials as well as five entities for corrupt acts that resulted in illicit personal gain, undermined the country's democratic institutions, and perpetuated its corrosive dependence on Russian energy sources.

The Department of the Treasury undertook several designations today pursuant to Executive Order 13818, which builds upon and implements the Global Magnitsky Human Rights Accountability Act and targets perpetrators of serious human rights abuse and corruption around the world:

- Rumen Ovcharov, a former Bulgarian member of parliament (MP) and minister responsible for energy; Aleksandar Hristov Nikolov, a former CEO and deputy director of Kozloduy Nuclear Power Plant (KNPP); and Ivan Genov, former CEO of KNPP and former MP were designated for a series of illicit dealings and the exchange of bribes related to energy contracts that robbed the Government and people of Bulgaria of hundreds of millions of dollars;
- Nikolay Malinov, a former MP and leader of the Russophiles National Movement and chairman of the Russophiles for Revival of the Fatherland Political Party, was designated for bribing a judge to permit him to travel to Russia, even though he had been indicted for espionage on behalf of Russian-backed interests and had been placed under a travel ban;
- Vladislav Goranov, a former MP and former Minister of Finance, was designated for using his position to facilitate bribery in exchange for favorable legislation, depriving the government of tax revenues;
- Inter Trade 2021 EOOD, MS Konsult 2016 EOOD, the Russophiles National Movement, and Russophiles for the Revival of the Fatherland, were designated for being owned or controlled by Malinov;
- Trilemma Consulting Ltd EOOD was designated for being owned or controlled by Goranov.

The Department of State also imposed visa restrictions on Ovcharov, Nikolov, and Goranov for involvement in significant corruption under Section 7031(c) of the annual Department of State, Foreign Operations, and Related Programs Appropriations Act. As a result of these actions, those individuals and their immediate family members are generally ineligible for entry into the United States.

The United Kingdom also designated three corrupt actors in Bulgaria for serious corruption and abuse of public institution funds: Vassil Kroumov Bojkov, a prominent Bulgarian businessman and oligarch; Delyan Slavchev Peevski, an oligarch and former MP; and Ilko Dimitrov Zhelyazkov, the former Deputy Chief of the Bulgarian State Agency for Technical Operations, under the UK Global Anti-Corruption Sanctions Regime. These actions reinforce prior U.S. designations of these individuals under the Global Magnitsky sanctions program and the Department of State's public designation of Peevski and Zhelyazkov under Section 7031(c) in June 2021.

These coordinated actions support the U.S. Strategy on Countering Corruption and demonstrate the commitment of the United States and the United Kingdom to promoting accountability for corruption, and to helping Bulgaria, a NATO Ally, institute critical rule of law reforms.

The corruption perpetuated by those designated today reflects a systemic pattern of personal enrichment at the expense of the Bulgarian people, government, and democratic institutions. The United States and the United Kingdom stand steadfast in solidarity with those in Bulgaria who seek to tackle corruption and strengthen the rule of law.

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On February 24, 2023, on the one-year anniversary of Russia's war against Ukraine, the State Department announced the designation of Russian military officials Artyom Igorevich Gorodilov, Aleksey Sergeyevich Bulgakov, and Aleksandr Aleksandrovich Vasilyev and their immediate family members under Section 7031(c). See the State Department press statement available at https://www.state.gov/the-united-states-imposes-additional-sweeping-costs-on-russia/. See section A.4.a, *supra*, for discussion of additional actions taken on the one-year anniversary of Russia's war against Ukraine.

On March 6, 2023, the Department announced the designation of Syrian military official Amjad Yousef under Section 7031(c), due to his involvement in gross violations of human rights, namely extrajudicial killings. The State Department's press statement is available at https://www.state.gov/designation-of-syrian-military-official/.

On March 23, 2023, the Department announced the designation of three Paraguayan officials—former Director of the Paraguayan Civil Aviation Authority Edgar Melgarejo, current member of the Paraguayan Panel for the Discipline of Judges and Prosecutors Jorge Bogarin, and current Court Clerk Vicente Ferreira—under Section 7031(c), due to involvement in significant corruption. The State Department's press statement is available at https://www.state.gov/designation-of-paraguayan-officials-edgar-melgarejo-jorge-bogarin-and-vicente-ferreira-for-involvement-in-significant-corruption/.

On April 5, 2023, the Department announced the designation of four Georgian officials—Mikheil Chinchaladze, Levan Murusidze, Irakli Shengelia, and Valerian Tsertsvadze—under Section 7031(c), due to involvement in significant corruption. The State Department's press statement is available at https://www.state.gov/public-designations-of-mikheil-chinchaladze-levan-murusidze-irakli-shengelia-and-valerian-tsertsvadze-due-to-involvement-in-significant-corruption/.

On April 5, 2023, the Department announced the designation of former President of the Haitian Chamber of Deputies Gary Bodeau, due to involvement in significant corruption. The State Department's press statement is available at https://www.state.gov/combating-systemic-corruption-in-haiti/.

On April 26, 2023, the Department announced the designation of Wasantha Karannagoda, Governor of North Western Province in Sri Lanka, under Section 7031(c), due to his involvement in a gross violation of human rights during his tenure as a Naval Commander. The State Department's press statement is available at https://www.state.gov/designation-of-sri-lankan-governor-due-to-involvement-in-a-gross-violation-of-human-rights/

On May 4, 2023, the Department announced the designation of three former Colombian officials—Colonel Publio Hernán Mejía Gutiérrez, former Colonel Juan Carlos Figueroa Suárez, and former General Iván Ramírez Quintero—under Section 7031(c)for their involvement in gross violations of human rights during Colombia's decades-long internal armed conflict. The Department's press statement is available at https://www.state.gov/designation-of-three-former-colombian-officials-due-to-involvement-in-gross-violations-of-human-rights/.

On May 25, 2023, the Department announced the designation of two Malian military commanders under Section 7031(c): Col. Moustaph Sangare and Maj. Lassine Togola, responsible for elements of the Malian Armed Forces that conducted a military operation in Moura, Mali, killing more than 500 people. The Department's press statement is available at https://www.state.gov/promoting-accountability-for-human-rights-abuses-and-violations-in-moura-mali/.

On June 2, 2023, the Department announced the designation of Laurent Salvador Lamothe, former Haitian Prime Minister and Minister of Planning and External Cooperation, under Section 7031(c), due to involvement in significant corruption. The Department's press statement is available at https://www.state.gov/designation-of-laurent-salvador-lamothe-former-haitian-prime-minister-and-minister-of-planning-and-external-cooperation-for-involvement-in-significant-corruption/.

On June 20, 2023, the Department announced the designation of the mayor of the municipality of Struga, North Macedonia, Ramiz Merko, due to involvement in significant corruption. The Department's press statement is available at https://www.state.gov/designation-of-ramiz-merko-north-macedonia-for-significant-corruption/.

On July 13, 2023, the Department announced the designation of former Panamanian President, Juan Carlos Varela Rodriguez as generally ineligible for entry into the United States, due to his involvement in significant corruption. The Department's press statement is available at https://www.state.gov/designation-of-juan-carlos-varela-rodriguez-former-panamanian-president-for-significant-corruption/.

On August 16, 2023, the Department announced the designation of Democratic Republic of the Congo officials for significant corruption. See press statement, available at https://www.state.gov/designation-of-democratic-republic-of-the-congo-drc-public-officials-for-significant-corruption/, which includes the following:

> The United States is designating the following individuals as generally ineligible for entry into the United States, due to their involvement in significant corruption:
>
> - Cosma Wilungula Balongelwa, the former Director General of Congolese Institute for the Conservation of Nature (ICCN);
> - Leonard Muamba Kanda, the former Department Head of the DRC Management Authority for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and Director of ICCN; and
> - Augustin Ngumbi Amuri, the Director-Coordinator of the DRC CITES Management Authority and Legal Advisor to ICCN

As public officials responsible for wildlife protection, they abused their public positions by trafficking chimpanzees, gorillas, okapi, and other protected wildlife from the DRC, primarily to the People's Republic of China, using falsified permits, in return for bribes. Their corrupt, transnational criminal actions not only undermined rule of law and government transparency in the DRC but also long-standing wildlife conservation efforts.

On August 17, 2023, the Department announced that it was imposing visa restrictions on four Russian Federal Security Service (FSB) operatives, Alexey Alexandrovich Alexandrov, Konstantin Kudryavtsev, Ivan Vladimirovich Osipov, and Vladimir Alexandrovich Panyaev, for their involvement in a gross violation of human rights, under Section 7031(c). See State Department press statement available at https://www.state.gov/designating-individuals-involved-in-the-poisoning-of-aleksey-navalny/. See section A.4.d, *supra*, for discussion of concurrent designations pursuant to the Sergei Magnitsky Rule of Law Accountability Act of 2012.

On September 18, 2023, the Department designated Iranian prison officials Ali Chaharmahali and Dariush Bakshi pursuant to Section 7031(c) "for their involvement in gross violations of human rights, namely the cruel, inhuman, or degrading treatment or punishment of detainees in Iran's prison system." See Secretary Blinken's press statement available at https://www.state.gov/designating-iranian-persons-connected-to-wrongful-detentions/.

On October 31, 2023, the Department announced the designation of three Guatemalan officials under Section 7031(c), due to involvement in significant corruption. See press statement available at https://www.state.gov/designation-of-three-guatemalan-public-officials-for-involvement-in-significant-corruption/.

On November 3, 2023, the Department announced the designation of Nexhat Krasniqi, the former Director of the Department of Procurement at the Kosovo Ministry of Trade and Industry, under Section 7031(c), due to involvement in significant corruption. See press statement available at https://www.state.gov/designation-of-kosovan-public-official-nexhat-krasniqi-for-significant-corruption/

On December 5, 2023, the Department announced the designation of Kocho Angjushev, a former Deputy Prime Minister of North Macedonia, under Section 7031(c), due to his involvement in significant corruption. See press statement available at https://www.state.gov/designation-of-north-macedonia-public-official-kocho-angjushev-for-significant-corruption/

c. Visa restrictions relating to undermining democracy

On January 25, 2023, the State Department announced visa restrictions on individuals and certain family members under Section 212(a)(3)(C) of the Immigration and Nationality Act for involvement in undermining the democratic process in Nigeria, including before, during, and following Nigeria's 2023 elections. See State Department

press statement available at https://www.state.gov/imposing-visa-restrictions-on-individuals-involved-in-undermining-the-democratic-process-in-nigeria/.

On September 27, 2023, Secretary Blinken announced a new visa restriction policy under Section 212(a)(3)(C) of the Immigration and Nationality Act for those undermining democracy in Liberia. Secretary Blinken's press statement is available at https://www.state.gov/visa-restriction-policy-on-undermining-democracy-in-liberia/, and explains the following:

> Under this policy, the United States will pursue visa restrictions for those believed to be responsible for, or complicit in, undermining democracy in Liberia, including through manipulation or rigging of the electoral process; use of violence to prevent people from exercising their rights to freedom of association and peaceful assembly; use of measures designed to prevent political parties, voters, civil society, or the media from disseminating their views; or engagement in any other activity designed to improperly influence the outcome of an election. Certain family members of such persons may also be subject to these restrictions. Persons who undermine democracy in Liberia—including in the lead-up to, during, and following Liberia's 2023 elections—may be found ineligible for U.S. visas under this policy.

On December 4, 2023, Secretary Blinken announced a new visa restriction policy under Section 212(a)(3)(C) of the Immigration and Nationality Act for those undermining democracy in Zimbabwe. Secretary Blinken's press statement is available at https://www.state.gov/visa-restriction-policy-for-undermining-democracy-in-zimbabwe/, and explains the following:

> Such acts may include manipulating or rigging the electoral process; disenfranchising voters or preventing individuals from exercising their right to vote; excluding members of the political opposition from electoral processes; restricting the ability of civil society organizations (CSOs) to operate and engage in democratic, governance, or human rights related activities; or intimidation of voters, election observers, or CSOs through threats or acts of physical violence. They may also include engaging in corrupt acts, including bribery, that undermine the electoral process; interfering with the independent operation of the judiciary during its adjudication of electoral cases; or abusing or violating human rights in Zimbabwe. Family members of such persons may also be subject to these restrictions. Anyone who undermines the democratic process in Zimbabwe—including in the lead-up to, during, and following Zimbabwe's August 2023 elections—may be found ineligible for U.S. visas under this policy.

d. Visa restrictions relating to corruption and undermining democracy in Guatemala, Honduras, El Salvador, and Nicaragua

On July 19, 2023, the Secretary of State transmitted the report to Congress required by section 353 of the United States-Northern Triangle Enhanced Engagement Act ("the Act"). 88 Fed. Reg. 48,280 (Jul. 26, 2023). See State Department press statement, available at https://www.state.gov/third-annual-transmission-of-the-section-353-report-to-congress/. Section 353 generally requires that listed individuals are ineligible for visas and admissions to the United States. The full report is available at https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2023/. The State Department also identified 10 Guatemalan, 10 Honduran, 13 Nicaraguan, and six Salvadoran individuals on the Section 353 Corrupt and Undemocratic Actors list, as listed below.

* * * *

El Salvador

Jose Miguel "Mecafe" Antonio Menendez Avelar, a former president of the Center for Fairs and Conventions (CIFCO), engaged in significant corruption by steering an $8.4 million Ministry of Public Works contract for the construction of a bridge in Chalatenango Department, El Salvador, to a Guatemalan businessman. In return, Menendez illegally received a small plane, a Beechcraft King Air 90, as a gift.

Carlos Alberto Ortiz, a former president of Banco Hipotecario, a state-owned bank, engaged in significant corruption by laundering $97 million in exchange for $72,000 in bribes.

Carlos Enrique Cruz Arana, a former vice president of Banco Hipotecario, a state-owned bank, engaged in significant corruption by laundering $94.5 million in exchange for $64,500 in bribes.

Jolman Alexander Ayala, a former compliance officer of Banco Hipotecario, a state-owned bank, engaged in significant corruption by laundering $177 million in exchange for $78,000 in bribes.

Carlos Mauricio Funes Cartagena, a former president of El Salvador, engaged in significant corruption by orchestrating and participating in several schemes involving bribery, embezzlement, and money laundering while president, pilfering hundreds of millions of dollars from state coffers.

Salvador Sanchez Ceren, a former president and vice president of El Salvador, engaged in significant corruption by laundering money during his tenure as vice president, personally receiving more than $1.3 million in public funds in exchange, and participated in a scheme to divert $183 million in public funds away from public accounts and oversight into personal accounts while serving as president.

Guatemala

Cinthia Edelmira Monterroso Gómez, a current prosecutor, undermined democratic processes or institutions by bringing unsubstantiated, politically motivated criminal charges against journalists for exercising their freedom of expression as protected by Guatemalan law.

Edgar Humberto Navarro Castro, a former president of Guatemala's energy wholesale market administrator (AMM), engaged in significant corruption by providing official benefits in exchange for bribes and kickbacks, at the expense of improving energy efficiency and taking effective action against climate change.

Fredy Raul Orellana Letona, a current judge, undermined democratic processes or institutions by authorizing unsubstantiated, politically motivated criminal charges against journalists who were exercising their freedom of expression as protected by Guatemalan law.

Gendri Rocael Reyes Mazariegos, a former minister of interior, engaged in significant corruption.

Joviel Acevedo Ayala, the current head of Guatemalan Education Workers Union (STEG), engaged in significant corruption by providing STEG's political support in exchange for bribes from public officials.

Jimi Rodolfo Bremer Ramírez, a current judge, undermined democratic processes or institutions by authorizing politically motivated criminal charges against journalists for exercising their freedom of expression as protected by Guatemalan law.

Lesther Castellanos Rodas, a former judge and current Guatemalan Rapporteur against Torture, undermined democratic processes or institutions by retaliating against an anticorruption prosecutor for filing administrative complaints concerning Castellanos's handling of a criminal case.

Melvin Quijivix Vega, the current president of the National Electrification Institute (INDE), engaged in significant corruption by using his position and connections to improperly and unlawfully direct government procurement contracts to specific companies, in several cases to a company he privately owns.

Omar Ricardo Barrios Osorio, the current president of the Board of Directors of the National Port Commission, undermined democratic processes or institutions by conspiring to intimidate and harass an anticorruption prosecutor for denouncing corrupt activity.

Walter Ramiro Mazariegos Biolis, the Rector of the San Carlos University (USAC), undermined democratic processes or institutions by accepting the position of Rector of the public education institution in July 2022 following a fraudulent selection process.

Honduras

Alex Alberto Moraes Giron, a former administrative manager of state-owned Strategic Investment of Honduras (INVEST–H), engaged in significant corruption by misappropriating public funds during the COVID–19 pandemic, including by defrauding the Honduran government of approximately $1.6 million intended for facemasks to be used by medical personnel.

Alexander Lopez Orellana, the current mayor of El Progreso and secretary general of the Liberal Party's Central Executive Council, engaged in significant corruption by improperly awarding multi-million dollar municipal contracts to his political allies.

Edna Yolany Batres Cruz, a former Minister of Health, engaged in significant corruption when she defrauded the Honduran government of more than $300,000 by colluding with Ministry of Health officials and private-sector businesspeople to improperly award government contracts.

Jesus Arturo Mejia Arita, a former general manager of the Honduran National Electric Energy Company (ENEE), engaged in significant corruption by awarding non-competitive or overpriced contracts for the generation of electricity and other energy-related services in

exchange for bribes, and by facilitating corrupt schemes related to the hiring and firing of ENEE employees in exchange for kickbacks.

Marcelo Antonio Chimirri Castro, the former director of the Honduran Telecommunications Company (HONDUTEL), engaged in significant corruption by committing fraud to improperly keep a telecommunications agreement in place in exchange for bribes and obstructed investigations into his corrupt acts by intimidating journalists.

Miguel Rodrigo Pastor Mejia, a former director of the now-defunct Secretariat of Public Works, Transport, and Housing (SOPTRAVI), engaged in significant corruption, laundering money on behalf of the Los Cachiros drug trafficking organization, by awarding $2.76 million in Honduran government contracts to a Cachiros-controlled construction firm.

Roberto Antonio Ordonez Wolfovich, a former minister of infrastructure and public services (INSEP), former minister of energy, and former presidential advisor to President Juan Orlando Hernandez, engaged in significant corruption by embezzling state funds through the overvaluation of public works projects.

Samuel Garcia Salgado, a current member of the Honduran National Congress from the Liberal Party, undermined democratic processes or institutions by manipulating the outcome of the Supreme Court of Justice election in 2023 for his personal and political gain.

Victor Elias Bendeck Ramirez, a private businessman and former member of the Central American Parliament, engaged in significant corruption through a series of fraudulent business activities in the banking, real estate, and other sectors and by using his influence with government officials for his personal gain.

Yani Benjamin Rosenthal Hidalgo, the current president of the Liberal Party in Honduras, undermined democratic processes or institutions by manipulating the outcome of the Supreme Court of Justice election in 2023 for his personal and political gain. Rosenthal also used his influence with government officials to escape accountability for apparent violations of Honduran law by his family-owned cable company.

Nicaragua

Wendy Carolina Morales Urbina, the current Nicaraguan attorney general, undermined democratic processes or institutions, using the office of the attorney general to facilitate a coordinated campaign to suppress dissent, by confiscating property from the government's political opponents without a legal basis. Urbina has also seized property from thousands of nongovernmental organizations (NGOs) under laws explicitly designed to suppress freedom of association.

Arling Patricia Alonso Gomez, the current first vice president of the National Assembly, undermined democratic processes or institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Gladis de los Angeles Baez, the current second vice president of the National Assembly, undermined democratic processes or institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Loria Raquel Dixon Brautigam, the current first secretary of the National Assembly, undermined democratic processes or institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Alejandro Mejia Ferreti, the current third secretary of the National Assembly, undermined democratic processes and institutions by taking part in coordinated government retaliation to strip Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Rosa Argentina Solís Davila, an appeals court judge in the Criminal Appeals Court of Managua, undermined democratic processes or institutions by using the Appeals Court to facilitate a coordinated government campaign to retaliate against critics of the Ortega-Murillo regime and suppress dissent by stripping Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Angela Davila Navarrete, a current appeals court judge in the Criminal Appeals Court of Managua, undermined democratic processes or institutions by using the Appeals Court to facilitate a coordinated government campaign to retaliate against critics of the Ortega-Murillo regime and suppress dissent by stripping Nicaraguan citizenship from political opponents and critics of the Ortega-Murillo regime.

Denis Membreño Rivas, the current director of the Financial Analysis Unit (UAF), the Nicaraguan government's financial crimes unit, undermined democratic processes or institutions by taking part in a coordinated campaign to suppress dissent, using his position to facilitate asset seizures from 94 political dissidents in exile and 222 former political prisoners, without any legal basis.

Aldo Martín Sáenz Ulloa, a current sub-director of the Financial Analysis Unit (UAF), the Nicaraguan government's financial crimes unit, undermined democratic processes or institutions by taking part in a coordinated campaign to retaliate against critics of the Ortega-Murillo regime and to suppress dissent, using his position to facilitate asset seizures from 94 political dissidents in exile and 222 former political prisoners, without any legal basis.

Valeria Maritza Halleslevens Centeno, the current director of the National Directorate of Property Registrar Offices (DNR), undermined democratic processes or institutions by using her position and influence to facilitate a coordinated government effort to confiscate the property of political opponents.

Eduardo Celestino Ortega Roa, a current deputy director of the National Directorate of Property Registrar Offices (DNR), undermined democratic processes or institutions by using his position and influence to facilitate a coordinated government effort to confiscate the property of political opponents.

Marta Mayela Diaz Ortiz, a current vice superintendent of banks and other financial institutions (SIBOIF), undermined democratic processes or institutions by using SIBOIF to provide the financial information of political dissidents in exile and former political prisoners to officials in the Nicaraguan judiciary as part of a coordinated government effort to suppress dissent by seizing the assets of political adversaries without a legal basis.

Sagrario de Fatima Benavides Lanuza, a vice director of the Nicaraguan Social Security Institute (INSS), undermined democratic processes or institutions by using her position and influence to facilitate a coordinated, politically motivated government campaign to terminate and seize pensions from political adversaries without a legal basis.

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On December 21, 2023, the State Department announced new listings to the United States' Corrupt and Undemocratic Actors list, under section 353 of the Act. See press statement, available at https://www.state.gov/new-listings-under-the-section-353-corrupt-and-undemocratic-actors-report/. The State Department identified the individuals listed below.*

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El Salvador

Ricardo Gomez, President Commissioner of the Institute for Access to Public Information, undermined democratic processes or institutions by purposefully and wrongfully blocking access to public information through his position as President Commissioner at the Institute for Access to Public Information.

Gerardo Guerrero, commissioner of the Institute for Access to Public Information, undermined democratic processes or institutions by purposefully and wrongfully blocking access to public information through his position as a Commissioner at the Institute for Access to Public Information.

Andrés Grégori Rodríguez, commissioner of the Institute for Access to Public Information, undermined democratic processes or institutions by purposefully and wrongfully blocking access to public information through his position as a Commissioner at the Institute for Access to Public Information.

Honduras

Ricardo Arturo Salgado Bonilla, Current Minister of Strategic Planning, undermined democratic processes or institutions by directing the LIBRE party's coordinated efforts through party loyalist groups ("colectivos") to suppress dissent by violently intimidating opposition legislators calling for a legislative session on October 31, 2023.

Mohammad Yusuf Amdani Bai, a private businessman, engaged in significant corruption by bribing Honduran Supreme Court officials to rule in favor of his business in a private lawsuit.

Cristian Adolfo Sánchez, engaged in significant corruption by participating in a scheme that defrauded the Honduran government of more than $300,000, and colluded with Ministry of Health officials to improperly award government contracts.

Guatemala

Leonor Eugenia Morales Lazo, current prosecutor, undermined democratic processes or institutions by leading a politically-motivated investigation to cast doubt on certified election results to disrupt the presidential transition.

Noe Nehemías Rivera Vasquez, current prosecutor, undermined democratic processes or institutions by bringing politically motivated charges against justice actors fighting corruption and impunity.

Pedro Otto Hernandez Gonzalez, current prosecutor, undermined democratic processes or institutions by participating in a politically-motivated investigation to cast doubt on certified election results to disrupt the presidential transition.

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* The December 21, 2023 updates to the U.S. Corrupt and Undemocratic Actors List were published in the Federal Register in 2024. See 89 Fed. Reg. 1621 (Jan. 10, 2024).

Silvia Patricia Valdes Quezada, a former Supreme Court of Justice magistrate, undermined democratic processes or institutions by participating in the "Parallel Commissions" scheme to stack the Supreme Court and Appellate Courts with corrupt judges.

Nicaragua

Gloria Maria Saavedra Corrales, Judge in the Tenth Criminal District Court of Hearings of Managua, undermined democratic processes or institutions by using her position and authority within the Nicaraguan judicial system to knowingly facilitate a coordinated campaign to suppress dissent by confiscating property from the Jesuit Central American University without a legal basis, in order to install a regime-friendly administration.

Maribel del Socorro Duriez González, President of Nicaragua's National Council for Evaluation and Accreditation (CNEA), undermined democratic processes or institutions by taking part in a coordinated campaign to suppress dissent by confiscating property from the government's political opponents, including the Central American University (UCA) and at least 25 other private Nicaraguan universities, without a legal basis, in order to install a regime-friendly administrations.

Ramona Rodriguez Perez, President of Nicaragua's National Council of Universities (CNU), undermined democratic processes or institutions by taking part in a coordinated campaign to suppress dissent by confiscating property from the government's political opponents, including Central American University (UCA) and at least 25 other private Nicaraguan universities, without a legal basis, in order to install a regime-friendly administrations.

Alejandro Enrique Genet Cruz, Rector of Casimiro Sotelo University (formerly Central American University), undermined democratic processes or institutions by taking part in a coordinated campaign to retaliate against critics of the Ortega-Murillo regime and to suppress dissent by using his position to create policies that punish Casimiro Sotelo University faculty and students who do not take part in political activities for Ortega's Sandinista National Liberation Front (FSLN) political party.

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e. Combatting Global Corruption and Human Rights Abuses

On February 1, 2023, the State Department announced actions to impose additional visa restrictions on certain current or former Taliban members, members of non-state security groups, and other individuals responsible for repressing women and girls in Afghanistan, under Section 212(a)(3)(C) of the INA. See Secretary Blinken's press statement available at https://www.state.gov/actions-to-impose-additional-visa-restrictions-in-response-to-the-talibans-ban-on-womens-university-education-and-working-with-ngos/.

On December 8, 2023, Secretary Blinken announced the United States would mark Human Rights Day and the 75th anniversary of the Universal Declaration of Human Rights on December 10th by taking actions to promote accountability for human rights abuses and violations. With Treasury, the State Department imposed visa restrictions and sanctions on 37 individuals in 13 countries. Secretary Blinken's press statement is

available at https://www.state.gov/promoting-accountability-in-support-of-the-75th-anniversary-of-the-universal-declaration-of-human-rights-2/, and excerpted below.

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With today's actions, the United States is addressing some of the most challenging and harmful forms of human rights abuses in the world, including those involving conflict-related sexual violence, forced labor, and transnational repression. Our actions promote accountability for these heinous acts, especially in environments with poor adherence to the rule of law, and support members of vulnerable and marginalized populations including political dissidents, women, civil society leaders and activists, LGBTQI+ persons, and human rights defenders and environmental activists targeted by repressive governments.

Many of today's designations target individuals responsible for gender-based violence and the repression of women and girls globally, including county commissioners and a governor in South Sudan whose forces and militias are responsible for rape and Taliban leaders connected to restrictions on access to secondary education for women and **Presidential Memorandum** issued by President Biden last year, which strengthens the use of financial, diplomatic, and legal tools to combat it.

The Iranian regime continues to be one of the worst human rights offenders both at home and abroad. Its abuses include the repression of dissidents and peaceful protestors through lethal force, arbitrary detention, and torture as well as the targeting of dissidents abroad through surveillance, intimidation, and lethal plotting. The United States today designated two Iranian intelligence officers involved in recruiting individuals to plot against regime opponents in the United States, including current and former U.S. Government officials, as well as surveillance activities focused on religious sites, businesses, and other facilities.

Additionally, the Department of State today issued the Uyghur Human Rights Policy Act (UHRPA) Report to Congress, while Treasury is sanctioning two People's Republic of China (PRC) government officials, including one under UHRPA, for their connection to serious human rights abuses in Xinjiang. Concurrently, the Department of Homeland Security-led interagency Forced Labor Enforcement Task Force is announcing the addition of three PRC entities to the Uyghur Forced Labor Prevention Act Entity List.

We are also revising, expanding, and issuing visa restriction policies for Zimbabwe, Syria, and Uganda to promote accountability for government officials and others involved in repression, human rights abuses, and other unacceptable acts. In addition, earlier this week, I determined that members of the Sudanese Armed Forces and Sudan's Rapid Support Forces (RSF) have committed war crimes, and that members of the RSF and allied militias have committed crimes against humanity and ethnic cleansing in Darfur.

Finally, to reinforce the impact of our designations today of four criminal gang leaders in Haiti involved in human rights abuses, including sexual violence, and of five DRC armed group leaders, we nominated these individuals for UN Security Council designations. The designations of Haitian criminal gang leaders complement previous U.S. government efforts to disrupt criminal activity in Haiti, including a State Department **Transnational Organized Crime Rewards Program** reward offer of up to $1 million and $2 million for information leading to the arrest and/or conviction of **Joseph Wilson** and **Vitel'homme Innocent**, respectively.

Our actions to promote respect for human rights are stronger and more durable when done in concert with allies committed to the international rules-based order. We are taking our sanctions actions today in coordination with the United Kingdom and with Canada, each of which has taken similar measures to deter human rights abuses globally. The United States will continue to use all available tools to promote accountability and signal our strong support for human rights and fundamental freedoms.

* * * *

The State Department issued a fact sheet detailing these actions available at https://www.state.gov/promoting-accountability-in-support-of-the-75th-anniversary-of-the-universal-declaration-of-human-rights/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1972. The Department of Homeland Security's press release is available at https://www.dhs.gov/news/2023/12/08/dhs-designates-three-additional-prc-based-companies-uflpa-entity-list.

On December 11, 2023, the United States took multiple actions under a range of authorities on International Anti-Corruption Day. The State Department press statement is included below and available at https://www.state.gov/promoting-accountability-for-corruption-globally/.

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The United States is taking a series of actions today, on International Anti-Corruption Day, to promote accountability for those who engage in corruption around the world. President Biden has signed a presidential proclamation to expand the State Department's visa restriction authorities so those who engage in corruption and their family members can be subject to visa restrictions, strengthening our ability to deny safe haven to those who enable public corruption. Pursuant to current law, I am designating over 30 individuals, including current and former foreign officials and immediate family members, as generally ineligible for entry to the United States due to their involvement in significant corruption.

These actions are complemented and reinforced by the Department of the Treasury's designations under the Global Magnitsky sanctions program of two former Islamic Republic of Afghanistan government officials, and 44 associated entities, for involvement in transnational corruption. Collectively these actions reinforce our comprehensive effort to promote accountability for corrupt actors and deter future corruption.

Today's actions target corrupt actors around the world who have misused their public office for personal gain. Through a variety of tools to promote accountability, the United States has designated more than 200 individuals and entities for acts related to corruption in 2023. The United States will continue to coordinate with allies and partners and use all available tools to address corruption in all its forms and promote accountability for malign actors.

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The State Department issued a fact sheet detailing these actions, available at https://www.state.gov/leveraging-tools-to-promote-accountability-and-counter-global-corruption/, and included below.

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On the occasion of International Anti-Corruption Day and the opening of the Conference of States Parties to the UN Convention Against Corruption, the United States is taking the following actions to promote accountability for corrupt actors around the world. The Department of State is designating over 30 individuals pursuant to Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2023 (Div. K, P.L. 117-328), as carried forward by the Continuing Appropriations Act, 2024 (Div. A, P.L. 118-15). The Department of the Treasury is designating two individuals and 44 entities pursuant to Executive Order (E.O.) 13818, which builds upon and implements the Global Magnitsky Human Rights Accountability Act.

Section 7031(c) provides that in cases where there is credible information that officials of foreign governments have been involved in significant corruption or a gross violation of human rights, those individuals and their immediate family members are generally ineligible for entry into the United States and must be either publicly or privately designated.

ACTIONS TAKEN TO PROMOTE ACCOUNTABILITY FOR CORRUPT ACTORS

Afghanistan

Mir Rahman Rahmani, former Afghan Speaker of Parliament, and Ajmal Rahmani, former Member of the Afghan Parliament

- Pursuant to Section 7031(c), the Department of State is publicly designating Mir Rahman Rahmani and Ajmal Rahmani for their involvement in significant corruption. This transnational corruption scheme spanned the globe as the Rahmani's stole millions of dollars from U.S. government-funded fuel contracts. As part of this action, their immediate family members (Jamila Jushan Haji Mohamad Hossin, Tamana Mir Rahman, Yalda Mir Rahman, Lina Mir Rahman, and Tahmina Tajali) are also designated. Concurrently, Treasury is also designating Mir Rahmani and Ajmal Rahmani and 44 associated entities pursuant to E.O. 13818.

Bosnia and Herzegovina (BiH)

Diana Kajmakovic, former state prosecutor in Bosnia and Herzegovina

Pursuant to Section 7031(c), the Department of State is publicly designating Kajmakovic for her involvement in significant corruption. In support of narcotics traffickers and other criminals, Kajmakovic helped hide evidence, prevent prosecution, and otherwise assist criminal activity in exchange for personal gain. She also attempted to block an investigation into her apparent criminal affiliates, including Osman Mehmedagic. Previously Kajmakovic was **designated by the Department of Treasury** pursuant to Executive Order (E.O.) 14033 for being responsible for or complicit in corruption or the undermining of democratic processes or institutions in the Western Balkans.

Osman "Osmica" Mehmedagic, former Director General for BiH's Intelligence Security Agency

- Pursuant to Section 7031(c), the Department of State is publicly designating Mehmedagic for his involvement in significant corruption. Mehmedagic collaborated with criminal networks and abused his public position to enrich himself. As part of this action, his wife Amela Mehmedagic Sehovic is also designated. Previously, **the Department of Treasury designated** Mehmedagic pursuant to E.O. 14033 for being complicit in, or having directly or indirectly engaged in, corruption related to the Western Balkans, including corruption by, on behalf of, or otherwise related to a government in the Western Balkans, or a current or former government official at any level of government in the Western Balkans, such as the misappropriation of public assets, expropriation of private assets for personal gain or political purposes, or bribery.

Dominican Republic

Jean Alain Rodriguez Sanchez, former Attorney General

- Pursuant to Section 7031(c), the Department of State is publicly designating Rodriguez for his involvement in significant corruption by misappropriating public funds intended for state-financed infrastructure projects and government institutions. As part of this action, his immediate family members are also designated, including his spouse Maria Isabel Perez Sallent and two minor children.

Haiti

Jean-Max Bellerive, former Prime Minister and Minister of Planning and External Cooperation

- Pursuant to Section 7031(c), the Department of State is publicly designating Bellerive for abusing his public position by participating in corrupt activity that undermined the integrity of Haiti's government. As part of this action, his immediate family members are also designated, including his spouse Myriam Estevez De Bellerive and his adult daughters Diana Jennifer Bellerive and Jessica Bellerive.

Nenel Cassy, former Senator

- Pursuant to Section 7031(c), the Department of State is publicly designating Cassy for abusing his public position by participating in corrupt activity that undermined the integrity of Haiti's government. As part of this action, his immediate family members are also designated, including his spouse Katherine Cassy Chery and one minor child.

Herve Fourcand, former Senator

- Pursuant to Section 7031(c), the Department of State is publicly designating Fourcand for abusing his public position by participating in corrupt activity that undermined the integrity of Haiti's government.

Liberia

Samuel Tweah, Liberian Minister of Finance and Development Planning, and Liberian Senators Albert Chie and Emmanuel Nuquay

- Pursuant to Section 7031(c), the United States is publicly designating Tweah, Chie, and Nuquay, afor their involvement in significant corruption by abusing their public positions through soliciting, accepting, and offering bribes to manipulate legislative processes and public funding, including legislative reporting and mining sector activity. As part of this action, their immediate family members are also designated, including their spouses Delecia Berry Tweah, Abigail Chie, and Ruthtoria Brown Nuquay, and Tweah and Nuquay's minor children.

Additionally, on December 8, Treasury designated Mayor of Monrovia Jefferson Koijee pursuant to E.O. 13818 for engaging, or having been a leader of an entity that has engaged in serious human rights abuse and corruption. In addition to serious human rights abuse, Koijee engaged in corrupt acts, including bribery and misappropriation of state assets and pressuring anti-corruption investigators to halt all corruption investigations.

Republic of the Marshall Islands

Kessai Note, Minister of Transportation and Communication, Senator, and former President of the Republic of the Marshall Islands, and Senator Mike Halferty

- Pursuant to Section 7031(c), the United States is publicly designating Note and Halferty, for their involvement in significant corruption by accepting articles of monetary value and other benefits in exchange for acts in the performance of their public functions. Specifically, Note and Halferty accepted bribes in the form of services and cash, in exchange for their legislative support of a bill in the RMI legislature to create a semi-autonomous region in the RMI.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1973.

12. Hostages and Wrongfully Detained United States Nationals

In 2022, President Biden issued a new executive order on wrongful detention on July 19, 2022, Executive Order (E.O.) 14078, entitled, "Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home." 87 Fed. Reg. 43,389 (Jul. 21, 2022). See *Digest 2022* at 47-50 and 699-701.

On April 27, 2023, OFAC designated four individuals, Rouhollah BAZGHANDI, Mohammad KAZEMI, Mohammad Hassan MOHAGHEGHI, and Mohammad Mehdi SAYYARI, under E.O. 14078. 88 Fed. Reg. 27,954 (May 3, 2023).

Also on April 27, 2023, the Department designated Russia's Federal Security Services (FSB) and Iran's Islamic Revolutionary Guard Corps Intelligence Organization (IRGC-IO) pursuant to E.O. 14078 for their involvement in the wrongful detention of U.S. nationals abroad. Secretary Blinken's press statement is available at https://www.state.gov/sanctioning-russian-federation-and-iranian-state-actors-responsible-for-the-wrongful-detention-of-u-s-nationals/, and includes the following:

> Russia's and Iran's continued pattern of wrongfully detaining U.S. nationals is unacceptable. The United States will never stop working to secure the release of U.S. nationals who are wrongfully detained or held hostage and reunite them with their loved ones. Today's actions are one tool furthering that cause, and we will continue to use all authorities at our disposal to bring our people home.

At the same time, OFAC designated four senior officials in the IRGC-IO pursuant to E.O. 14078.

On July 11, 2023, OFAC adopted a final rule adding regulations to implement E.O. 14078. OFAC issued the Hostages and Wrongful Detention Sanctions Regulations, 31 C.F.R. part 526 to implement portions of E.O. 14078. 88 Fed. Reg. 44,052 (Jul. 11, 2023).

On September 18, 2023, the Department designated Iran's Ministry of Intelligence and Security (MOIS) in connection with its involvement in the wrongful detention of U.S. citizens, pursuant to the Levinson Act, E.O. 14078, and other authorities. See Section A.11.b, *supra* for additional designations for involvement in

abuses of human rights. Secretary Blinken's press statement is available at https://www.state.gov/designating-iranian-persons-connected-to-wrongful-detentions/, and includes the following:

> While we celebrate the release of Emad Shargi, Siamak Namazi, Morad Tahbaz, and two other U.S. citizens from their unjust detention in Iran, we are also taking action to hold the regime accountable for its abhorrent practice of unjustly detaining other countries' citizens and to deter future wrongful detention by Iran and other regimes.
>
> Pursuant to the sanctions authorities provided by the Levinson Act and Executive Order 14078, the United States is today designating Iran's Ministry of Intelligence and Security (MOIS) in connection with the MOIS's involvement in the wrongful detention of U.S citizens and former President Mahmoud Ahmadinejad for his support to MOIS. During Ahmadinejad's term in office, Iran's MOIS abducted and detained Bob Levinson with authorization by senior Iranian officials. The regime's refusal to account for what happened to Bob caused unbearable pain and suffering to his family and those who care about him. We call on Iran to give a full accounting of what happened to Bob Levinson, from his initial captivity to his probable death.
>
> We are also taking steps to impose visa restrictions on three Iranian government officials believed to be responsible for or complicit in serious abuses or violations of human rights, as well as hostage-taking or wrongful, arbitrary, or otherwise unjust detention of U.S. and foreign nationals pursuant to authority in Section 212 (a)(3)(C) of the Immigration and Nationality Act (INA).

At the same time, OFAC designated Mahmoud Ahmadinejad pursuant to E.O. 14078 for materially assisting, sponsoring or providing support or goods and services for MOIS. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1739.

13. Transnational Organized Crime and Global Drug Trade

a. Transnational Organized Crime

On February 8, 2023, OFAC designated the following individuals under E.O. 13581, as amended by E.O. 13863, relating to transnational criminal organizations: Yulan Adonay ARCHAGA CARIAS and David Elias CAMPBELL LICONA. OFAC also determined that the following four individuals are unblocked and removed them from the SDN List: Vladislav Vladimirovich LEONTYEV, Grigory Victorovich LEPSVERIDZE, Igor Leonidovich SHLYKOV, and Aleksandr Leonidovich MANUYLOV. 88 Fed. Reg. 9,329 (Feb. 13, 2023).

On June 16, 2023, OFAC designated five individuals—Ofelia HERNANDEZ SALAS, Federico HERNANDEZ SANCHEZ, Jesus Gerardo CHAVEZ TAMAYO, Fatima del Rocio

MALDONADO LOPEZ, and Raul SAUCEDO HUIPIO—and three entities—HERNANDEZ SALAS TRANSNATIONAL CRIMINAL ORGANIZATION, HOTEL PLAZA, and HOTELERA LOPEZ MATEOS S.A. DE C.V.—pursuant to E.O. 13581 of July 24, 2011, "Blocking Property of Transnational Criminal Organizations." 88 Fed. Reg. 40,925 (June 22, 2023).

On December 14, 2023, OFAC designated two individuals—Joel Alexandro SALAZAR BALLESTEROS and Luis Eduardo ROMAN FLORES—and entity MALAS MANAS—pursuant to E.O. 13581. 88 Fed. Reg. 87,838 (Dec. 19, 2023).

b. Global Drug Trade

On January 30, 2023, OFAC designated three fentanyl traffickers, Jose Angel RIVERA ZAZUETA, Nelton SANTISO AGUILA, and Jason Antonio YANG LOPEZ, under E.O. 14059, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade" for manufacturing and smuggling fentanyl into the United States. 88 Fed. Reg. 7539 (Feb. 3, 2023). See State Department press statement available at https://www.state.gov/u-s-to-sanction-three-fentanyl-traffickers-contributing-to-the-u-s-opioid-crisis/.

On February 22, 2023, OFAC designated six Sinaloa Cartel members involved in the illicit methamphetamine and fentanyl trade—Jose Santana ARREDONDO BELTRAN, Luis Gerardo FLORES MADRID, Ernesto MACHADO TORRES, Ludim ZAMUDIO LERMA, Ludim ZAMUDIO IBARRA, and Luis Alfonso ZAMUDIO LERMA, under E.O. 14059. 88 Fed. Reg. 12,436 (Feb. 27, 2023). OFAC also designated six Mexico-based entities under E.O. 14059—ACEROS Y REFACCIONES DEL HUMAYA, S.A. DE C.V., FARMACIA LUDIM, GRUPO ZAIT, S.A. DE C.V., INMOBILIARIA DEL RIO HUMAYA, S.A. DE C.V., OPERADORA DEL HUMAYA, S.A. DE C.V., and OPERADORA PARQUE ALAMEDAS, S. DE R.L. DE C.V. *Id*. The State Department press statement is available at https://www.state.gov/u-s-to-sanction-sinaloa-cartel-network-of-fentanyl-suppliers-contributing-to-the-u-s-opioid-crisis/.

On February 28, 2023, OFAC designated Jesus CISNEROS HERNANDEZ, under E.O. 14059. 88 Fed. Reg. 14,443 (Mar. 8, 2023).

On March 15, 2023, OFAC designated Edin GACANIN under E.O. 14059. 88 Fed. Reg. 16,726 (Mar. 20, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/sanctioning-individuals-in-bosnia-and-herzegovina-for-corruption-destabilizing-activity-and-drug-proliferation/, which includes the following:

> …Treasury is designating Edin Gacanin, a BiH national and one of the world's most notorious narcotics traffickers, pursuant to E.O. 14059. In addition to narcotics trafficking efforts across multiple countries, Gacanin's cartel is involved in money laundering and is connected to the Kinahan Organized Crime Group, which was previously designated by Treasury for its role as a significant transnational criminal organization.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1344.

On April 14, 2023, OFAC designated five individuals—Ana Gabriela RUBIO ZEA, Yaqin WU, Yonghao WU, Hongfei WANG, and Huatao YAO—and two entities—SUZHOU XIAOLI PHARMATECH CO., LTD and WUHAN SHUOKANG BIOLOGICAL TECHNOLOGY CO., LTD, pursuant to E.O. 14059. 88 Fed. Reg. 24,267 (Apr. 19, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/u-s-actions-targeting-transnational-criminals-for-illicit-fentanyl-activity/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1413. See also, Chapter 3 of this *Digest* for Department of State's announcements of reward offers for information leading to the arrest or conviction of individuals involved in illicit fentanyl trafficking.

On April 27, 2023, OFAC designated seven individuals—Luis Lorenzo GOMEZ ARIAS, Ian Jassiel GONZALEZ VILLEGAS, Horacio Edmundo LELO DE LARREA VENTIMILLA, Brayan Moises LUQUIN RODRIGUEZ, Clemente PADILLA ZARATE, Eduardo PARDO ESPINO, and Pedro RIVAS SANCHEZ—and 19 entities--AKA INTEGRAL SERVICES, S. DE R.L. DE C.V., ASESORES Y PROMOTORES ACG, S.A. DE C.V., ATLANTIC DIAMOND GROUP, S.A. DE C.V., BESTHINGS, S.A. DE C.V., BUSSINES CORPORATIVO T SERVICE INC, S.A. DE C.V., CONSTRUCTORES B2, S.A. DE C.V., CORPORATIVO BUSSINES MX INSIDER, S.A. DE C.V., CORPORATIVO SOPORTE LEGAL RECOVERY, S.A. DE C.V., ENVIGH, S. DE R.L. DE C.V., MAGNISERVIA, S.A. DE C.V., NT INSURANCE CORPORATIVO, S.A. DE C.V., PRODUZIONI PECA, S. DE R.L. DE C.V., RESGUARDO DE VALORES Y SERVICIOS INTEGRALES RSVI, S.A. DE C.V., RH LITMAN, S. DE R.L. DE C.V., SERVICIOS ADMINISTRATIVOS DANTWOO, S.A. DE C.V., SOCIEDAD SPA PENINSULA, S. DE R.L. DE C.V., SUNCAN MEXICO, S. DE R.L. DE C.V., T SERVICE BUSSINES INC, S.A. DE C.V., and TRADOS COMERCIO, S. DE R.L. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 27,585 (May 2, 2023). Also on April 27, 2023, OFAC determined that the following person is no longer subject to the blocking provisions of E.O. 14059: Ervin Rene MORENO LOPEZ. *Id*.

On May 9, 2023, OFAC designated four individuals-- Mario Esteban OGAZON SEDANO, Joaquin GUZMAN LOPEZ, Saul PAEZ LOPEZ, and Raymundo PEREZ URIBE—and two entities—URBANIZACION, INMOBILIARIA Y CONSTRUCCION DE OBRAS, S.A. DE C.V. and SUMILAB, S.A. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 30,832 (May 12, 2023). Secretary Blinken's press statement is available at https://www.state.gov/united-states-sanctions-additional-sinaloa-cartel-network-of-fentanyl-suppliers/, and includes the following:

> The United States is continuing our efforts to disrupt the global production and supply chain of illicit fentanyl, including by denying the criminal actors who engage in this activity access to the international financial system. As part of this **whole of government effort** , today, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is designating four Sinaloa Cartel members and two Mexico-based entities involved in the illicit methamphetamine and fentanyl trade.

> The production and trafficking of illicit drugs is a global health and security threat that exacerbates the U.S. opioid overdose epidemic. Today's action is part of the United States' ongoing effort to disrupt and dismantle the transnational criminal organizations that facilitate the illicit supply of fentanyl and other narcotics. The United States is leading this effort at a global level.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1467.

On May 30, 2023, OFAC designated nine individuals—Chunyan GUO, Yunnian GUO, Ruiguang GUO, Yiren FEI, Dongdong ZHAO, Hao PAN, Mario Ernesto MARTINEZ TREVIZO, Cinthia Adiana RODRIGUEZ ALMEIDA, and Ernesto Alonso MACIAS TREVIZO—and eight entities—YOULI TECHNOLOGY DEVELOPMENT CO., LTD., YASON GENERAL MACHINERY CO., LTD., YASON ELECTRONICS TECHNOLOGY CO., LIMITED, SHENZHEN YASON GENERAL MACHINERY CO., LTD. NANCHANG BRANCH, TDPMOLDS, YANTAI YIXUN INTERNATIONAL TRADE CO., LTD., YANTAI MEI XUN TRADE CO., LTD., and MEXPACKING SOLUTIONS—pursuant to E.O. 14059. 88 Fed. Reg. 38,126 (June 12, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/sanctioning-prc-and-mexico-based-individuals-and-entities-for-enabling-illicit-drug-production/, and includes the following:

> The United States is a leader in the global effort to stop the illicit manufacture and trafficking of illicit fentanyl and other synthetic drugs, a major cause of death among adults ages 18 to 45 in the United States. Today, the Department of the Treasury sanctioned 17 individuals and entities involved in the production of illicit drugs, 13 of which are based in the People's Republic of China (PRC), and four of which are based in Mexico. This action was coordinated closely across the U.S. government with the Government of Mexico and targets entities and individuals involved in criminal activities, not specific countries. These designated individuals and entities were involved in creating counterfeit pills with false markings of legitimate pharmaceuticals, often laced with fentanyl, and likely bound for U.S. markets.
>
> Today's actions further bolster those previously taken by the Biden-Harris administration as part of a whole-of-government offensive to save lives by disrupting illicit fentanyl supply chains around the globe. To date, the Administration has supported more than 20 million Americans in recovery, strengthened partnerships with law enforcement around the world to disrupt and dismantle transnational criminal organizations, and issued over 30 reward offers totaling over $75 million for information to help bring illicit fentanyl traffickers to justice through the Narcotics and Transnational Organized Crime Rewards Programs. To address synthetic drug threats, the Department of State is mobilizing a global coalition that will strengthen international engagement and drive innovative actions.

On June 6, 2023, OFAC designated three individuals—Alonso GUERRERO COVARRUBIAS, Javier GUERRERO COVARRUBIAS, and Mary Cruz RODRIGUEZ AGUIRRE—and one entity—NACER AGENCIA PANAMERICANA DE DIVISAS Y CENTRO CAMBIARIO, S.A. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 38,596 (June 13, 2023).

On July 12, 2023, OFAC designated 10 individuals—Nestor Isidro PEREZ SALAS, Jeuri LIMON ELENES, Noel LOPEZ PEREZ, Ricardo PAEZ LOPEZ, Daniel ZAMUDIO LERMA, Jorge Alberto ZAMUIDO LERMA, Angel Guillermo ZAMUDIO LERMA, Eliseo DE LEON BECERRA, Dora Vanessa VALDEZ FERNANDEZ, and Oscar Noe MEDINA GONZALEZ—and one entity—REI COMPANIA INTERNACIONAL, S.A. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 45,453 (Jul. 17, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/sanctioning-fentanyl-network-run-by-sinaloa-cartel-family-members/, which includes the following:

> Last week, 85 countries and 13 international organizations convened virtually to launch a Global Coalition to Address Synthetic Drug Threats. Today, in another step to combat the illicit manufacture and trafficking of fentanyl and other synthetic drugs, the Department of the Treasury sanctioned one Mexico-based company and 10 Mexican nationals including several Sinaloa Cartel members and fugitives, who are responsible for a significant portion of the illicit fentanyl and other deadly drugs trafficked into the United States. The company regularly receives chemical shipments from exporters in the People's Republic of China. This action was coordinated closely with the Government of Mexico and targets entities and individuals from one of the most pervasive drug trafficking organizations in the world.

On July 19, 2023, OFAC designated the following four individuals pursuant to E.O. 14059: Franco TABAREZ MARTINEZ, Youssef BEN AZZA, Othman EL BALLOUTI, and Younes EL BALLOUTI. 88 Fed. Reg. 47,943 (Jul. 25, 2023).

On August 9, 2023, OFAC designated the following three individuals pursuant to E.O. 14059: Alfonso ARZATE GARCIA, Rene ARZATE GARCIA, and Rafael Guadalupe FELIX NUNEZ. 88 Fed. Reg. 55,120 (Aug. 14, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/united-states-sanctions-three-sinaloa-cartel-fentanyl-traffickers/.

On October 3, 2023, OFAC designated 14 individuals—Jiantong WANG, Fengbing XIA, Bahman DJEBELIBAK, Xingbiao SHEN, Changgen DU, Xuebi GAN, Lanfang GAO, Xueqin SONG, Mingming WANG, Tianmin WANG, Mingjing WANG, Shucheng WANG, Qi YANG, and Wei ZHANG—and 14 entities—JIANGSU BANGEYA NEW MATERIAL TECHNOLOGY CO, LTD., XINGTAI DONG CHUANG NEW MATERIAL TECHNOLOGY CO., LTD., JINHU MINSHENG PHARMACEUTICAL MACHINERY CO. LTD, VALERIAN LABS DISTRIBUTION CORP., VALERIAN LABS, INC., HANGHONG PHARMACEUTICAL TECHNOLODGY CO., LTD., HEBEI CROVELL BIOTECH CO., LTD., HEIBEI GUANLANG BIOTECHNOLOGY CO. LIMITED, HEBEI GUANLANG BIOTECHNOLOGY CO., LTD., HEBEI XIUNA TRADING CO., LTD., HEBEI YAXIN RESTAURANT MANAGEMENT CO., LTD., HUBEI VAST CHEMICAL CO., LIMITED, QINGDAO CEMO TECHNOLOGY DEVELOP CO., LTD., and

SHANGHAI JARRED INDUSTRIAL CO., LTD. pursuant to E.O. 14059. 88 Fed. Reg. 69,992 (Oct. 10, 2023).

On November 7, 2023, OFAC designated the following 13 individuals—Jesus CAMACHO PORCHAS, David Alonso CHAVARIN PRECIADO, Sergio Isaias HERNANDEZ MAZON, Cristian Julian MENESES OSPINA, Oscar Enrique MORENO OROZCO, Juan Carlos MORGAN HUERTA, Jose Arnoldo MORGAN HUERTA, Miguel Angel MORGAN HUERTA, Jose Luis MORGAN HUERTA, Martin MORGAN HUERTA, Oscar MURILLO MORGAN, Alvaro RAMOS ACOSTA, Ramiro Martin ROMERO WIRICHAGA—and four entities—COMERCIALIZADORA VILLBA STONE, S.A DE C.V., CONCEPTOS GASTRONOMICOS DE SONORA, S. DE R.L. DE C.V., EXPORTADORA DEL CAMPO RAMOS ACOSTA, S. DE R.L. DE C.V., and MORGAN GOLDEN MINING, S.A. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 80,812 (Nov. 20, 2023).

On November 15, 2023, OFAC designated individual Gilbert Hernan de Los Angeles BELL FERNANDEZ pursuant to E.O. 14059. 88 Fed. Reg. 80,812 (Nov. 20, 2023).

On November 30, 2023, OFAC designated three individuals—Teresa De Jesus ALVARADO RUBIO, Gabriela DEL VILLAR CONTRERAS, and Manuel Alejandro FOUBERT CADENA—and 13 entities-- ASSIS REALTY AND VACATION CLUB, S.A. DE C.V., AXIS SALE & MAINTENANCE BUILDINGS, S.A. DE C.V., BANLU COMERCIALIZADORA, S.A. DE C.V., COMERCIALIZADORA DE SERVICIOS TURISTICOS DE VALLARTA, S.A. DE C.V., CONDOS & VACATIONS BUILDINGS SALE & MAINTENANCE, S.A. DE C.V., CROWLANDS, S.A. DE C.V., GRUPO EMPRESARIAL EPTA, S.A. DE C.V., GRUPO MINERA BARRA PACIFICO, S.A.P.I. DE C.V., INTERNATIONAL REALTY & MAINTENANCE, S.A. DE C.V., MEGA COMERCIAL FERRELECTRICA, S.A. DE C.V., REAL ESTATES & HOLIDAY CITIES, S.A. DE C.V., SKAIRU, S.A. DE C.V., and TERRA MINAS E INVERSIONES DEL PACIFICO, S.A.P.I. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 84,394 (Dec. 5, 2023).

On December 6, 2023, OFAC designated 15 individuals—Oscar ALEMAN MEZA, Juan Pablo BASTIDAS ERENAS, Amberto BELTRAN ARAUJO, Mario German BELTRAN ARAUJO, Jesus Jose Gil CARO MONGE, Jose Gil CARO QUINTERO, Ricardo ESTEVEZ COLMENARES, Jose de Jesus ESTRADA GUTIERREZ, Francisco Abraham FLORES ORTIZ, Ulises FRANCO FIGUEROA, Pedro INZUNZA NORIEGA, Juvenal LEON RODRIGUEZ, Servando LOPEZ LOPEZ, and Oscar PULIDO DIAZ—and two entities—DIFACULSA, S.A. DE C.V. and EDITORIAL MERCADO ECUESTRE, S.A. DE C.V.—pursuant to E.O. 14059. 88 Fed. Reg. 87,054 (Dec. 15, 2023).

14. Other Visa Restrictions, Sanctions, and Measures

a. Venezuela

On June 29, 2023, OFAC designated individual Philipp Paul Vartan APIKIAN and entity SWISSOIL TRADING SA pursuant to E.O. 13850 of November 1, 2018, "Blocking Property of Additional Persons Contributing to the Situation in Venezuela." 88 Fed. Reg. 50,951 (Aug. 2, 2023).

On July 28, 2023, OFAC determined that circumstances no longer warranted the inclusion of the following individuals, previously designated pursuant to E.O. 13850, on the SDN List. These individuals were removed from the SDN List: Didier CASIMIRO and Carlos Alberto ROTONDARO COVA. 88 Fed. Reg. 50,951 (Aug. 2, 2023).

On October 18, 2023, the United States provided U.S. sanctions relief in response to the signing of an electoral roadmap agreement between Venezuela's Unitary Platform and representatives of Nicolas Maduro. OFAC issued Venezuela-related General Licenses (GLs) 3I, 5M, 9H, 43, 44, and 45. 88 Fed. Reg. 76,991 (Nov. 8, 2023). OFAC also issued two new Venezuela-related Frequently Asked Questions (FAQs 1136, 1137), amended four related FAQs (FAQs 595, 661, 662, and 629), and published "Frequently Asked Questions Related to the Suspension of Certain Sanctions with Respect to Venezuela on October 18, 2023." Information on the General Licenses and Frequently Asked Questions is available at https://ofac.treasury.gov/recent-actions/20231018_44. Secretary Blinken's press statement is included below and available at https://www.state.gov/signing-of-electoral-roadmap-between-the-unitary-platform-and-representatives-of-maduro/.

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The United States welcomes the signing of an electoral roadmap agreement between the Unitary Platform and representatives of Nicolas Maduro. This is a concrete step toward resolution of Venezuela's political, economic, and humanitarian crisis.

Consistent with our longstanding commitment to provide U.S. sanctions relief in response to concrete steps toward competitive elections and respect for human rights and fundamental freedoms, the United States Department of Treasury Office of Foreign Assets Control today took the following steps:

1. Issued a six-month general license temporarily authorizing transactions involving the oil and gas sector in Venezuela. The license will be renewed only if Venezuela meets its commitments under the electoral roadmap as well as other commitments with respect to those who are wrongfully detained.
2. Issued a second general license authorizing dealings with Minerven – the Venezuelan state-owned gold mining company – which we assess would have the effect of reducing black-market trading in gold.
3. Amended relevant licenses to remove the secondary trading ban on certain Venezuelan sovereign bonds and PdVSA debt and equity. The ban on trading in the primary Venezuelan bond market remains in place. We assess that this, too, would have the positive effect of displacing nefarious players in this market, and with negligible financial benefit to authorities from Venezuela.

Other sanctions and restrictions imposed by the United States on Venezuela remain in place. The United States and the international community will closely follow implementation of the electoral roadmap, and the U.S. government will take action if commitments under the electoral roadmap and with respect to political prisoners are not met.

The United States has also conveyed our expectation and understanding that Venezuela will take the following steps before the end of November:

1. Define a specific timeline and process for the expedited reinstatement of all candidates. All who want to run for President should be allowed the opportunity, and are entitled to a level electoral playing field, to freedom of movement, and to assurances for their physical safety.
2. Begin the release of all wrongfully detained U.S. nationals and Venezuelan political prisoners.

Failure to abide by the terms of this arrangement will lead the United States to reverse steps we have taken. The United States remains firmly committed to the Venezuelan people and we will continue to work with the international community to support the restoration of democracy and the rule of law so that Venezuelans can rebuild their lives and their country. The United States stands with the Venezuelan people and actors who want a democratic future.

* * * *

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1822.

On December 1, 2023, the State Department announced continued review of Venezuela sanctions relief. The press statement is included below and available at https://www.state.gov/reviewing-our-venezuela-sanctions-relief/.

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The United States welcomes the steps taken to implement the electoral roadmap agreement between the Unitary Platform and representatives of Nicolas Maduro, in particular the November 30 announcement defining the timeline and process for the reinstatement of all candidates. This is an important development.

However, we are deeply concerned by the lack of progress on the release of wrongfully detained U.S. nationals and Venezuelan political prisoners. We continue active diplomatic engagement on these issues and will have more to say in the coming days on next steps given the state of play.

The United States remains firmly committed to the Venezuelan people and supports their aspirations for a democratic future. We will continue to work with the international community to support the restoration of democracy and the rule of law in Venezuela.

* * * *

b. Nicaragua

On November 27, 2018, the President issued E.O. 13851, "Blocking Property of Certain Persons Contributing to the Situation in Nicaragua." See *Digest 2018* at 614.

On April 19, 2023, OFAC designated three individuals, Octavio ROTHSCHUH ANDINO, Nadia Camila TARDENCILLA RODRIGUEZ, and Ernesto Leonel RODRIGUEZ MEJIA, pursuant to E.O. 13851. 88 Fed. Reg. 25,470 (Apr. 26, 2023).

c. Balkans

On March 15, 2023, OFAC designated individuals Osman MEHMEDAGIC and Dragan STANKOVIC under E.O. 14033, "Blocking Property and Suspending Entry Into the United States of Certain Persons Contributing to the Destabilizing Situation in the Western Balkans." 88 Fed. Reg. 16,726 (Mar. 20, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/sanctioning-individuals-in-bosnia-and-herzegovina-for-corruption-destabilizing-activity-and-drug-proliferation/, which includes the following:

> The Treasury Department is designating Osman Mehmedagic, the former Director General for BiH's Intelligence Security Agency, pursuant to Executive Order (E.O.) 14033. Mehmedagic misused a government-owned telecommunications company for the benefit of his party, the Party of Democratic Action (SDA). There is also credible information that Mehmedagic has collaborated with criminal networks for personal and party enrichment. This activity reflects a larger pattern of behavior by Mehmedagic and SDA to use positions of authority for personal and party gain.
>
> Further, Treasury is designating Dragan Stankovic, the Director of the RS Administration for Geodetic and Property Affairs, pursuant to E.O. 14033. Stankovic was responsible for a blatant attempt to usurp the authority of the state of BiH over state property located in the RS contrary to BiH Constitutional Court decisions, the BiH Constitution, and a state property disposal ban imposed by the Office of the High Representative. Stankovic's efforts to pass this unconstitutional legislation reflect specious claims made by RS President Milorad Dodik and other RS leaders in this regard.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1344.

On July 11, 2023, OFAC designated individual Aleksandar VULIN under E.O. 14033. 88 Fed Reg. 47,555 (Jul. 24, 2023).

On July 19, 2023, OFAC designated individual Jordan KAMCEV pursuant to E.O. 14033. 88 Fed Reg. 48,948 (Jul. 28, 2023). See State Department press release available at https://www.state.gov/sanctioning-corrupt-businessman-in-north-macedonia/.

On July 31, 2023, OFAC designated the following four individuals pursuant to E.O. 14033: Radovan VISKOVIC, Nenad STEVANDIC, Zeljka CVUANOVIC, and Milos BUKEJLOVIC. 88 Fed. Reg. 73,415 (Oct. 25, 2023). The Department's press statement is available at https://www.state.gov/imposing-sanctions-on-bosnia-and-herzegovina-officials-who-undermined-dayton-peace-accord/, and includes the following:

> Today, the United States is designating four officials from Bosnia and Herzegovina (BiH) who facilitated the passage of a law in the Republika Srpska National Assembly (RSNA) that undermines the BiH Constitution, an annex of the Dayton Accords.
>
> Promoted by the president of the Republika Srpska entity in BiH, Milorad Dodik, a U.S.-designated person, this new legislation is a brazen attempt to undermine state institutions. The law threatens the stability, sovereignty, and territorial integrity of BiH as well as the country's prospects for integration into Euro-Atlantic and European institutions, at the expense of the people of BiH.
>
> High Representative Schmidt — the ultimate authority on the interpretation of the Dayton Accords — publicly condemned the law as an unacceptable offense to the rule of law and an assault on the constitutional order of BiH. Despite the High Representative's action to annul the law, Dodik signed the law into effect on July 7, 2023.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1660.

On October 20, 2023, OFAC designated two individuals—Igor DODIK and Gorica DODIK—and four entities—GLOBAL LIBERTY D.O.O. LAKTASI, FRUIT ECO D.O.O. GRADISKA, AGRO VOCE D.O.O. LAKTASI, and AGAPE GORICA DODIK I IVANA DODIK S.P. BANJA LUKA—pursuant to E.O. 14033. 88 Fed. Reg. 73,414 (Oct. 25, 2023). See State Department press statement, available at , and excerpted below.https://www.state.gov/designating-milorad-dodiks-patronage-network-in-the-western-balkans/, and excerpted below.

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Today, the United States is imposing sanctions on individuals and entities comprising part of the patronage network of Republika Srpska (RS) President Milorad Dodik. The Department of the Treasury has taken action against two individuals and four entities, including Dodik's two adult children, Igor and Gorica Dodik. This network facilitates Dodik's leading role in undermining the 1995 Dayton Peace Agreement and the authority of the High Representative, as well as perpetuating deeply entrenched corruption in Bosnia and Herzegovina (BiH). This network also reinforces the country's patronage-based economy, thereby inhibiting critically important economic growth and opportunity for BiH citizens.

U.S.-designated Dodik – a leading voice of genocide denial and driver of the deepening divisions and political impasse in the country – has misused his official government position to accumulate personal wealth through graft, bribery, and other forms of corruption.

Most recently, Dodik pushed for the passage of a June 2023 RS National Assembly law that purports to declare the decisions of the BiH Constitutional Court and those of the High Representative inapplicable in the RS, thus obstructing implementation of the Dayton Peace Agreement. Dodik signed the law into effect in July, despite the High Representative's action to annul the law, which led the Court of BiH to indict Dodik for ignoring these decisions.

Today's designations aim to disrupt elements of the financial network that personally enriches and enables Dodik at the expense of the territorial integrity and functional governance of BiH, along with the general economic wellbeing of the RS.

These actions build on prior U.S. sanctions and visa restrictions to promote accountability for persons who engage in corruption and undermine democratic processes or institutions in the region. They are part of the U.S. government's wider efforts to promote peace, stability, and functional democratic governance in the Western Balkans.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1825.

Also on October 20, 2023, OFAC determined that an insufficient basis exists to retain the following individual on the SDN List under E.O. 14033 and removed the individual: Aleksandar KARADZIC. 88 Fed. Reg. 73,415 (Oct. 25, 2023).

On November 16, 2023, OFAC designated seven individuals—Miodrag DAVIDOVIC, Petar DJOKIC, Ratka Kunoska KAMCEVA, Branislav MICUNOVIC, Dusko PEROVIC, Irina SAMSONENKO, and Sergey SAMSONENKO—and six entities —BET CITY INTERNATIONAL D.O.O. SKOPJE, ADVERTISING, MARKETING, AND SERVICES COMPANY, INZINJERING-BN BIJELJINA D.O.O., KAMCHEV KONSAL TING SKOPJE DOOEL, ORKA F AJNANS SKOPJE DOOEL, ORKA HOLDING AD, and SISTINA LAJF KEAR SENTAR SKOPJE DOOEL—pursuant to E.O. 14033. 88 Fed. Reg. 82,502 (Nov. 24, 2023).

d. Colombia

In 2023, OFAC removed several individuals and entities from the SDN List under the relevant sanctions authorities. On May 25, 2023, OFAC removed the following nine individuals from the SDN List: Angel Horacio GONZALEZ BETANCUR, Roberto Manuel LOPEZ PERDIGON, Guillermo VALENCIA TRUJILLO, Claudia Jannet CASTILLO LONDONO, Duber Astrid GARCES GIRALDO, Nelson Fernando JARAMILLO ESTRADA, Andres PIEDRAHITA CASTILLO, Leonardo RUIZ PEREZ, and Jose PIEDRAHITA CASTILLO. 88 Fed. Reg. 36,362 (June 2, 2023). OFAC removed nine entities from the SDN List: CONSTRUCTORA FR DE VENEZUELA, C.A., BOLSAK E.U., CIA. ANDINA DE EMPAQUES LTDA., GEOPLASTICOS S.A., GESTORA MERCANTIL S.A., TRINIDAD LTDA. Y CIA. S.C.S., UNIPAPEL S.A., VALOR LTDA. S.C.S., and GUMOBARO S.A.S. *Id*.

On June 29, 2023, OFAC determined that the following persons and entities are unblocked and removed from the SDN List: Carlina VILLA DE CIFUENTES, Hector Fabio GIRALDO VELASCO, Hildebrando Alexander CIFUENTES VILLA, FUNDACION OKCOFFEE COLOMBIA, CRIADERO SANTA GERTRUDIS S.A., ROBLE DE MINAS S.A.S., ALMACEN BATUL, and COMERCIAL ESTILO Y MODA. 88 Fed. Reg. 43,416 (Jul. 7, 2023).

On September 6, 2023, OFAC determined that the following persons and entities are unblocked and removed from the SDN List: Miguel Angel Melchor MEJIA MUNERA, Victor Manuel MEJIA MUNERA, Diosde GONZALEZ RODRIGUEZ, Irma Lizet DAMIAN RAMIREZ, CIA COMERCIALIZADORA DE BIENES RAICES LTDA, INVERSIONES DE

OCCIDENTE LTDA., and CONSORCIO VINICOLA DE OCCIDENTE, S.A. DE C.V. 88 Fed. Reg. 62,428 (Sept. 11, 2023).

On October 31, 2023, OFAC determined that 20 individuals and 73 entities (not listed herein) are unblocked and removed from the SDN List. 88 Fed. Reg. 76,889 (Nov. 7, 2023).

On December 20, 2023, OFAC removed 35 individuals and 34 entities (not listed herein) from the SDN List. 88 Fed. Reg. 89,810 (Dec. 28, 2023).

e. Democratic Republic of Congo

E.O. 13413 of 2006 is entitled, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo," and was amended by E.O. 13671 of 2014 ("Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo").

On August 24, 2023, OFAC designated the following six individuals pursuant to E.O. 13413: Andrew NYAMVUMBA, Ruvugayimikore PROTOGENE, Bernard BYAMUNGU, Salomon TOKOLONGA, Apollinaire HAKIZIMANA, and Sebastien UWIMBABAZI. 88 Fed. Reg. 60,011 (Aug. 30, 2023).

On December 8, 2023, OFAC designated the following three individuals pursuant to E.O. 13413: Willy NGOMA, Michel RUKUNDA, and William Amuri YAKUTUMBA. 88 Fed. Reg. 86,730 (Dec. 14, 2023).

f. South Sudan

On June 20, 2023, OFAC designated two individuals—James NANDO and Alfred FUTUYO—pursuant to E.O. 13664 of April 3, 2014, "Blocking Property of Certain Persons With Respect to South Sudan." 88 Fed. Reg. 41,191 (June 23, 2023). See Secretary Blinken's press statement, available at https://www.state.gov/designating-and-promoting-accountability-for-conflict-related-sexual-violence/, which includes the following:

> The United States is also concurrently designating two South Sudan-based individuals, under Executive Order 13664, involved in abductions and conflict-related sexual violence.
>
> - James Nando is a Major General in South Sudan People's Defense Forces. In 2021, forces loyal to Nando were responsible for at least 64 instances of rape and sexual slavery against civilians in Western Equatoria. In 2018, Nando was responsible for the abduction of hundreds of women and girls.
> - Alfred Futuyo is Governor of Western Equatoria and affiliated with Sudan People's Liberation Movement/Army – In Opposition. In 2018, forces under

> Futuyo's command carried out numerous attacks in Western Equatoria that resulted in the abduction of 887 civilians, of whom at least 43 were raped.

The Treasury Department's press release is available at https://home.treasury.gov/news/press-releases.

In 2019, OFAC designated two senior South Sudanese officials pursuant to E.O. 13664: Martin Elia LOMURO and Kuol Manyang JUUK. See *Digest 2019* at 555-56 for discussion. These designations were published in the Federal Register in 2023. See 88 Fed. Reg. 50,277 (Aug. 1, 2023).

On August 14, 2023, the State Department, Department of Labor, and the Department of Commerce issued a business advisory on South Sudan. The business advisory is available at https://www.state.gov/south-sudan-business-advisory/. See State Department press statement available at https://www.state.gov/u-s-government-issues-a-business-advisory-for-south-sudan/, which is excerpted below.

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The Advisory highlights the growing reputational, financial, and legal risks to U.S. businesses and Americans conducting business or transactions with companies that have significant ties to South Sudan's extended transitional government or that are controlled by family members of government officials.

The transitional government has failed to implement key economic reforms and public financial management commitments made in the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), which were due to be completed by February 2023. The transitional government's lack of progress on these reforms, the absence of significant progress over the original transition period, and the transitional government's continued failure to adhere to its own laws in the transparent management of its oil revenue could adversely impact U.S. businesses, individuals, other persons and their operations in South Sudan and the region.

U.S. businesses and Americans operating in South Sudan and the region should undertake robust due diligence on corruption and human rights issues or abuses that contribute to violence. They should also take care to avoid all dealings, including transactions transiting the United States, that involve any property or interests in property of persons, including from South Sudan, listed on the Department of the Treasury Office of Foreign Assets Control's (OFAC) Specially Designated Nationals and Blocked Persons. U.S. financial institutions should have familiarized themselves with their due diligence and suspicious activity report (SAR) filing obligations related to senior South Sudanese political figures, as is already required and as outlined in a **2017 advisory** from the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). U.S. financial institutions should also refer to the 2020 joint guidance FinCEN issued with the Federal Banking Agencies on Bank Secrecy Act (BSA), "*Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons.*"

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On December 8, 2023, OFAC designated the following three individuals pursuant to E.O. 13664: Gordon Koang BIEL, Gatluak Nyang HOTH, and Joseph Mantiel WAJANG. 88 Fed. Reg. 86,729 (Dec. 14, 2023).

g. North Korea

On December 1, 2022, OFAC designated three individuals pursuant to E.O. 13687 of January 2, 2015, "Imposing Additional Sanctions With Respect To North Korea," which was published in 2023. The designated individuals are: Il Ho JON, Su Gil KIM, and Jin YU. 88 Fed. Reg. 16,305 (Mar. 16, 2023).

On February 28, 2023, OFAC designated two individuals—Kil Su HWANG and Hwa Song PAK—and one entity—CONGO ACONDE SARL—pursuant to E.O. 13810 of September 20, 2017, "Imposing Additional Sanctions With Respect to North Korea." 88 Fed. Reg. 16,303 (Mar. 16, 2023). Also on February 28, 2023, OFAC designated two entities—KOREA PAEKHO TRADING CORPORATION and CHILSONG TRADING CORPORATION—pursuant to E.O. 13687. *Id*.

On April 24, 2023, OFAC designated three individuals, Huihui WU, Hung Man CHENG, and Hyon Sop SIM, pursuant to E.O. 13722, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea." 88 Fed. Reg. 25,736 (Apr. 27, 2023).

On May 23, 2023, OFAC designated entity PYONGYANG UNIVERSITY OF AUTOMATION pursuant to E.O. 13687. 88 Fed. Reg. 34,556 (May 30, 2023).

On August 31, 2023, OFAC designated two individuals—Jin Yong JON and Sergey Mikhaylovich KOZLOV—and one entity—INTELLEKT LLC—pursuant to E.O. 13687. 88 Fed. Reg. 61,668 (Sept. 7, 2023).

(*1*) *Nonproliferation Sanctions*

On June 15, 2023, OFAC designated individual Chol Min CHOE pursuant to E.O. 13382. 88 Fed. Reg. 40,399 (June 21, 2023). At the same time, OFAC designated individual Un Jong CHOE pursuant to E.O. 13810, "Imposing Additional Sanctions With Respect to North Korea." *Id*. The Department's press statement discussing these designations is available at https://www.state.gov/designation-of-two-dprk-individuals-supporting-the-dprks-unlawful-weapons-of-mass-destruction-and-missile-programs/, and includes the following:

> The United States is designating Choe Chol Min and his wife Choe Un Jung. Choe Chol Min has worked with DPRK weapons trading officials, People's Republic of China (PRC) nationals, and other associates to procure materials used in the production of DPRK missiles. He has also supported Second Academy of Natural Sciences (SANS) representatives to facilitate the importation of over a thousand

DPRK workers into the PRC to unlawfully generate income abroad for the DPRK regime. Choe Un Jung, who is officially assigned to the DPRK Embassy in the PRC, helped coordinate an order with one or more SANS associates for dual-use bearings used in DPRK missile production.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1697.

On May 23, 2023, OFAC designated individual Sang Man KIM pursuant to E.O. 13810. 88 Fed. Reg. 34,556 (May 30, 2023).

(2) OFAC designations

On March 30, 2023, OFAC designated individual Ashot MKRTYCHEV pursuant to E.O. 13551, "Blocking Property of Certain Persons With Respect to North Korea." 88 Fed. Reg. 20,018 (Apr. 4, 2023).

On August 16, 2023, OFAC designated the following three entities connected to arms dealer Ashot Mkrtychev, pursuant to E.O. 13551: DEFENSE ENGINEERING LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY VERUS, and VERSOR S.R.O. 88 Fed. Reg. 57,521 (Aug. 23, 2023). The Department's press statement is available at https://www.state.gov/sanctioning-entities-connected-to-russia-dprk-arms-dealer/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1697. Ashot Mkrtychev was designated on March 30, 2023, *supra*.

On October 18, 2023, OFAC determined that the following individual is no longer subject to the blocking provisions of E.O. 13722: Irina Igorevna HUISH. 88 Fed. Reg. 72,817 (Oct. 23, 2023).

h. Zimbabwe

On November 30, 2022, OFAC determined that circumstances no longer warranted the inclusion of individual Happyton Mabhuya BONYONGWE on the SDN List. The individual, who was previously designated pursuant to E.O. 13288, "Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe," as amended by E.O. 13391, was removed from the SDN list on November 30, 2023. 88 Fed. Reg. 84,874 (Dec. 6, 2023).

i. Somalia

On May 24, 2023, OFAC designated four individuals—Abdulwahab Noor ABDI, Mariam BARREH, Bashir Khalif MUSSE, and Ali Ahmed NAAJI—and seven entities—AL NEZAM AL ASASY GENERAL TRADING L.L.C., BUSHRA BACHIR SHIPPING AND LOGISTICS SERVICES L.L.C., JAMAME BROTHERS COMPANY, KISMAYO GENERAL TRADING LLC, RED SEA TRANSIT & TRANSPORT SERVICE, ROYAL SHIPPING AGENCY, AND SITTI GENERAL

TRADING LLC—pursuant to E.O. 13536 of April 12, 2010, "Blocking Property of Certain Persons Contributing to the Conflict in Somalia." 88 Fed. Reg. 34,559 (May 30, 2023).

On December 1, 2023, the UN Security Council unanimously adopted draft resolution 2714 (U.N. Doc. S/RES/2714 (2023) available at https://undocs.org/S/RES/2714). The resolution lifts the arms embargo on the Federal Government of Somalia.

Also on December 1, 2023, the UN Security Council adopted a resolution extending an arms embargo, travel ban, and asset freeze measures to help limit the influence of groups like al-Shabaab (U.N. Doc. S/RES/2713 (2023) available at https://www.undocs.org/S/RES/2713). Ambassador Robert Wood delivered the U.S. explanation of vote following the adoption of the resolution. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-on-somalia/ and excerpted below.

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…The United States welcomes the extension of the Panel of Experts mandate and renewal of the arms embargo, travel ban, and asset freeze measures.

The United States voted in favor of this resolution as these measures, and the Panel's role in monitoring their implementation, remain crucial to promoting peace and stability in Somalia and in the broader region. Moreover, this renewal ensures that Panel oversight and reporting will continue to inform the al-Shabaab Sanctions Committee and this Council. For these reasons, we look forward to the swift appointment of the experts, so they can begin their important work.

The United States also voted in favor of this text because these measures will help limit the influence of groups like al-Shabaab and address the drivers of conflict in Somalia.

We welcome the Government of the Federal Republic of Somalia's commendable progress on weapons and stockpile management. We encourage it to continue this important work.

We urge all UN Member States to implement existing sanctions measures to help curb al-Shabaab's ability to access funds, weapons, and other support they need to carry out attacks and to support Somalia's security and police institutions with the resources they need to combat terrorism and secure their citizens.

We further urge our fellow Council members to support designations, including of al-Shabaab operatives. These designations demonstrate that the international community will support accountability and end impunity for those who undermine peace and security in Somalia.

The United States is disappointed by the omission of the Djibouti and Eritrea language. We note that there has been no noticeable progress on the outstanding issues between the two countries. We remain committed to working constructively with all parties to support the normalization of relations between the two countries.

We are committed to the Somali people and will continue to work closely with the Government of the Federal Republic of Somalia, fellow Council members, and all stakeholders to facilitate peace for the country and the region.

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j. Haiti

On February 16, 2023, the State Department announced steps taken to impose visa restrictions on five individuals and seven family members under section 212(a)(3)(C) of the Immigration and Nationality Act. Secretary Blinken's press statement is available at https://www.state.gov/actions-to-impose-visa-restrictions-on-haitians-involved-in-street-gangs-and-other-haitian-criminal-organizations/.

On September 22, 2023, the Department announced steps taken to impose visa restrictions on an additional five individuals under Section 212(a)(3)(C) of the INA. Secretary Blinken's press statement is available at https://www.state.gov/actions-to-impose-visa-restrictions-on-haitians-involved-in-street-gangs-and-other-haitian-criminal-organizations-2/, and includes the following:

> This action affects current or former Haitian government officials and other individuals believed to be involved in the operation of street gangs and other criminal organizations in Haiti through financial and other forms of material support, including the facilitation of illicit arms or narcotics trafficking.
>
> The Department continues to identify individuals and their immediate family members who may be subject to visa restrictions under this policy. There are consequences for those enabling and financing gangs and other criminal organizations, and we will continue to use all available tools, including visa restrictions and sanctions authorities, to promote accountability for those who engage in such actions. These measures, and those implemented by our partners, are intended to move Haiti towards a more prosperous and stable future.

On October 19, 2023, Ambassador Linda Thomas-Greenfield delivered a statement on the adoption of UN Security Council resolution 2700 renewing Haiti sanctions. See U.N. Doc. S/RES/2700, available at https://undocs.org/en/S/RES/2700(2023). The statement followed the unanimous adoption of the resolution, which was co-drafted by the United States and Ecuador. The statement is available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-the-adoption-of-a-un-security-council-resolution-on-haiti-sanctions/, and included below.

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Today's unanimous adoption by the UN Security Council on a U.S.- and Ecuador-drafted resolution on Haiti sanctions is another milestone and important step to help the Haitian people who have been victims of brutal gang violence, acute food insecurity, a cholera outbreak, and years of instability and needless suffering. The United States thanks our co-penholder Ecuador for its work on this resolution – the third resolution on Haiti adopted by the Security Council since July.

The United States remains deeply concerned by the security and humanitarian situation in Haiti. The continued suffering of the Haitian people due to ongoing violence must end and this resolution recognizes the urgent needs on the ground and builds on the Security Council's recent resolutions to renew and strengthen the mandate of the UN Integrated Office in Haiti and to authorize the Multinational Security Support mission to Haiti.

The adoption of this resolution also strengthens a key tool from the Security Council's broader peace and security toolkit with respect to Haiti, extends the mandate of the Haiti Panel of Experts, and renews arms embargo, travel ban, and asset freeze measures – all of which will play a critical role in promoting peace and stability in Haiti, and in the broader region.

The United States remains committed to the people of Haiti and we will continue to work closely with the Haitian government, fellow Council members, and all stakeholders to facilitate peace and prosperity for Haiti and the region.

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Also on October 19, 2023, Ambassador Robert Wood delivered the U.S. explanation of vote following the adoption of UNSCR 2700 renewing Haiti sanctions. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-on-haiti-sanctions/ and excerpted below.

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With the unanimous adoption of this resolution, the Security Council has taken an important step to help the Haitian people, who have been victims of: brutal gang violence, acute food insecurity, a cholera outbreak, and years of instability and needless suffering.

I would like to first thank Ecuador as our co-penholder for its work on this resolution – the third resolution adopted by this Council on Haiti since July. I also want to thank the members of the Council for their constructive engagement.

We welcome the extension of the mandate of the Haiti Panel of Experts and the renewal of the arms embargo, travel ban, and asset freeze measures. The measures outlined in this resolution will play a critical role in promoting peace and stability in Haiti, and in the broader region.

Colleagues, we remain deeply, deeply concerned by the security and humanitarian situation in Haiti. So many Haitians continue to suffer from the ongoing violence. And the adoption of this resolution strengthens a key tool from the Security Council's broader peace and security toolkit with respect to Haiti.

A lasting political solution is critical to promoting a peaceful and prosperous future for the people of Haiti and the region. And we continue to view an international response to Haiti's call for international security support as serious, credible, and realistic – and one potential approach to taking on Haiti's challenges.

Colleagues, the Haiti Panel of Experts noted in their reporting that Haitian stakeholders expressed hope for the rapid expansion and implementation of UN sanctions in Haiti.

When the Council established the Haiti sanctions committee through Resolution 2653 last year, we answered the calls from the Haitian people to take action against criminal actors, including gangs and their financiers, who have been undermining stability and expanding poverty in their vibrant society. Today is another milestone.

This resolution recognizes the urgent needs on the ground. And this adoption builds on the Council's recent resolutions to renew and strengthen the mandate of the UN Integrated Office in Haiti and to authorize the Multinational Security Support mission to Haiti.

Colleagues, we are dedicated to adding designations to this regime and encourage other Member States to work with us on this. The United States is committed to the people of Haiti. And we will work closely with the Haitian government, fellow Council members, and all stakeholders to facilitate peace and prosperity for Haiti and the region.

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On October 20, 2023, the State Department released a press statement welcoming the adoption of resolution 2700. The press statement is available at https://www.state.gov/un-security-council-resolution-on-haiti/, and follows.

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The United States welcomes the UN Security Council's October 19 unanimous adoption of resolution 2700, which renews an arms embargo on Haiti to prevent the supply of weapons to non-state actors, as well as a targeted assets freeze and travel ban measures.

Since October 2022, the United States has taken steps to impose sanctions and visa restrictions on over 50 individuals for undermining Haiti's democratic processes, supporting or financing gangs and criminal organizations, or engaging in significant corruption and human rights violations.

In addition, the United States continues to take steps to stem the illegal outflow of firearms from the United States to the Caribbean, including Haiti. The U.S. Government is using new criminal authorities in the Bipartisan Safer Communities Act to identify and hold firearms traffickers accountable. To bolster these efforts, in June 2023, Vice President Harris announced the creation of a Department of Justice Coordinator for Caribbean Firearms Prosecutions, including Haiti. The Department of State is also supporting the regional Crime Gun Intelligence Unit in Trinidad and Tobago to help Caribbean partner nations solve gun-related crime cases, deter gun crimes in the region and bring criminals to justice.

Finally, the State Department is partnering with Homeland Security Investigations to create a Transnational Criminal Investigative Unit within Haiti to facilitate investigations and prosecution of transnational crimes, including those with a U.S. nexus. This new unit will focus

on crimes including firearms and ammunition smuggling, human trafficking, and transnational gang activity.

We will continue to use all available tools to promote accountability for corrupt actors, individuals supporting gang violence, and other criminal activity in Haiti. The United States remains committed to promoting peace and prosperity for the people of Haiti.

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On December 1, 2023, the United States nominated the following four Haitian individuals for designation at the UN under the UN's Haiti sanctions regime pursuant to Security Council resolution 2653: Johnson "Izo" André, Renel Destina, Vitel'homme Innocent, and Wilson Joseph. The four individuals were similarly added to the UN Sanctions List on December 8, 2023. For more information, see https://press.un.org/en/2023/sc15520.doc.htm. Also, on December 8, Treasury designated these individuals for each being a foreign person who is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse, pursuant to E.O. 13818. See section A.11.a, *supra*. The State Department press statement discussing designation under E.O. 13818 and the nomination of these individuals for designation under UNSCR 2653 is available at https://www.state.gov/promoting-accountability-in-support-of-the-75th-anniversary-of-the-universal-declaration-of-human-rights/.

k. Iraq

E.O. 13315 of August 28, 2003, entitled "Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' authorizes asset freezing of immediate family members of former Iraqi senior officials whose assets may be frozen. E.O. 13315 is amended by E.O. 13350 of July 29, 2004, "Termination of Emergency Declared in Executive Order 12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315." See *Digest 2003* at 920-23 and *Digest 2004* at 884-86.

In 2022, OFAC removed one individual—Khalaf AL-DULAIMI—and one entity—MIDCO FINANCE S.A. previously designated under E.O. 13315, as amended by E.O. 13315, from the SDN list. This action was published in the Federal Register in 2023. See 88 Fed. Reg. 399 (Jan. 4, 2023).

l. Central African Republic

On January 19, 2023, OFAC designated two individuals-- Aleksandr Aleksandrovich IVANOV and Valery Nikolayevich ZAKHAROV—and four entities-- KRATOL AVIATION, OFFICER'S UNION FOR INTERNATIONAL SECURITY, PRIVATE MILITARY COMPANY 'WAGNER', and SEWA SECURITY SERVICES, under E.O. 13667, "Blocking Property of

Certain Persons Contributing to the Conflict in the Central African Republic." 88 Fed. Reg. 6369 (Jan. 31, 2023).

On July 27, 2023, Ambassador Robert Wood, Alternative Representative for Special Political Affairs, delivered the U.S. explanation of vote on the adoption of a UN Security Council resolution renewing Central African Republic ("CAR") sanctions. The statement is excerpted below and available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-renewing-central-african-republic-sanctions-2/.

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The United States was pleased to vote in favor of the extension of the CAR Panel of Experts' mandate and the renewal of elements of the arms embargo, travel ban, and asset freeze. We voted in favor because the measures in this resolution are crucial to promoting peace and stability in the Central African Republic and broader region.

Most importantly, this resolution will help keep dangerous weapons and resources from reaching armed groups. Today's renewal also ensures the Panel of Experts will continue its oversight and reporting responsibilities, which inform the CAR Sanctions Committee and this Council.

The United States acknowledges the call by the Central African Government to fully lift the arms embargo, but we remain concerned by the security situation in CAR and some Council Members' and CAR authorities' disregard for the sanctions regime's notification requirements, as noted in the Panel of Experts' final report.

Notably, nothing in this or in previous sanctions regimes has kept Central African security forces from receiving any weapons or training they requested. The United States is committed to lifting sanctions when conditions permit, but that is not yet the case in the Central African Republic.

Although the CAR government has made progress in achieving the key benchmarks on security sector reform, further efforts are needed to strengthen stockpile management and address cross-border arms and natural resource smuggling. For these reasons we are disappointed the Council did not include in this resolution an annex of weapons that would have required notification to the CAR Sanctions Committee.

We are increasingly alarmed by reports that MANPADs have been transported through CAR into Sudan by the Wagner Group. Oversight of these weapons remains important for monitoring the security situation in CAR and the broader region. We are also very concerned about the threat that these weapons could pose to the safety and security of peacekeepers serving in MINUSCA.

I would like to highlight that under the terms of today's resolution, Russia remains obligated to notify the Committee of all transfers of weapons and resources to its Wagner mercenaries in the Central African Republic. Any failure to do so will violate the terms of the sanctions regime.

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On July 29, 2023, Ambassador Jeffery DeLaurentis, Senior Advisor for Special Political Affairs, delivered the U.S. explanation of vote on the resolution on CAR sanctions. The explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-renewing-central-african-republic-sanctions/, and excerpted below.

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We support and welcome the extension of the Central African Republic Panel of Experts mandate and the renewal of the travel ban and asset freeze measures for a further 12 months. We thank the efforts of France to get this over the finish line.

Our goal is to promote peace and stability in CAR and across the region, and we believe the measures in this resolution aim to do just that. Specifically, today's action helps ensure the Panel's reporting continues, which spotlights key issues for the Central African people, the CAR government, and this Council.

On the arms embargo, the region is awash with guns and it's time to stem the unfettered flow. If effectively implemented, this arms embargo will help silence the guns. Effective implementation in this case means a notification requirement which is critical for transparency. And it means, as this resolution calls for, that the CAR authorities must continue improving physical protection and accountability of weapons.

So, although this resolution calls for the relaxation of the arms embargo, we must ensure this does not endanger Central Africans, other civilians, MINUSCA personnel, UN staff, or humanitarian workers. Because the truth is, military actions alone will not resolve CAR's crises. Good governance, credible security sector reform, transparent disarmament and reintegration, national dialogue, and justice and accountability are the most important steps toward peace.

To that end, we appreciate the CAR government's efforts to address these issues through the revitalization of the country's 2019 peace agreement and its dedication to the roadmap from the Luanda process.

The United States is committed to the Central African people and we are committed to finding and forging a durable peace. We will continue to work closely with the CAR government, fellow Council members, and all stakeholders to facilitate true security and prosperity for the country and the region.

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On December 8, 2023, OFAC designated the following two individuals pursuant to E.O. 13667: Jean-Francis BOZIZE and Mahamat SALLEH ADOUM KETTE. 88 Fed. Reg. 86,729 (Dec. 14, 2023).

m. Lebanon

On April 4, 2023, OFAC designated two individuals—Teddy Zina RAHME and Raymond Zina RAHME—and two entities—ZR ENERGY DMCC and ZR GROUP SAL HOLDING—pursuant to E.O. 13441 of August 1, 2007, "Blocking Property of Persons Undermining

the Sovereignty of Lebanon or Its Democratic Processes and Institutions." 88 Fed. Reg. 21,232 (Apr. 10, 2023).

On August 10, 2023, OFAC designated the following five individuals pursuant to E.O. 13441: Marianne HOAYEK, Nady SALAMEH, Raja SALAMEH, Riad SALAMEH, and Anna KOSAKOVA. 88 Fed Reg. 56,922 (Aug. 21, 2023). The State Department press statement is available at https://www.state.gov/joint-u-s-uk-and-canadian-sanctions-against-former-lebanese-official-and-co-conspirators-in-corruption-scheme/, and excerpted below.

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As governor of the Banque du Liban (BdL), Riad Salameh used his office to engage in a variety of unlawful self-enrichment schemes with the help of close family members and associates, ignoring Lebanese law and taking privileges not afforded to average citizens, even as the country sank deeper into financial chaos. In doing so, Salameh and his co-conspirators placed their personal financial interests and ambitions above those of the Lebanese people.

Today's action occurs in coordination with similar actions by the United Kingdom and Canada, close partners who share our vision of a Lebanon governed in the interest of its people and free from the corruption and unethical practices perpetuated by elites who abuse positions of privilege.

The Central Bank of Lebanon, the Banque du Liban, is not designated or blocked as a result of today's actions. This action only targets Salameh and the other named individuals. We are clear-eyed about the endemic corruption that plagues Lebanon. We remain committed to the Lebanese people, and we welcome the opportunity to work with partners, allies, civil society, and those members of the Lebanese political elite who are willing to place their country over their self-interest.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1687.

n. Sudan

On May 4, 2023, President Biden issued new executive order, E.O. 14098 "Imposing Sanctions on Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition." 88 Fed. Reg. 29,529 (May 5, 2023). A portion of Section 1 of E.O. 14098 follows.

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Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be responsible for, or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following:

(A) actions or policies that threaten the peace, security, or stability of Sudan;

(B) actions or policies that obstruct, undermine, delay, or impede, or pose a significant risk of obstructing, undermining, delaying, or impeding, the formation or operation of a civilian transitional government, Sudan's transition to democracy, or a future democratically elected government;

(C) actions or policies that have the purpose or effect of undermining democratic processes or institutions in Sudan;

(D) censorship or other actions or policies that prohibit, limit, or penalize the exercise of freedoms of expression, association, or peaceful assembly by individuals in Sudan, or that limit access to free and independent news or information in or with respect to Sudan;

(E) corruption, including bribery, misappropriation of state assets, and interference with public processes such as government oversight of parastatal budgets and revenues for personal benefit;

(F) serious human rights abuse, including serious human rights abuse related to political repression, in or with respect to Sudan;

(G) the targeting of women, children, or any other civilians through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law;

(H) the obstruction of the activities of United Nations missions — including peacekeeping missions, as well as diplomatic or humanitarian missions — in Sudan, or of the delivery of, distribution of, or access to humanitarian assistance; or

(I) attacks against United Nations missions, including peacekeeping operations;

(ii) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be or have been a leader, official, senior executive officer, or member of the board of directors of any entity:

(A) that has, or whose members have, engaged in any activity described in subsection (a)(i) of this section relating to the tenure of such leader, official, senior executive officer, or member of the board of directors; or

(B) whose property and interests in property are blocked pursuant to this order relating to the tenure of such leader, official, senior executive officer, or member of the board of directors;

(iii) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be a spouse or adult child of any person whose property and interests in property are blocked pursuant to this order;

(iv) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity described in

subsection (a)(i) of this section or any person whose property and interests in property are blocked pursuant to this order; or

(v) any foreign person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

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On May 31, 2023, the State Department, the Department of the Treasury, the Department of Commerce, the Department of Labor, and the United States Agency for International Development issued an update to the May 2022 Business Risk Advisory related to Sudan following the eruption of conflict between the Sudanese Armed Forces (SAF) and Rapid Support Forces (RSF) in April 2023. The May 2023 update is available at https://www.state.gov/june-2023-update-risks-for-us-businesses-operating-in-sudan/. The May 2022 business advisory is available at https://www.state.gov/risks-and-considerations-for-u-s-businesses-operating-in-sudan/.

On June 1, 2023, OFAC designated the following four entities pursuant to E.O. 14098: DEFENSE INDUSTRIES SYSTEM, SUDAN MASTER TECHNOLOGY, AL JUNAID MULTI ACTIVITIES CO LTD, and TRADIVE GENERAL TRADING L.L.C. 88 Fed. Reg. 37,139 (June 6, 2023). The State Department also imposed visa restrictions on officials from Sudanese Armed Forces and Rapid Support Forces and leaders from the former Omar al-Bashir regime pursuant to Section 212(a)(3)(C) of the Immigration and Nationality Act. See Secretary Blinken's press statement, available at https://www.state.gov/u-s-measures-in-response-to-the-crisis-in-sudan/, and excerpted below.

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As directed by the President in his May 4 Executive Order, today we are holding accountable the Sudanese Armed Forces (SAF), Rapid Support Forces (RSF), and entities under their control for actions that threaten the peace, security, and stability of Sudan.

The United States is implementing three specific measures to promote accountability for the actions committed by the two forces, including imposing visa restrictions, levying economic sanctions, and updating our business advisory for Sudan.

These actions are in response to SAF and RSF violations of the obligations they undertook in Jeddah: looting, occupation of and attacks on civilian residences and infrastructure, use of aerial bombardment and artillery, attacks and prohibited movements, and obstruction of humanitarian assistance and essential services restoration.

The United States is imposing visa restrictions on specific individuals in Sudan, including officials from the SAF, RSF, and leaders from the former Omar al-Bashir regime, responsible for, or complicit in, undermining Sudan's democratic transition.

We are designating Al Junaid company, an RSF-affiliated gold mining company that operates a series of mines in the Darfur region. The RSF is using the revenue generated from

these mines to procure equipment for the RSF. Tradive General Trading, which the RSF utilizes to procure equipment for its forces, will also be designated.

The United States is taking additional action by designating the Sudanese government-controlled entity Sudan Master Technology, which is a major shareholder in three companies involved in producing weapons and vehicles for the SAF. We are also designating state-operated company Defense Industries System, which produces and procures equipment and weapons for the SAF.

Finally, the Departments of State, the Treasury, Commerce, Labor, and the U.S. Agency for International Development issued an update to the **Business Advisory**, originally introduced in May 2022, to highlight growing risks to U.S. businesses and individuals exacerbated by the conflict. These include trade in gold from a conflict-affected area, business potentially conducted with SAF and RSF-owned entities, and other concerns.

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Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1514.

On September 6, 2023, OFAC designated individual Abdelrahim Hamdan DAGALO pursuant to E.O. 14098. 88 Fed. Reg. 62,625 (Sept. 12, 2023). Concurrently, the State Department imposed visa restrictions on RSF General and West Darfur Sector Commander, Abdul Rahman JUMA. Secretary Blinken's press statement is available at https://www.state.gov/actions-against-senior-rapid-support-forces-commanders-in-sudan/, and includes the following:

> Members of the Rapid Support Forces (RSF) in Darfur have committed atrocities and other abuses, inducing ethnically motivated killings, targeted abuses against human rights activists and defenders, conflict-related sexual violence, and looting and burning of communities. In response, the Department of State and Department of the Treasury are taking actions against two of its senior commanders.
>
> The Department of State is imposing visa restrictions on RSF General and West Darfur Sector Commander, Abdul Rahman Juma, for his involvement in a gross violation of human rights. According to credible sources, on June 15, 2023, RSF forces led by General Juma kidnapped and killed the Governor of West Darfur, Khamis Abbakar, and his brother. This act came just hours after Abbakar's public statements condemning the actions of the RSF.
>
> Concurrently, the Department of the Treasury is imposing sanctions on RSF senior commander Abdelrahim Hamdan Dagalo for his connection to the RSF, whose members have committed human rights abuses against civilians in Sudan, to include conflict-related sexual violence and killings based on ethnicity.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1712.

On September 28, 2023, OFAC designated individual Ali Ahmed KARTI MOHAMED and the following two entities pursuant to E.O. 14098: AVIATRADE LLC and GSK ADVANCE COMPANY LTD. 88 Fed. Reg. 69,681 (Oct. 6, 2023). In addition, the State Department took actions to impose visa restrictions pursuant to Section 212(a)(3)(C) of the Immigration and Nationality Act on individuals responsible for or complicit in undermining Sudan's' democratic transition. Secretary Blinken's press statement is available at https://www.state.gov/designating-actors-undermining-the-peace-security-and-stability-of-sudan/, and includes the following:

> We are imposing sanctions on Ali Karti, Secretary General of the Sudanese Islamic Movement, a hardline Islamist group that actively opposes Sudan's democratic transition. Karti was Minister of Foreign Affairs during Omar al-Bashir's regime. Following the fall of the al-Bashir regime, Karti led efforts to undermine the former civilian-led transitional government and derail the Framework Political Agreement process. He and other former regime officials are now obstructing efforts to reach a ceasefire between the Sudanese Armed Forces and the Rapid Support Forces, mobilizing forces to enable continued fighting, and opposing Sudanese civilian efforts to resume Sudan's stalled democratic transition.
>
> In addition, the Department of State has taken steps this week to impose visa restrictions on individuals believed to be responsible for or complicit in past and current efforts to undermine Sudan's democratic transition. This includes Sudanese Islamists and officials of the former al-Bashir regime, as well as other individuals who are working to suppress human rights and fundamental freedoms or engage in other actions that undermine Sudan's aspirations for democracy. We will continue to hold to account those who undermine peace and a democratic transition in Sudan.

Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1769.

On December 4, 2023, OFAC designated the following three individuals pursuant to E.O. 14098: Mohamed Atta Elmoula ABBAS, Taha Osman Ahmed AL-HUSSEIN, and Salah Abdallah Mohamed SALAH. The State Department issued a press statement, available at https://www.state.gov/designation-of-individuals-linked-to-the-conflict-in-sudan/. Treasury's press release is available at https://home.treasury.gov/news/press-releases/jy1947.

o. Africa Gold Advisory

On June 27, 2023, the State Department announced in a media note available at https://www.state.gov/the-united-states-issues-an-advisory-focused-on-the-gold-sector-across-sub-saharan-africa/, the issuance of a unique business risk advisory focused on the gold sector across sub-Saharan Africa. The advisory was issued in

coordination with the Treasury Department, Commerce Department, the Department of Homeland Security, the Labor Department, and the United States Agency for International Development. The media note describes the advisory as follows:

> The advisory highlights the opportunities and specific risks raised by the gold trade across sub-Saharan Africa and encourages industry participants to adopt and apply strengthened due diligence practices to ensure that malign actors, such as the Wagner Group, are unable to exploit and benefit from the sector, which remains essential to the livelihoods of millions of people across the continent.
>
> The advisory provides integrated and holistic guidance to those connected to the gold sector in sub-Saharan Africa, which produces approximately 25 percent of the world's gold each year. It encourages U.S. businesses to undertake responsible investment in all aspects of the sector: mining, trading, refining, manufacturing, and retail of end products. In particular, the advisory discusses the multi-faceted context related to artisanal and small-scale mining, reviewing the opportunities for development in the sector and ways in which the U.S. government has provided support.

The full business advisory is available at https://www.state.gov/africa-gold-advisory/.

p. Mali

On August 30, 2023, Ambassador Robert Wood, Alternative Representative for Special Political Affairs, delivered remarks on the Russian drafted UN Security Council resolution on renewing Mali sanctions. The remarks are excerpted below and available at https://usun.usmission.gov/remarks-on-the-russian-drafted-un-security-council-resolution-on-renewing-mali-sanctions/.

* * * *

We find the Russian draft for the sanctions regime disingenuous and lamentable. First, Russia's draft was introduced with no opportunity for discussion or negotiation.

Although the text calls for maintaining the travel ban and asset freezes, the draft ends the Panel of Experts' reporting mandate. One also must question why Russia seeks to renew the sanctions for only six months and then add a sunset clause. The situation in Mali requires our sustained support. The text Russia has put forward falls lamentably short in that objective.

Following the withdrawal of MINUSMA, the Panel of Experts is the only UN mechanism left to monitor and report on human rights abuses as well as facilitate efforts to implement the peace agreement.

The Panel's elimination – as called for by Russia – would render the regime ineffective and not useful for Mali.

Russia seeks to eliminate the Panel of Expert's mandate to stifle publication of uncomfortable truths about Wagner's actions in Mali which require attention. Russia is putting its own interests above those of the region.

Russia's repeated refusals to engage in negotiations followed by its submission of an alternative text at the eleventh-hour are egregious breaks in procedure which fail to respect the integrity and transparency essential to Council deliberations.

It is for these reasons that the United States must oppose the Russian drafted resolution, and we urge others to do so as well for the sake of the Malian people.

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On August 30, 2023, following the vote on the draft resolution that would have renewed Mali sanctions, which was vetoed by Russia, Ambassador Robert Wood delivered remarks. The remarks are available at https://usun.usmission.gov/remarks-on-the-france-and-uae-drafted-un-security-council-resolution-on-renewing-mali-sanctions/ and included below.

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* * * *

The United States is disappointed by the outcome of today's vote. Once again, Russia has imposed its will on the Council, in the face of the opposition of countries from the region. The Council's failure to agree on the urgent and necessary renewal of Mali's sanctions regime due to Russia's actions threatens peace and security not just in Mali, but the entire region.

We voted in favor of this text because the Panel of Experts' reporting is a central source of information on the situation in Mali. The travel ban and asset freeze remain necessary to stem the illicit financial transfers and ill-gotten gains both from Mali and into a region in which numerous malign actors operate and have sadly proliferated. Too many people continue to suffer from the ongoing violence, and due to Russia's actions, this Council has failed to renew some of the most important international initiatives for addressing this crisis.

The provisions of this resolution remain critical to peace and security in Mali. The United States is committed to working constructively with Security Council colleagues in the coming days to achieve a mandate renewal that accurately reflects the dire situation on the ground and this Council's primary role to maintain international peace and security.

* * * *

q. Restrictions related to Irregular Migration

On November 21, 2023, the Department announced a new visa restriction policy under INA 212(a)(3)(C) for flight operators facilitating irregular migration. The press statement is available at https://www.state.gov/visa-restriction-policy-for-flight-operators-facilitating-irregular-migration/, and explains:

> The State Department today launched a new visa restriction policy targeting individuals running charter flights into Nicaragua designed primarily for irregular migrants. In a growing trend, charter flight companies have been offering flights—and charging extortion-level prices—that put migrants onto a dangerous overland path north to the U.S. border. Many of these migrants lack a legal basis for entering or remaining in the United States and are often returned to their home countries, having wasted significant personal resources and put themselves and their families at risk.
>
> As part of our comprehensive approach to addressing irregular migration, the U.S. government is taking steps to impose visa restrictions under INA 212 (a)(3)(C) against owners, executives, and/or senior officials of companies providing charter flights into Nicaragua designed for use primarily by irregular migrants to the United States. These charter flights and their operators target migrants and put them in harm's way. We are also engaging with governments in the region, as well as the private sector, to seek to eliminate this exploitative practice.

r. Fallon Smart Policy related to Assisting Fugitives Evading the U.S. Justice System

On June 21, 2023, Secretary Blinken announced a new visa restriction policy under Section 212(a)(3)(C) of the Immigration and Nationality Act for foreign government officials and agents, and their immediate family members, who have assisted fugitives in evading the U.S. justice system. Secretary Blinken's press statement is available at https://www.state.gov/announcing-the-fallon-smart-policy-visa-restrictions-on-foreign-government-officials-who-have-assisted-fugitives-in-evading-the-u-s-justice-system/, and explains:

> Under Section 212(a)(3)(C) of the Immigration and Nationality Act, I am announcing a new policy of visa restrictions on foreign government officials and agents who have intervened in a manner beyond the reasonable provision of consular services to assist fugitives accused or convicted of serious crimes to evade the U.S. justice system. Such individuals are subject to the "Fallon Smart Policy." Immediate family members of such individuals may also be subject to this policy.
>
> This policy is named in honor of Fallon Smart, a 15-year-old who was killed in a hit-and-run incident in 2016. The foreign national accused of causing Fallon Smart's death fled the United States to avoid being tried for manslaughter.

s. Afghanistan

(1) Visa Restrictions

On February 1, 2023, Secretary Blinken announced actions to impose additional visa restrictions in response to the Taliban's ban on women's university education and working with NGOs. The Secretary's press statement is available at https://www.state.gov/actions-to-impose-additional-visa-restrictions-in-response-to-the-talibans-ban-on-womens-university-education-and-working-with-ngos/, and explains:

> The Taliban's most recent edicts ban women from universities and from working with NGOs, and further the Taliban's previous measures that closed secondary schools to girls and limit the ability of women and girls to participate in the Afghan society and economy. Through these decisions, the Taliban have again shown their disregard for the welfare of the Afghan people.
>
> So far, the Taliban's actions have forced over one million school-aged Afghan girls and young women out of the classroom, with more women out of universities and countless Afghan women out of the workforce. These numbers will only grow as time goes on, worsening the country's already dire economic and humanitarian crises. Women's and girls' quality, safe, and inclusive education and workforce participation is essential to growing and strengthening economies, reducing inequality, and fostering stability. Equal access to education and work is also an essential component to the vitality and resiliency of entire populations, including all adults and children, regardless of gender. The Taliban cannot expect the respect and support of the international community until they respect the human rights and fundamental freedoms of all Afghans, including women and girls.

(2) UN Security Council Resolutions

On December 14, 2023, Ambassador Linda Thomas-Greenfield delivered the U.S. explanation of vote following the adoption of a UN Security Council resolution renewing the mandate of the 1988 Monitoring Team. The U.S. explanation of vote is available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-renewing-the-mandate-of-the-1988-monitoring-team/, and excerpted below.

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[T]he United States welcomes today's renewal of the UN Security Council's 1988 Monitoring Team mandate for an additional year, and the reaffirmation of the 1988 regime's assets freeze, travel ban, and targeted arms embargo.

The results of today's vote serve as confirmation of the continuing importance of the 1988 sanctions regime in supporting peace and stability in Afghanistan.

We know the 1988 Monitoring Team's reporting remains crucial to understanding both the impact of the sanctions on the listed individuals and entities – and the events on the ground in Afghanistan.

In addition, these insights enable Member States to track whether the Taliban follows through on its commitments, including those involving counterterrorism and human rights for women and girls, as well as unhindered humanitarian access, safe conditions for humanitarian personnel, and the independent provision of assistance.

So, once again, the United States is grateful for the adoption of this critical resolution and for members' constructive engagement as we worked to renew it.

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B. EXPORT CONTROLS

1. Debarments

On June 15, 2023, the U.S. Department of State provided notice of ten persons statutorily debarred for having been convicted of violating, or conspiring to violate, the Arms Export Control Act (22 U.S.C. 2751, *et seq.*). This action, pursuant to section 127.7(b) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130), was taken by the Department's Office of Defense Trade Controls Compliance in the Bureau of Political-Military Affairs, in conjunction with the Department of Justice, Homeland Security Investigations, and the Federal Bureau of Investigation, based on the criminal convictions of the ten persons by a court of the United States. 88 Fed. Reg. 39,323 (June 15, 2023). The persons are:

(1) Almendarez, Maria Guadalupe; May 10, 2022; Eastern District of Arkansas; 4:19–cr–00116; December 1980.
(2) Bükey, Murat; a.k.a. Bukey, Murat; a.k.a. Murat, Recep; March 22, 2023; District of Columbia; 1:18–cr–00129; January 1971.
(3) Cassidy, Kevin Jerome; September 13, 2022; District of Arizona; 2:18–cr–01236; December 1959.
(4) Hamade, Usama Darwich; a.k.a. Hamade, Prince Sam; July 22, 2020; District of Minnesota; 0:15–cr–00237; December 1964.
(5) Pierson, Andrew Scott; April 29, 2022; Eastern District of Arkansas; 4:19–cr–00116; May 1975.
(6) Radionov, Ihor; August 27, 2021; Middle District of Florida; 8:20–cr–00308; January 1969.
(7) Sery, Joe; September 19, 2022; Southern District of California; 3:21–cr–02898; June 1944.
(8) Ugur, Arif; December 16, 2022; District of Massachusetts; 1:21–cr–10221; January 1969.
(9) Veletanlic, Hany; January 27, 2020; Western District of Washington; 2:18–cr–00162; December 1983.

> (10) Wu, Tian Min; a.k.a. Wu, Bob; a.k.a. Wu, David; a.k.a. Sones, Graham; a.k.a. Wang, Edward; June 9, 2021; Central District of California; 2:17–cr–00081; April 1965.

See also State Department media note, available at https://www.state.gov/u-s-department-of-state-debars-ten-persons-for-violating-or-conspiring-to-violate-the-arms-export-control-act-2/.

2. Administrative Settlements

In 2023, the State Department announced the conclusion of the following administrative settlements to resolve violations and alleged violations of the Arms Export Control Act ("AECA"), 22 U.S.C. § 2751 et seq., and the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. Parts 120-130.

In a February 27, 2023 media note, available at https://www.state.gov/u-s-department-of-state-concludes-20000000-settlement-of-alleged-export-violations-by-3d-systems-corporation/, the State Department announced the conclusion of a $20,000,000 administrative settlement with 3D Systems Corporation (3D) of Rock Hill, South Carolina. The alleged violations included unauthorized exports and retransfers of technical data to the People's Republic of China, unauthorized reexports of technical data to Taiwan, unauthorized exports of technical data to foreign-person employees, and failure to maintain ITAR records. The media note states:

> Under the terms of the 36-month Consent Agreement, 3D Systems Corporation will pay a civil penalty of $20,000,000. The Department has agreed to suspend $10,000,000 of this amount on the condition that the funds will be used for Department-approved Consent Agreement remedial compliance measures to strengthen 3D's compliance program. In addition, the Company will engage an external Special Compliance officer for at least the first year of the Consent Agreement and will conduct two external audits of its ITAR compliance program and implement additional compliance measures.

In a May 31, 2023 media note, available at https://www.state.gov/u-s-department-of-state-concludes-settlement-resolving-export-violations-by-vta-telecom-corporation/, the State Department announced an administrative settlement with VTA Telecom Corporation to resolve six violations of AECA and ITAR. The unauthorized exports and attempted exports in this case included ITAR-controlled defense articles, including hobby rocket motors, video trackers, including related technical data, and a gas turbine engine controlled under U.S. Munitions List Categories IV(d)(7), IV(h), IV(h)(11), XII(a), and XIX(c) to Vietnam, a proscribed country for exports and temporary imports of defense articles and defense services, by 22 CFR § 126.1 at the time of the violations. The media note summarizes the agreement as follows:

Under the terms of the Consent Agreement, VTA Telecom Corporation will be administratively debarred and thereby prohibited from participating directly or indirectly in any activities subject to the ITAR for three years. See 88 Fed. Reg. 35,994 (June 1, 2023) for administrative debarment of VTA Telecom Corporation.

In an August 28, 2023 media note, available at https://www.state.gov/u-s-department-of-state-concludes-settlement-resolving-export-violations-by-island-pyrochemical-industries-corp/, the State Department announced the conclusion of an administrative settlement with Island Pyrochemical Industries Corp. (IPI) to resolve three violations of AECA and ITAR. The settlement addresses misrepresentation of material fact on export license applications and unauthorized brokering activities involving ITAR-controlled ammonium perchlorate, which is controlled under U.S. Munitions List Category V(d)(2), from the People's Republic of China, a proscribed country for exports and temporary imports of defense articles and defense services, under 22 CFR § 126.1 at the time of the violations.

3. Export Controls and Human Rights Initiative

On March 30, 2023, the State Department announced in a media note the launch of the Export Controls and Human Rights Initiative, a voluntary, nonbinding written code of conduct to apply export controls to prevent human rights abuses. The media note is available at https://www.state.gov/export-controls-and-human-rights-initiative-code-of-conduct-released-at-the-summit-for-democracy/, and follows.

* * * *

The United States continues to put human rights at the center of our foreign policy. The Export Controls and Human Rights Initiative – launched at the first Summit for Democracy as part of the Presidential Initiative for Democratic Renewal – is a multilateral effort intended to counter state and non-state actors' misuse of goods and technology that violate human rights. During the Year of Action following the first Summit, the United States led an effort to establish a voluntary, nonbinding written code of conduct outlining political commitments by Subscribing States to apply export control tools to prevent the proliferation of goods, software, and technologies that enable serious human rights abuses. Written with the input of partner countries, the Code of Conduct complements existing multilateral commitments and will contribute to regional and international security and stability.

In addition to the United States, the governments that have endorsed the voluntary Code of Conduct are: Albania, Australia, Bulgaria, Canada, Costa Rica, Croatia, Czechia, Denmark, Ecuador, Estonia, Finland, France, Germany, Japan, Kosovo, Latvia, The Netherlands, New Zealand, North Macedonia, Norway, Republic of Korea, Slovakia, Spain, and the United Kingdom. The Code of Conduct is open for all Summit for Democracy participants to join.

The Code of Conduct calls for Subscribing States to:

- Take human rights into account when reviewing potential exports of dual-use goods, software, or technologies that could be misused for the purposes of serious violations or abuses of human rights.
- Consult with the private sector, academia, and civil society representatives on human rights concerns and effective implementation of export control measures.
- Share information with each other on emerging threats and risks associated with the trade of goods, software, and technologies that pose human rights concerns.
- Share best practices in developing and implementing export controls of dual-use goods and technologies that could be misused, reexported, or transferred in a manner that could result in serious violations or abuses of human rights.
- Encourage their respective private sectors to conduct due diligence in line with national law and the UN Guiding Principles on Business and Human Rights or other complementing international instruments, while enabling non-subscribing states to do the same.
- Aim to improve the capacity of States that have not subscribed to the Code of Conduct to do the same in accordance with national programs and procedures.

We will build on the initial endorsements of the ECHRI Code of Conduct by States at the Summit for Democracy and seek additional endorsements from other States. We will convene a meeting later this year with Subscribing States to begin discussions on implementing the commitments in the Code of Conduct. We will also continue discussions with relevant stakeholders including in the private sector, civil society, academia, and the technical community.

Find the text of the full code of conduct [91 KB].

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4. Litigation: *Washington v. Department of State* and *Defense Distributed*

For a detailed background on *Washington v. Department of State and Defense Distributed*, see *Digest 2022* at 720-22, *Digest 2021* at 695-701, *Digest 2020* at 629, *Digest 2019* at 578–79, *Digest 2016* at 668–75, and *Digest 2015* at 680–84. The *Defense Distributed* case involved challenges to the restrictions on publishing instructions on the Defense Distributed website that would enable the 3D printing of certain weapons. On March 15, 2023, the court in *Distributed v. Grewal* granted the government's motion to dismiss plaintiff's Administrative Procedure Act (APA) and constitutional claims. See 364 F.Supp. 3d 681 (W.D. Tex. 2019). On April 3, 2023, the district court transferred plaintiff's breach of contract claim to the United States Court of Federal Claims pursuant to 28 U.S.C. § 1631. No. 18-cv-00637 (W.D. Tex.) Plaintiffs claimed that the State Department violated a settlement agreement by complying with a separate court order from the Eastern District of Washington. However, plaintiffs' complaint went beyond the breach of contract claim, reasserting their APA and constitutional claims. On October 19, 2023, the government filed a motion to dismiss on jurisdictional grounds. No. 23-849 (Fed. Cl.).[***]

[***] Editor's note: On March 13, 2024, the U.S. Court of Federal Claims dismissed plaintiffs' claims for lack of jurisdiction without reaching the merits. *Defense Distributed, et al. v. United States*, No. 23-849 (Fed. Cl.).

Cross References

U.S. Passports Invalid for Travel to North Korea, **Ch. 1.A.8**
E.O. 14078, "Bolstering Efforts To Bring Hostages and Wrongfully Detained United States Nationals Home," **Ch. 2.A.3.a**
Organized Crime, **Ch. 3.B.1**
Reward for justice offer for Vitel'homme Innocent, **Ch. 3.B.1**
Narcotics, **Ch. 3.B.3**
Designations of Foreign Terrorist Organizations ("FTOs"), **Ch. 3.B.4.a(2)**
Determinations of countries not fully cooperating with U.S. antiterrorism efforts, **Ch. 3.B.4.b**
Corruption, **Ch. 3.B.5**
UN Third Committee statements on sanctions , **Ch. 6.A.3**
HRC on sanctions, **Ch. 6.A.4**
China's policies in Xinjiang, **Ch. 6.A.5.c**
Forced labor in China, **Ch. 6.A.5.c**
Media freedom in Hong Kong, **Ch. 6.K**
UN resolutions related to Russia's aggression against Ukraine, **Ch. 7.A.2**
OAS on repression in Nicaragua, **Ch. 7.D.4**
Resolution of Sudan claims, **Ch. 8.B**
Bosnia and Herzegovina, **Ch. 9.A.1**
Ukraine, **Ch. 9.B.1**
Halkbank v. United States, **Ch. 10.A.1**
Syria, **Ch. 17.B.2**
Ukraine, **Ch. 17.B.3**
Afghanistan, **Ch. 17.B.5**
Ethiopia, **Ch. 17.B.7**
Sudan, **Ch. 17.B.9**
Mali, **Ch. 17.B.10**
Haiti, **Ch. 17.B.12**
Atrocities in Burma, **Ch. 17.C.3**
Atrocities in Ukraine, **Ch. 17.C.4**
Atrocities in Northern Ethiopia, **Ch. 17.C.5**
Actions in Response to Iran and Iran-Backed Militia Groups, **Ch. 18.A.2**
Chemical weapons in Syria, **Ch. 19.D.1**

CHAPTER 17

International Conflict Resolution and Avoidance

A. MIDDLE EAST PEACE PROCESS

On February 13, 2023, Secretary Blinken issued a press statement on Israel's settlement and outpost legalization announcement. The press statement follows and is available at https://www.state.gov/israeli-settlement-and-outpost-legalization-announcement/.

> We are deeply troubled by Israel's decision yesterday to advance reportedly nearly 10,000 settlement units and to begin a process to retroactively legalize nine outposts in the West Bank that were previously illegal under Israeli law. Like previous administrations, Democratic and Republican, we strongly oppose such unilateral measures, which exacerbate tensions and undermine the prospects for a negotiated two-state solution. As I have previously stated, anything that takes us away from the vision of two states for two peoples is detrimental to Israel's long-term security, its identity as a Jewish and democratic state, and to our vision of equal measures of security, freedom, prosperity, and dignity for Israelis and Palestinians alike. We call on all parties to avoid additional actions that can further escalate tensions in the region and to take practical steps that can improve the well-being of the Palestinian people.

On May 13, 2023, Secretary Antony J. Blinken issued a press statement welcoming the ceasefire agreement in Gaza and Israel. The press statement follows and is available at https://www.state.gov/welcoming-ceasefire-agreement-in-israel-and-gaza/.

> The United States welcomes the agreement today for a ceasefire to bring an end to the hostilities in Israel and Gaza. We express our condolences to the families of civilians who were killed and those who were injured in the violence.
>
> The United States commends Egypt's crucial role in mediating the ceasefire agreement, which will prevent the further loss of civilian lives. We also recognize Qatar's robust efforts to de-escalate the situation and end the hostilities, as well as the international community's support for the ceasefire. Our team worked tirelessly in cooperation with our partners to support these efforts.

> The United States reaffirms our ironclad commitment to Israel's security, as reflected in our ongoing support for Iron Dome and other Israeli missile defense systems. We will remain engaged with our partners to promote calm in the weeks and months ahead. We also will continue our efforts to improve quality of life for Palestinians and we urge the swift delivery of fuel and other critical supplies into Gaza. The United States believes that Israelis and Palestinians both deserve to live safely and securely and to enjoy equal measures of freedom, prosperity, and democracy.

On October 7, 2023, the Secretary of State issued a press statement condemning attacks by Hamas against Israel. The statement follows and is available at https://www.state.gov/israel-under-attack/.

> The United States unequivocally condemns the appalling attacks by Hamas terrorists against Israel, including civilians and civilian communities. There is never any justification for terrorism. We stand in solidarity with the government and people of Israel, and extend our condolences for the Israeli lives lost in these attacks. We will remain in close contact with our Israeli partners. The United States supports Israel's right to defend itself.

On November 21, 2023, Secretary Blinken issued a press statement welcoming a deal to release hostages in Gaza. The statement is available at https://www.state.gov/release-of-hostages-in-gaza/ and follows:

> The United States welcomes the deal to release 50 hostages, including American citizens, held by Hamas since its October 7 attack on Israel. I cannot imagine the ordeal that each of these individuals has endured over the past few weeks, and I am thankful that they will be reunited with their loved ones soon.
>
> Today's outcome is the result of tireless diplomacy and relentless effort across the Department and broader United States government. I appreciate the leadership and ongoing partnership of Egypt and Qatar in this work. I also thank the government of Israel for supporting a humanitarian pause that will facilitate the transfer of hostages to safety and allow additional humanitarian assistance to reach Palestinian civilians in Gaza.
>
> While this deal marks significant progress, we will not rest as long as Hamas continues to hold hostages in Gaza. My highest priority is the safety and security of Americans overseas, and we will continue our efforts to secure the release of every hostage and their swift reunification with their families.

On November 28, 2023, the State Department published as a media note a joint statement of the G7 foreign ministers on the situation in Israel and Gaza. The statement, released by the G7 foreign ministers of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States of America, and the High Representative of the

European Union, is available at https://www.state.gov/g7-foreign-ministers-statement-on-the-situation-in-israel-and-gaza/ and follows.

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We, the G7 Foreign Ministers of Canada, France, Germany, Italy, Japan, the United Kingdom, the United States of America, and the High Representative of the European Union welcome the release of some of the hostages seized on October 7 by Hamas and other terrorist organizations, and the recent pause in hostilities that has allowed a surge in humanitarian assistance to reach Palestinian civilians in Gaza. We, as the G7, urge the release of all hostages immediately and unconditionally. We call for the facilitated departure of all foreign nationals. We emphasize Israel's right to defend itself and its people, in accordance with international law, as it seeks to prevent a recurrence of the October 7 attacks.

We appreciate the leadership of the United States and countries in the region, especially Qatar and Egypt, and their tireless efforts to secure this and future pauses. We support the significant efforts of the United Nations to coordinate the delivery of humanitarian assistance during this pause.

This arrangement is a crucial step towards bringing all remaining hostages home and addressing the full scope of the ongoing humanitarian crisis in Gaza. We call on all parties to build on the provisions of the deal and to ensure greater humanitarian aid continues to reach civilians in Gaza on a sustained basis. Every effort must be made to ensure humanitarian support for civilians, including food, water, fuel, and medical supplies. We support the further extension of this pause and future pauses as needed to enable assistance to be scaled up, and to facilitate the release of all hostages.

We underscore the importance of protecting civilians and compliance with international law, in particular international humanitarian law. We remain steadfast in our commitment to work with all partners in the region to prevent the conflict from escalating further. Emphasizing the importance of maritime security, we call on all parties not to threaten or interfere with lawful exercise of navigational rights and freedoms by all vessels. We especially call on the Houthis to immediately cease attacks on civilians and threats to international shipping lanes and commercial vessels and release the M/V Galaxy Leader and its crew, illegally seized from international waters on November 19.

We remain committed to a Palestinian state as part of a two-state solution that enables both Israelis and Palestinians to live in a just, lasting, and secure peace.

* * * *

B. PEACEKEEPING, CONFLICT RESOLUTION, AND RELATED SECURITY SUPPORT

1. General

On September 7, 2023, Ambassador Robert Wood, Alternative Representative for Special Political Affairs, delivered remarks at a UN Security Council briefing on UN peacekeeping operations. The remarks are excerpted below and available at

https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-un-peacekeeping-operations-3/.

* * * *

In recent years, there has been a disturbing trend of increasing threats of violence against UN peacekeepers. Just this past month in August, UNFICYP peacekeepers were physically assaulted in Pyla. Violence perpetrated against UN peacekeepers is unacceptable. We call on the Secretary-General and member states, particularly host governments, to do everything they can to promote the safety and security of UN peacekeepers.

One of the largest, and growing, threats to that safety is misinformation and disinformation. Misinformation and disinformation campaigns, such as those we have seen targeting MINUSCA, hinder missions' abilities to protect civilians, investigate human rights violations, and facilitate political dialogue. Misinformation and disinformation breed mistrust of the mission by local populations, which makes peacekeepers a target for violence.

Peacekeeping missions must proactively shape public messaging to include factual information about a mission's mandate in local languages on accessible media platforms. Host governments must also increase their efforts to combat misinformation and disinformation campaigns targeting UN missions.

Environmental management is a cross-cutting issue that impacts peacekeeper safety and security, mission operations, and the legacy that peacekeepers leave behind. More reliance on renewable energy, and less reliance on diesel, means fewer supply convoys which expose peacekeepers to attacks and lessens the flow of funding to conflict actors who control supply chains. The bottom line is this: "greener" peacekeeping leads to safer peacekeepers, and safer and cleaner environment for host communities.

To encourage greater support for these efforts, the United States will host a side event for the 2023 Accra Peacekeeping Ministerial to explore innovative partnerships with troop and police contributing countries to meet key UN environmental management goals.

The United States underlines the importance of the Secretariat and Member States continuing to work to improve performance of peacekeeping operations. Improving peacekeeping performance is an integral part of the Secretary-General's Action for Peacekeeping and Action for Peacekeeping "Plus" agenda, and UN Security Council Resolution 2436 shows it is a priority for the Council as well.

The Council must continue to seek accountability for underperformance in UN peacekeeping, and to do our part to ensure that missions have the support they need to succeed.

* * * *

On December 21, 2023, Ambassador Robert Wood, Alternative Representative for Special Political Affairs, delivered remarks before a vote on a UN Security Council resolution on financing African Union-led peace support operations. The remarks are available at https://usun.usmission.gov/remarks-before-the-vote-on-a-un-security-council-resolution-on-financing-african-union-led-peace-support-operations/, which follows.

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* * * *

Colleagues, finding a way to better support African Union-led peace support operations is a priority for the United States. In 2016, we spear-headed Security Council Resolution 2320, which cemented the consensus behind the idea of burden-sharing between the United Nations and the African Union to support the deployment and sustainment of these operations. That resolution was adopted unanimously by the Council.

We have worked hard and in good faith with all Council members to reach consensus on this draft resolution, and we commend the penholders for their efforts as well. And to be clear: there are many important elements in this draft resolution that the United States supports.

But there is one critical element that this resolution lacks: an explicit delineation of the financial burden that UN Member States will need to bear for these operations. As drafted, we interpret the draft resolution as not – repeat: not – [requiring] 100 percent funding from the UN, since it only provides for "appropriate" amount of UN funding.

But in order to remove any possible ambiguity, we believe that the resolution should be as clear as possible on this point. Not only on principle, but because a clear and actionable resolution will pave the way for the timely deployment of a future AU peace support operation, and resolving this possible ambiguity is an important step to get us there.

Accordingly, the United States is proposing this amendment to include a specific limit on UN contributions, in clear language, in this draft resolution, and ensure that all stakeholders are on the same page about what this resolution means. We urge all Security Council members who would like this draft resolution to be adopted unanimously to also vote "yes" to include this amendment in the draft.

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Ambassador Robert Wood delivered the U.S. explanation of vote following the adoption of a UN Security Council resolution on financing African Union-lead peace support operations. The December 21, 2023 remarks are available at https://usun.usmission.gov/explanation-of-vote-following-the-adoption-of-a-un-security-council-resolution-on-financing-african-union-led-peace-support-operations/, excerpted.

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[T]he United States is pleased to support this framework resolution, which outlines the conditions under which the UN Security Council would consider authorizing AU-led Peace Support Operations with access to UN assessed contributions.

We recognize the AU's important contributions with respect to the PSOs it has already deployed. And we applaud the AU's partnership with the UN in developing common frameworks on human rights, conduct, and discipline, for those operations.

As we look to the future, we want to take a moment to highlight a few key elements of this resolution.

First, it underscores the primacy of politics, and the need for a coherent political strategy to guide any operation.

Second, it notes that any support to AU PSOs must be in full compliance with the UN's Human Rights Due Diligence Policy.

Third, it emphasizes that these operations must include appropriate safeguards for the protection of civilians.

And fourth, it outlines that any PSO receiving UN assessed contributions will be authorized by – and ultimately, accountable to – this Council for implementation of its mandate, and to the GA for appropriate and reasonable use of funds.

And finally, it specifies a burden-sharing agreement. Namely, that UN contributions to AU PSOs will be no more than 75 percent of the cost of the operation's annual budget.

We stand ready to work with Security Council members and the African Union to determine how the remainder of the budget would be financed whether through an AU financial contribution, voluntary contributions, in-kind contributions, or some contribution thereof.

I want to end by expressing the United States' gratitude to the A3 for their flexibility as co-pens in helping put our shared principles to paper, as well as to Ghana for its partnership and leadership throughout this process.

As we near the end of Ghana's time on the Council, we are eager to cement its legacy by moving forward with AU financing to ensure peace on a continent faced with numerous security threats. And we look forward to seeing this resolution implemented, so that the AU can face those challenges head on.

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On December 22, 2023, Ambassador Linda Thomas-Greenfield delivered a statement on the adoption of the UN Security Council resolution on financing African Union-led support operations. The statement is available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-the-adoption-of-a-un-security-council-resolution-on-financing-african-union-led-support-operations/, which follows.

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The United States welcomes the unanimous adoption of a United Nations Security Council resolution on the financing of African Union-led peace support operations. This resolution outlines a framework for the use of UN funds to support the deployment of AU-led missions to promote peace and security across the African continent.

As I said earlier this month to a group of young African leaders at the Kofi Annan International Peacekeeping Training Center in Ghana, Africans deserve a better vision for security – a vision that puts African leadership at the forefront and African people at the center. The international community has a responsibility to empower AU missions to respond to Africa's growing security challenges. This resolution is a major steppingstone toward that end.

The United States expresses its gratitude to Ghana for its leadership and partnership throughout this process and to all three African members of the Security Council for their

flexibility and collaboration in helping put our shared principles to paper. As we near the end of Ghana's time on the Security Council, we are eager to cement its legacy by working with the AU on the deployment of a mission to promote peace and protect civilians on a continent facing grave and complex security threats.

We look forward to working closely with Security Council members and the AU to implement this resolution, so that the UN can partner with the AU to to meet Africa's security needs.

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2. Syria

a. Joint statements

On January 25, 2023, representatives of the France, Germany, the United Kingdom, and the United States issued a joint statement after a meeting at the envoys level in Geneva to discuss the crisis in Syria. The joint statement is available as a State Department media note at https://www.state.gov/joint-statement-on-syria-3/ and follows:

> We reaffirmed our steadfast support for UN Special Envoy Geir Pedersen's efforts to reach a political solution to the Syrian conflict in line with UN Security Council Resolution 2254. We expressed our firm commitment to the implementation of all aspects of UNSCR 2254, including a nation-wide ceasefire, the release of any arbitrarily detained persons, free and fair elections, and the need to build conditions for the safe, dignified, and voluntary return of refugees and internally displaced persons, consistent with UN standards. UNSCR 2254 remains the only viable solution to the conflict, and we look forward to working with partners in the region and opposition to engage fully under this framework, including the reciprocal step-for-step process, through the UN Special Envoy to ensure that a durable political solution remains within reach.

On March 16, 2023, the United States of America, France, Germany, and the United Kingdom issued a joint statement on the occasion of the 12th anniversary of the Syrian uprising. The joint statement is available as a State Department media note at https://www.state.gov/joint-statement-on-the-occasion-of-the-12th-anniversary-of-the-syrian-uprising/ and follows.

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Today marks the beginning of the 13th year since the Syrian people peacefully rose up to demand their freedom and dignity, calling on the Assad regime to respect their inalienable rights and to stop human rights violations. Almost a quarter of a million Syrian civilians have been

killed since then, the vast majority of them by the Assad regime, which met its people's demands with atrocities that continue today. The ongoing conflict has created a permissive environment for terrorists and drug traffickers to exploit, further threatening regional stability.

This year's anniversary comes on the heels of a series of devastating earthquakes that claimed the lives of nearly 10,000 Syrians inside the country and across the border in Turkey many of whom sought refuge there after fleeing the Assad regime. In light of this catastrophe, we renew our call on all parties in Syria to observe their commitments under ceasefire agreements, work towards a sustained calm, permit unhindered humanitarian access and the unhindered delivery of humanitarian aid through all modalities, including the continued authorization of the cross-border mechanism by the UN Security Council, and address the increasing need for assistance after over a decade of war and abuse. To respond to this humanitarian crisis, we have issued emergency exemptions to our sanctions policies which facilitate the delivery of humanitarian and disaster relief to earthquake affected areas, while preventing the Assad regime from benefiting from this assistance at the expense of the Syrian people.

As we focus on addressing the immediate humanitarian needs following the tragic earthquakes, we recall our joint goals to advance a UN-facilitated, Syrian-led political process in line with UN Security Council Resolution 2254 and to improve the situation on the ground for millions of Syrians in other ways, including the situation of internally displaced persons and refugees. We remain committed to supporting Syrian civil society and ending the human rights violations and abuses the Syrian people have suffered – from the Assad regime and others – long before the earthquakes struck. The international community must work together to hold the Assad regime and all perpetrators of abuses, violations, and atrocities accountable. We welcome ongoing efforts by national courts to investigate and prosecute crimes committed in Syria. Furthermore, we call on all parties to release and/or clarify the fate and whereabouts of over 155,000 persons who, to this day, remain unjustly detained or missing in Syria.

We are not normalizing relations with the Assad regime, nor are we funding reconstruction of the damage inflicted by the regime during the conflict or lifting sanctions. For the benefit of the Syrian people, we will not normalize until there is authentic and enduring progress towards a political solution. As we observe the 12th anniversary of the Assad regime's initiation of this horrendous conflict, and as we confront conflict elsewhere around the world, the plight of the Syrian people must remain front and center. We continue to stand with the Syrian people and strongly support efforts to advance an enduring political solution, in line with UN Security Council Resolution 2254, that is grounded in justice and accountability and remains the only way to achieve the stable peace that Syrians need and deserve.

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On May 12, 2022, representatives of the United States, Arab League, Egypt, the European Union, France, Germany, Greece, Iraq, Italy, Japan, Jordan, Kuwait, Lebanon, Norway, Qatar, Saudi Arabia, Sweden, Turkey, the United Arab Emirates, and the United Kingdom issued a joint statement after a meeting in Brussels on May 10, 2022, to discuss the crisis in Syria. The joint statement is available as a State Department media note at https://www.state.gov/joint-statement-on-syria/ and excerpted below.

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We applauded the European Union for convening the Brussels VI Conference on Supporting the Future of Syria and the Region and welcomed the generous support pledged for vulnerable Syrians, Syrian refugees, and their host countries. We also urged continued support to Syrian refugees and host countries, until Syrians can voluntarily return home with safety and dignity, according to UN standards.

We remain committed to reducing the suffering of the Syrian people. We highlighted the importance of sustaining and increasing humanitarian aid to Syrians through all modalities, including UN-mandated cross-border aid, and continued implementation of UNSC Resolution 2585.

We reiterated our continued support for UN Special Envoy Geir Pedersen, for UNSC Resolution 2254, and for a political resolution to the crisis, with full respect for the unity and territorial integrity of Syria. We also reaffirmed our commitment to the fight against terrorism in all its forms and manifestations, as well as to prevent violent extremism, and underlined the need to continue working closely with international partners to ensure a lasting defeat of Daesh and other terrorist organizations consistent with UNSC Resolution 2254. We also underscored the need to continue to press for accountability and justice for the atrocities perpetrated in Syria, as well as to press for the release of the arbitrarily detained and a full accounting of the missing.

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Representatives of the Arab League, Egypt, the European Union, France, Germany, Iraq, Jordan, Norway, Qatar, Saudi Arabia, Türkiye, the United Kingdom, and the United States issued a joint statement after a meeting on August 30-31, 2022 at the envoy level to discuss the crisis in Syria. The joint statement is available at https://geneva.usmission.gov/2022/09/01/joint-statement-on-syria-2/ and excerpted below.

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We reaffirmed our commitment to reaching a political solution to the Syrian crisis consistent with UN Security Council resolution 2254, including continued support for implementing and sustaining an immediate nation-wide ceasefire, the Constitutional Committee, free and fair elections, the end of arbitrary detention, and the release of all those unjustly held. We reiterated the need to create secure conditions for the safe, dignified, and voluntary return of refugees and internally displaced persons, consistent with UNHCR standards; and support the provision of sufficient and sustainable aid to the displaced and their host countries and communities until such conditions are in place. We noted with concern the continuing threat posed by Daesh and reiterated our commitment to the mission of the Global Coalition Against Daesh, and to the fight against terrorism in all its forms and manifestations.

We called on all parties, in particular the government-nominated bloc, to resume meetings of the Syrian-led and Syrian-owned Constitutional Committee under UN auspices in Geneva and to advance an inclusive political solution that will protect the territorial integrity,

unity, and sovereignty of Syria and the rights and dignity of all Syrians. We reiterated that there is no military solution to the Syrian crisis and reaffirmed our continued support of UN Special Envoy Geir Pedersen and his tireless efforts to advance a UN-facilitated political process consistent with UNSC resolution 2254.

We remain deeply concerned about the dire humanitarian situation in Syria and the ongoing suffering of the Syrian people. We emphasized the importance of continuing to provide life-saving and early recovery humanitarian assistance across Syria through all modalities, including expansion and extension of the UNSC resolution 2642 cross-border aid mechanism, for which there is no alternative that can match its scope and scale. Furthermore, we underlined the necessity to continue to press for accountability for all atrocities and international crimes perpetrated in Syria, including the use of chemical weapons, as well as to press for a full accounting of the missing.

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b. U.S. statements at the United Nations

On May 30, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN Security Council briefing on the political and humanitarian situation in Syria. The remarks are available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-briefing-on-the-political-and-humanitarian-situations-in-syria/, and excerpted below.

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Recent public attention has focused on the evolving relationship between Syria and its neighbors. But this obscures a simple fact: The situation within Syria has not fundamentally changed for the better.

For more than 12 years of war and the recent earthquake, the humanitarian crisis in Syria has reached new heights. More than 6.8 million Syrians remain displaced within Syria, and another 5.3 million live as refugees in neighboring countries. And as we speak, Syria continues to export instability to neighboring states and remains a safe haven for extremist and terrorist groups. In short, the Syrian crisis remains a staggering human tragedy, and a threat to regional and international peace and security.

The Assad regime has cynically tried to seize on the outpouring of international support following the earthquakes to reclaim its place on the world stage. But merely sitting at the same table as other regional leaders does nothing to help the people of Syria. And while the United States welcomed this month's announcement that the United Nations will continue to have access to Bab al-Salaam and to al-Rai border crossings through August 13, the truth is that human suffering does not occur in three-month increments. And the devastation caused by the earthquakes will take much longer than another three months to alleviate.

If the Assad regime wants to help the Syrian people, it should act immediately and announce that it will keep the Bab al-Salaam and al-Rai crossings open through at least August 2024, or as long as it takes. And even if the Assad regime does the right thing, it is frankly no substitute for actions by this Council, which has a responsibility to respond to the dire

humanitarian needs of the Syrian people. As we have heard, the Secretary-General has said a 12-month extension is indispensable, and it is a matter of life and death for the Syrian people.

Due to its scale and scope, the UN humanitarian response requires longer timelines for planning and implementation, particularly of early recovery projects. And the cost-savings associated with a 12-month timeline are significant and ever more essential at a time of decreasing humanitarian contributions, given vast global needs.

Colleagues, immediately after the earthquake in February, we saw just how insufficient one border crossing point was given the scale of the humanitarian challenge. And we saw what happened when that one crossing, Bab al-Hawa, temporarily closed. Think of the lives that could have been saved had the UN been able to use several crossings to immediately surge the delivery of assistance into northwest Syria.

Going forward, the UN must have multiple access options available. For this reason, the United States will work with the penholders to seek a 12-month authorization of all border crossing points – Bab al-Hawa, Bab al-Salaam, and al-Rai – through a Security Council resolution this July. We encourage all Council members to back this resolution, which will provide confidence, predictability, and desperately needed support for humanitarian workers, the UN, and the Syrian people.

At the same time, we also encourage additional progress on cross-line assistance to all areas of Syria. We support all modalities to ensure the delivery of assistance through the most efficient and safe means. We welcome the completion of the cross-line delivery to Ras al-Ayn and Tal Abyad on May 24. And we remain concerned about the lack of progress on long-delayed cross-line missions to Rukban.

Before I close, I also want to discuss the political situation. The Jeddah Declaration from the Arab League summit stressed the need for the regime to take effective practical steps to resolve the conflict in line with Security Council Resolution 2254. We expect the members of the Arab League to hold Syria to the commitment it made to the UN framework at this summit.

One practical step the regime can take is to release the more than 130,000 detainees it holds in its prisons and torture chambers, and to provide an accounting of those who have disappeared or died. The United States also calls on other actors to release and provide more information on those unjustly detained, including those taken by terrorist groups like Da'esh and Al Nusra.

Although the Assad regime claims it is ready to work with regional actors to receive refugees, we see no indication that the regime is committed to ending its harassment, arbitrary detention, torture, and ill-treatment of returnees. Moreover, the regime, along with Russia, continues airstrikes that impact IDP camps in northern Syria. And we must also press the Assad regime to create the conditions for safe, voluntary, and dignified returns of refugees. And countries that have generously hosted millions of refugees must refrain from prematurely pressing them to return.

Finally, this Council must speak with one voice on the need for the Syrian regime to return to the Constitutional Committee. Until there is political progress toward a durable resolution of the conflict, U.S. sanctions will remain in place. And to those who blame sanctions for the state of Syria, let's be serious: Assad shattered Syria with his brutal war and heinous human rights violations. The United States will continue to hold the regime accountable for its abuses, including torture and killing.

We will however at the same time continue to help provide desperately needed humanitarian assistance to the most vulnerable. And we ask that others provide more. Syrians

should not be forced to live day by day as we heard from Ms. Aveline. We will continue to work with this Council and all Member States to build a more reliable future for the Syrian people, particularly women and children.

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On June 29, 2023, Ambassador Linda Thomas-Greenfield delivered the U.S. statement on the adoption of a UN General Assembly resolution on missing persons in Syria. The statement follows and is available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-on-the-adoption-of-a-united-nations-general-assembly-resolution-on-missing-persons-in-syria/.

The United States welcomes today's vote in the United Nations General Assembly to establish the Independent Institution on Missing Persons in the Syrian Arab Republic as an answer to the Syrian people and families desperately seeking information about their missing loved ones. The United States strongly supports the long overdue resolution put forth today by Luxembourg and a geographically diverse group of countries.

The victims here are not just those detained, tortured, and killed. The victims are also their families and loved ones. With more than 155,000 people unjustly detained and/or missing in Syria, almost every single Syrian family has been impacted by this issue – whether those missing were the result of acts of the Assad regime, ISIS, or other parties to the conflict.

We stand behind this resolution and its demand for clarification on the fate and whereabouts of Syria's missing persons. And we stand behind the Syrian human rights defenders, survivors, and families who, despite immense suffering, tirelessly lead the charge on the search for the missing. The status quo is unacceptable – we will continue to work with them, our allies and partners, the UN, and NGOs to bring peace, justice, and closure to Syrian families.

On August 23, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN Security Council briefing on the political situation in Syria. The remarks are available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-briefing-on-the-political-situation-in-syria-2/, and excerpted below.

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More than 12 years after the beginning of the Syrian revolution, some want to pretend the conflict is over. But the Syrian people continue to suffer the daily reality you detailed – airstrikes, surface-missile attacks, torture and detention, and the denial of humanitarian aid.

And let's be clear: The Syrian conflict radiates instability across the region. Millions are unable to return to their homes. And the regime facilitates drug trafficking.

In recent days, we've seen peaceful protests in cities like Daraa and Al Suweida, where Syrians have called for political changes and for all parties to uphold Resolution 2254. These are areas where the revolution started, and it is clear that peaceful demands have not been met.

This Council has repeatedly reaffirmed the full implementation of all aspects of Resolution 2254. It is our shared roadmap, but progress is elusive. We appreciate your persistent efforts, Special Envoy Pedersen, to encourage renewed momentum toward a political settlement in the face of steadfast opposition by the Assad regime and its backers, including Russia.

Colleagues, this week, we marked the 10th anniversary of one of the most horrific events in recent memory when the Assad regime launched rockets carrying the deadly nerve agent sarin into the Ghouta district of Damascus. This attack killed more than 1,400 people and injured many more.

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It is also long [past] time for the Assad regime to take necessary steps to improve the lives of the Syrian people including Syria's youngest, most vulnerable population. Across the country, millions of children remain out of school, putting them at high risk of child labor, early and forced marriage.

The bottom line is this: Until conditions improve, the safe and dignified return of the displaced will not be possible. Syrians will not return so long as they risk being drafted into the Syrian army, unjustly detained, tortured, and forcibly disappeared. And we have seen many cases of returnees being harassed or worse.

We welcome the UN General Assembly's establishment of the Independent Institution on Missing Persons in Syria to help clarify the fate and whereabouts of at least 155,000 missing and unjustly detained Syrians. We hope all parties to the conflict will participate in this important new institution.

And we reiterate our call for all parties to the conflict to release those arbitrarily detained, to provide human rights organizations access to detention facilities and those within them, and to share information on the missing with families.

Colleagues, we saw the August 15 statement of the Arab Ministerial Liaison Committee on Syria, which expressed an aspiration for the resumption of the Constitutional Committee in Oman by the end of the year. It has been more than a year since the Constitutional Committee last met. And we all know who is holding up progress: Russia. Russia claims to support a Syrian-led and Syrian-owned political process, but we know that they are only trying to exploit the situation for leverage.

And while we see no need to change the venue from Geneva, we support any effort that would press the Assad regime to return to the Constitutional Committee. Any selection of the venue must be decided by the parties themselves, and must include input from the Syrian Negotiations Committee. And there must be meaningful participation by the regime, regardless of location.

As such, we continue to support you, Special Envoy Pederson. We support you and your efforts to resume a process that will make genuine and verifiable progress toward a political solution.

The regime's lack of action on broad political transition initiatives, as well as the dire, day-to-day issues facing the Syrian people, demonstrate Assad's contempt for Syrians. A

contempt that we have seen time and time again over more than a decade of war – a war in which Assad has used chemical weapons and committed countless atrocities.

In response to these evils, the United States will continue to promote accountability for the regime's abuses, including by applying and enforcing sanctions against those who deserve them. U.S. sanctions will remain in place until – at a minimum – there is concrete, measurable progress toward a political solution. And let me be clear: Our sanctions do not target humanitarian assistance.

Colleagues, this Council must not look away or – or worse, move away. Not when atrocities continue. Not when humanitarian needs are greater than ever before. And not when a political solution and accountability are still out of reach. The Syrian people deserve our full support. They deserve peace and security and justice. And we will continue to stand with them in their time of need.

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3. Ukraine

See Chapter 9 for U.S. statements regarding Russia's sham elections in Ukraine's sovereign territory. Section C.4, *infra*, for discussion of atrocities in Ukraine. See also Chapter 16 for a discussion of U.S. and international sanctions imposed on Russia in response to its actions in Ukraine.

On February 21, 2023, Ambassador Linda Thomas-Greenfield, U.S. Representative to the United Nations delivered remarks at a press briefing to the discuss actions the United States took to uphold Ukraine's sovereignty and territorial integrity in the face of Russia's aggression. The press briefing is available at https://www.state.gov/briefings-foreign-press-centers/upholding-ukraines-sovereignty-in-the-face-of-russias-aggression, and excerpted below.

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Over the past year, in cooperation with allies and partners, we have done everything in our power to help Ukraine defend itself, because Russia has shown no interest in ending this war. And here at the UN for the past year, you've seen us stand up for the fundamental principles of the UN Charter. Leading up to the brutal full-scale invasion, we held meeting after meeting. We made it clear that Russia was preparing to invade, even as Russia denied, denied, denied. Then Russia launched their full-scale invasion at the very moment when we were sitting in the Security Council. While we sought peace, Putin chose war.

So we have worked with the international community to respond. Just days after Russia launched its attack, the UN General Assembly adopted with 141 votes from countries across the globe a resolution condemning Russia's invasion of Ukraine and demanding Russia withdraw its troops. Then in March, the UN General Assembly reconvened to adopt a resolution deploring the humanitarian crisis caused by Russia's aggression. And in April, we successfully led a push to suspend Russia from the Human Rights Council for its gross and systematic violations of human rights.

In May, we used our presidency of the Security Council to shine a light on how Russia's attacks on Ukraine were hurting others around the world too by exacerbating global food insecurity. We rallied more than 100 countries to sign onto a Roadmap for Global Food Security. And this past October, 143 countries – 143 member-states – voted to reject Russia's illegal attempted annexation of Ukrainian territory and upheld Ukraine's sovereignty and territorial integrity once again – 143 members. It was a strong rebuke by the international community. The world time and time again has sent an unequivocal message to President Putin: Silence your weapons, withdraw your troops, end this war. Because we all know that the longer this war goes on, the more the Ukrainian people will suffer; the more the world, especially countries in the Middle East and Africa that rely on Ukraine's grain, will suffer.

This week the UN General Assembly will have the opportunity to vote on a resolution that calls on countries to support diplomatic efforts to achieve a comprehensive, just, and lasting peace in Ukraine – a peace consistent with the UN Charter, especially the fundamental principles of sovereignty and territorial integrity. This resolution also urges countries to work together to address the global impact of the war, including on food security, energy, finance, the environment, and nuclear security and safety.

Already 68 countries have co-sponsored this important text, and we strongly encourage all member-states to vote for this resolution, to vote for peace. I want to emphasize that supporting peace in Ukraine is in no way about a great power competition. This is not somehow about choosing between the United States and Russia. This is about defending the UN Charter, this is about doing our part to end the scourge of war, and this is about reaffirming one of this institution's core principles – that one country – one country cannot take the territory of another by force.

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On February 22, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN General Assembly emergency special session before the vote on a resolution on achieving peace in Ukraine. The remarks are available at https://usun.usmission.gov/remarks-at-a-un-general-assembly-emergency-special-session-before-the-vote-on-a-resolution-on-achieving-peace-in-ukraine/, and excerpted below.

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We have before us a resolution that calls on the nations of the world to support diplomatic efforts to achieve a comprehensive and lasting peace in Ukraine. A peace consistent with the UN Charter. Consistent with its fundamental principles of sovereignty, territorial integrity, and self-defense.

Colleagues, this vote will go down in history. On the one-year anniversary of this conflict, we will see where the nations of the world stand on the matter of peace in Ukraine.

Earlier this week, President Biden visited Ukraine. And he made it clear where the United States stands. He stood shoulder-to-shoulder with President Zelenskyy to remind the world that, one year later, Kyiv still stands. Ukraine still stands. And America still stands with Ukraine.

I, too, visited Ukraine late last year. And while I learned a great deal in my meetings and discussions, the most powerful lessons I took away were in the faces of the Ukrainian people. In President Zelenskyy, I saw resolve. I saw a leader determined to defend his people and defend his country, for as long as it takes. In the faces of refugees and victims, I saw suffering. Deep sorrow. Unimaginable pain was etched into their visages. It is hard to overstate how much unnecessary anguish and pain President Putin has caused.

But it was in the faces of Ukrainian children that I found hope. I met a 10-year-old girl, Milena, who lived in a facility where displaced families were gathering to prepare for the cold winter. A facility that had once been hit by Russian missiles. And I asked Milena what she wanted to do when the war was over. And she smiled. She told me, simply, that she wanted to go back to school and see her best friend again. Her face beamed with hope. I will never forget her shining eyes.

Colleagues, we should never give up on hope. We should never give up on the potential for diplomacy, or the power of dialogue, or the urgency of peace. We now have an opportunity to vote for that peace. And to vote to uphold the UN Charter once more. A UN Charter which stands for sovereignty and territorial integrity. A UN Charter that stands for the inherent right of self-defense. And a UN Charter which aims to maintain international peace and security and end the scourge of war.

So, colleagues, I urge you to vote against – against any and all hostile amendments that seek to undermine the UN Charter and ignore the truth of this war. I urge you, instead, to vote "yes" in support of this resolution as it stands. To promote diplomacy and dialogue – yes, diplomacy and dialogue. To promote cooperation on the threats to global food security, energy, finance, the environment, nuclear security, and safety. To defend the UN Charter we have all signed up to protect. And to support a just and lasting peace in Ukraine.

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On February 23, 2023, the UN General Assembly adopted resolution ES-11/6 entitled, "Principles of the Charter of the United Nations underlying a comprehensive, just and lasting peace in Ukraine" at a meeting of the eleventh emergency special session. The General Assembly called for an immediate withdraw from Ukraine and a cessation of hostilities in line with the UN Charter. U.N. Doc. A/RES/ES-11/6, available at https://www.undocs.org/A/RES/ES-11/6. See *Digest 2022* at 286-87 for discussion of additional resolutions adopted by the UN General Assembly addressing the Russian invasion of Ukraine.

On February 23, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at the UN General Assembly stakeout following the adoption of resolution ES-11/6 on a comprehensive peace in Ukraine. The remarks follow and are available at https://usun.usmission.gov/remarks-at-the-un-general-assembly-stakeout-following-the-adoption-of-a-resolution-on-a-comprehensive-peace-in-ukraine/.

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Good afternoon, everyone. I think you've had a long list of people here already, so let me just start by thanking all of you.

Today's vote was really historic. You saw one year after Russia's illegal, unprovoked, full-scale invasion into Ukraine where the countries of the world stand. We showed where we stand – with Ukraine.

The vote was clear. A hundred forty-one countries voted to uplift and uphold the UN Charter. Only seven countries voted against it.

A hundred forty-one countries voted for a comprehensive, just, and lasting peace in Ukraine.

A hundred forty-one countries affirmed that such a peace must be rooted in the UN Charter's most fundamental principles of sovereignty, territorial integrity, and the inherent right of self-defense.

A hundred forty-one countries – 141 countries – recommitted to tackling the threats to energy, finance, the environment, food insecurity, nuclear security that Russia's war has unleashed upon the world.

And as stated in Ukraine's resolution, these 141 countries reiterated a clear demand to Russia: withdraw and – I'm sorry: Withdraw immediately, completely, and unconditionally from Ukraine's internationally recognized territory, send your troops home, and end this war.

When I was in Ukraine, I saw so much etched into the faces of the Ukrainian people. In President Zelenskyy's face, I saw resolve. In the faces of victims and civilians, I saw pain and sorrow. And in the faces of Ukraine's children, I saw hope.

Today we refuse to give up on hope. We refuse to give up on the potential for diplomacy, the power of dialogue, and the urgency of peace. And tomorrow we will continue to push for just that – a durable peace.

Secretary Blinken will return to the Security Council to outline the Council's unique responsibilities to uphold the UN Charter as Russia's horrific war enters its second year, and he will reaffirm America's commitment to supporting Ukraine and defending the UN Charter's most fundamental principles. As President Biden said when he was in Kyiv this week, "We stand together. We stand with Ukraine for as long as it takes."

Thank you very much.

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4. Somalia

On February 28, 2023, the State Department published as a media note the joint statement on Somalia by Qatar, Somalia, Türkiye, the United Arab Emirates, the United Kingdom, and the United States of America. The joint statement follows and is available at https://www.state.gov/joint-statement-on-somalia/.

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Representatives of Qatar, Somalia, Türkiye, the United Arab Emirates, the United Kingdom, and the United States of America met in Washington, D.C. to discuss Somalia's security, state-building, development, and humanitarian priorities.

The partners expressed support for the Federal Government of Somalia's focus on counterterrorism and capacity building. They discussed how to better support Somalia's fight against al-Shabaab and prepare for the African Union Transition Mission in Somalia drawdown, and agreed to strengthen coordination of international security assistance. Partners agreed on the importance of ensuring timely delivery of stabilization assistance to newly liberated areas. They committed to support Somalia's efforts to meet the benchmarks on weapons and ammunition management to enable the UN Security Council to fully lift the arms controls on the Federal Government of Somalia.

The partners encourage and support Somalia's National Consultative Council (NCC) process in promoting political reconciliation and to delineate the roles and responsibilities of levels of government in Somalia, including by finalizing the constitution.

The partners expressed concern about the ongoing conflict in and around Lascanood and called on all parties to adhere to the ceasefire, de-escalate, allow unhindered humanitarian access, and engage in constructive and peaceful dialogue.

They also expressed concern about the ongoing humanitarian crisis driven by Somalia's worst drought on record. They welcomed support along with international actors to meet the immediate needs of the Somali people, while also strengthening Somalia's ability to withstand future climate shocks.

The partners agreed to continue work within these areas and reconvene in Doha, Qatar, within the next three months for ongoing discussions and to take stock of progress.

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5. Afghanistan

On March 7, 2023, the State Department released as a media note, a joint statement on Afghanistan. The statement was agreed upon by the Special Representatives and Envoys for Afghanistan of Australia, Canada, the European Union, France, Germany, Italy, Norway, Switzerland, the United Kingdom and the United States following their meeting in Paris held February 20, 2023 to discuss the situation in Afghanistan. The joint statement is available at https://www.state.gov/joint-statement-on-afghanistan-2/, and excerpted below.

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1. Noted with grave concern the increased threat to security and stability in Afghanistan and the deterioration of the humanitarian and economic situation, with more than 28 million Afghans now in need of humanitarian aid, of whom more than half are women and children, and six million just one step from famine.

2. Emphasized their concern about increasing deterioration and multiple violations of human rights and fundamental freedoms of Afghans by the Taliban since August 2021, especially those of women and girls as well as members of ethnic and religious minorities and other marginalized groups;

2.1 Strongly condemned the Taliban's decisions in December 2022 to ban Afghan women from university education and from working in NGOs, which follow numerous other harmful violations and restrictions imposed on opportunities for women to exercise their rights in Afghanistan since the Taliban's takeover in August 2021, including to continue to ban girls from secondary schools, thus excluding them from all spheres of public life;

2.2 Affirmed that these decisions violate and threaten not only Afghan women's rights and freedoms, but also the overall much-needed social and economic development of the country, which will suffer greatly if half of the population is excluded from participating meaningfully; emphasized that humanitarian assistance cannot be delivered fairly or effectively if limited by discriminatory policies or practices;

2.3 Called for the immediate reversal of these unacceptable bans as they are preventing humanitarian assistance from reaching Afghans most in need.

3. Recalled the Taliban's responsibility for the deterioration of the economic and humanitarian situation, as well as their responsibility for the recovery of the country and the improvement of the economic situation; recalled that responding to the needs of the Afghan people should be the main preoccupation of the Taliban.

4. Expressed grave concern about the increasing threat of terrorist groups in Afghanistan, including ISKP, Al Qaeda, Tehrik-i-Taliban-Pakistan and others, which deeply affects security and stability inside the country, in the region and beyond, and called on the Taliban to uphold Afghanistan's obligation to deny these groups safe haven.

5. Underscored that achieving peace and stability in Afghanistan requires a credible and inclusive national dialogue leading to a constitutional order with a representative and inclusive political system.

6. Emphasized that the UN Security Council has set out the international community's clear expectations of the Taliban in UNSCR 2593 (2021) and subsequent resolutions which are critical for peace and stability in the country and for normalization of relations with the international community: (1) full efforts to ensure Afghan territory is not used to threaten or attack any country or to shelter or train terrorists, or to plan or finance terrorist acts; (2) unhindered and safe access for the United Nations and humanitarian actors in delivering services and assistance; (3) respect for the human rights of all Afghans, including women and members of minority groups; (4) pursuit of an inclusive negotiated political settlement and rule of law with the full, equal, and meaningful participation of women; and (5) safe passage and freedom to travel for those who wish to travel abroad.

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On July 30 and 31, 2023, U.S. officials met with Taliban representatives. A readout of the meeting is available as a State Department media note at https://www.state.gov/meeting-of-u-s-officials-with-taliban-representatives/, and excerpted below.

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U.S. officials identified areas for confidence building in support of the Afghan people. The American delegation also expressed deep concern regarding the humanitarian crisis and the need to continue to support aid organizations and UN bodies delivering assistance consistent with humanitarian principles.

U.S. officials urged the Taliban to reverse policies responsible for the deteriorating human rights situation in Afghanistan, particularly for women, girls, and vulnerable communities. U.S. officials expressed grave concern regarding detentions, media crackdowns, and limits on religious practice. The United States expressed support for the Afghan people's demands for their rights to be respected and for their voices to shape the future of the country.

The American delegation met with representatives of the Afghan Central Bank and Afghan Ministry of Finance to discuss the state of the Afghan economy and the challenges that the banking sector faces. U.S. officials took note of recent data indicating declining inflation, growth of merchandise exports and imports in Afghanistan in 2023, and voiced openness to a technical dialogue regarding economic stabilization issues soon.

U.S. officials took note of the Taliban's continuing commitment to not allow the territory of Afghanistan to be used by anyone to threaten the United States and its allies, and the two sides discussed Taliban efforts to fulfill security commitments. The American delegation acknowledged that there has been a decrease in large-scale terrorist attacks against Afghan civilians. U.S. officials pressed for the immediate and unconditional release of detained U.S. citizens, noting that these detentions were a significant obstacle to positive engagement.

The United States took note of reporting indicating that the Taliban's ban on opium poppy cultivation resulted in a significant decrease in cultivation during the most recent growing season. U.S. officials registered serious concerns regarding continuing trafficking and sale of processed opiates and synthetic drugs. The American delegation voiced openness to continue dialogue on counternarcotics.

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On October 31, 2023, the State Department released as a media note a joint statement following a meeting on the situation in Afghanistan between the Special Representatives and Envoys for Afghanistan from Canada, the European Union, France, Germany, Italy, Japan, Norway, the United Kingdom, and the United States. The joint statement is available at https://www.state.gov/joint-statement-on-afghanistan-3/, and includes the following:

7. Noted with regret that the Taliban has taken no serious steps to initiate an inclusive political process with fellow Afghans regarding the future order of the country; and affirmed that legitimacy is derived, first and foremost, from the Afghan people. Emphasized that a new constitution for the country should only be adopted following a transparent, inclusive, and meaningful national consultative dialogue and urged the Taliban and other Afghans to seek advice from the UN and OIC in this regard….

12. Stressed the importance of international unity on Afghanistan, including on not normalizing relations with the Taliban and on support for respecting the rights of every citizen of Afghanistan, particularly the right of women and girls to education, employment, and public participation; welcomed the important work of UNAMA under the leadership of SRSG Roza Otunbayeva; looked forward to the UN Special Coordinator's report on 17 November; and welcomed the UN Secretary General's offer to host a second meeting of Special Representatives and Envoys soon.

6. Yemen

On April 2, 2023, the State Department issued a press statement marking the one-year anniversary of the Yemen truce's commencement. The statement is available at https://www.state.gov/one-year-anniversary-of-the-yemen-truces-commencement/, and includes the following:

> Today marks one year since the UN-meditated truce in Yemen began and initiated the longest period of calm since the war started. For one year, Yemenis have benefitted from a halt to airstrikes, regular civilian flights from Sana'a airport, enhanced and unrestricted humanitarian and food assistance, and the increased flow of fuel to northern Yemen. The UN-led truce and U.S.-facilitated diplomacy have largely stopped the fighting, saving thousands of civilian lives; nevertheless, the United States recognizes that the truce was only the first step toward a comprehensive, Yemeni-Yemeni political process and a durable resolution to the conflict.
>
> The truce has paved the way for intensive dialogue on a more comprehensive agreement, and the recent deal to release almost 900 detainees from all sides of the Yemen conflict represents another important step forward. The United States welcomes the efforts of regional partners, including Saudi Arabia and Oman, to advance peace efforts. We remain seriously concerned, however, about Houthi actions that threaten this extraordinary progress and exacerbate the suffering of Yemenis, such as recent attacks in Taiz and Marib and on Yemen's oil exports. We call on the Houthis to foreswear such actions and pursue a peaceful resolution to the conflict.

On April 14, 2023, the United States welcomed the release of detainees from the Yemen conflict. The statement follows and is available at https://www.state.gov/the-united-states-welcomes-release-of-detainees-from-yemeni-conflict/.

> The United States welcomes the release of nearly 900 detainees from all sides of the Yemen conflict. This release reunifies hundreds of families ahead of Eid al-Fitr and takes place amidst a 13-month period of calm initiated by the UN-mediated truce.
>
> The UN and International Committee of the Red Cross (ICRC) facilitated this prisoner release agreement on March 20. The United States will continue to support this UN-led engagement and do all we can to consolidate the truce to help set the conditions for an enduring peace.
>
> The United States remains unwavering in its commitment to an inclusive, Yemeni-Yemeni political process and to the release of all conflict-related detainees as part of efforts to end the war.

On September 15, 2023, the State Department released a press statement welcoming talks in Saudi Arabia advancing Yemen's peace process. The statement is available at https://www.state.gov/welcoming-talks-in-saudi-arabia-advancing-yemens-peace-process/, and includes the following:

> The United States supports reinvigorating the Yemeni-Yemeni political process under United Nations auspices to bring an end to the conflict. We especially appreciate the important role the Sultanate of Oman played in facilitating the visit, which we hope will foster trust and explore ways to definitively end the war in Yemen while enabling Yemenis to determine their future. The talks in Riyadh follow a visit by senior U.S. officials to Saudi Arabia, Oman, and the United Arab Emirates last week to consult with our regional partners and the Yemeni parties about a viable path toward peace.
>
> We are in the 18th month of calm since the truce began on April 2, 2022. The United States looks forward to achieving progress on a durable ceasefire, inclusive Yemeni-Yemeni talks, and a resolution to the dire humanitarian crisis. We wish Saudi Arabia, Oman, and all the stakeholders success in this important visit and encourage a return to a peace process that reflects the broad range of Yemeni actors and their aspirations.

7. Ethiopia

For statements regarding atrocities in northern Ethiopia, see section C.5, *infra*.

On May 2, 2023, Secretary Blinken issued a press statement marking six-month anniversary of the cessation of hostilities in northern Ethiopia. The press statement is available at https://www.state.gov/statement-marking-six-month-anniversary-of-the-cessation-of-hostilities-in-northern-ethiopia/, and includes the following:

> Today marks six months since the signing of the Cessation of Hostilities Agreement (COHA) between the Government of Ethiopia and the Tigray People's Liberation Front (TPLF) in Pretoria on November 2, 2022, which ended two years of conflict in northern Ethiopia and began a process of peace and recovery that continues today. The success of this African Union (AU)-led process, in which the United States participated as an observer, is a tribute to the AU's campaign to "Silence the Guns" and to AU Commission Chairperson Faki's leadership as well as the extraordinary efforts of the AU's High-Level Panel.
>
> The United States commends the parties for the significant progress on COHA implementation, which has led to the restoration of essential services, flow of humanitarian aid, TPLF turnover of heavy weapons, release of detainees, the initiation of a comprehensive and inclusive transitional justice process, and establishment of an interim regional administration in the Tigray Region. The United States urges continued follow-through, including by deploying additional monitors for the protection of civilians and conducting an effective disarmament, demobilization, and reintegration process. The complete withdrawal of Eritrean and non-federal forces from the Tigray Region and a credible transitional justice process, including accountability for those responsible for human rights violations and abuses, will be key to achieving sustainable peace in northern Ethiopia.

On November 2, 2023, Secretary Blinken issued a press statement one year after Ethiopia's cessation of hostilities agreement. The statement is available at https://www.state.gov/1st-anniversary-of-ethiopias-cessation-of-hostilities-agreement/, and excerpted below.

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A year ago in Pretoria, the African Union and the AU High-Level Panel working with observers from the Intergovernmental Authority on Development (IGAD), the United Nations, and the United States facilitated the Cessation of Hostilities Agreement (COHA) between the Government of Ethiopia and the Tigray People's Liberation Front (TPLF). The Agreement silenced the guns and ended a horrific two-year war that killed hundreds of thousands and forced millions to flee their homes. Today, on the first anniversary of the COHA, the United States remembers those who lost their lives and suffered atrocities. We also recommit to supporting peace and justice for all Ethiopians.

The United States welcomes the significant progress made on COHA implementation, including the establishment of the Tigray Interim Regional Administration, resumption of essential services, provision of humanitarian assistance, facilitation of access for international human rights monitors in Tigray, and implementation of the AU Monitoring, Verification, and

Compliance Mechanism. The government and Transitional Justice Working Group of Experts have taken important steps toward the establishment of a national transitional justice policy.

It is important, however, to acknowledge the challenges that remain. While TPLF forces have disarmed their heavy weapons and begun to demobilize, more actions are needed to bring lasting peace and stability to Tigray. Eritrean forces must fully withdraw. Both Ethiopia and Eritrea must refrain from provocation and respect the independence, sovereignty, and territorial integrity of all countries in the region. We also remain concerned about ongoing conflicts – in Amhara, Oromia, and elsewhere – that threaten Ethiopia's fragile peace. Continued human rights violations and abuses by multiple actors and the circulation of toxic rhetoric further erode a social fabric worn thin by war.

Looking ahead, the United States stands ready to support concrete action to advance implementation of the COHA – including a comprehensive disarmament, demobilization, and reintegration program – and to promote peace, justice, prosperity, and accountability nationwide. We encourage the publication and implementation of a credible, inclusive, and victim-centered national transitional justice policy. We urge continued investment in an inclusive and genuine national dialogue. We also urgently call for dialogue to address the conflicts in Amhara and Oromia.

The United States remains steadfast in its commitment to working with the Ethiopian government and people toward our shared goal of a united, peaceful, and prosperous Ethiopia.

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On October 25, 2022, Secretary Blinken issued a statement welcoming the start of the African Union-led peace negotiations between the government of Ethiopia and Tigrayan regional authorities. His statement, available at https://www.state.gov/on-the-start-of-northern-ethiopia-peace-talks/, includes the following:

> We urge the delegations to engage seriously in these talks to reach a lasting resolution to this conflict. As a first priority, it is essential to achieve an immediate cessation of hostilities. We also call on the delegations to agree on unhindered delivery of humanitarian assistance to all those in need, measures to protect civilians, and Eritrea's withdrawal from northern Ethiopia.

On November 2, 2022, Secretary Blinken issued a statement on the signing of a cessation of hostilities between the Government of Ethiopia and the Tigray People's Liberation Front. His statement, available at https://www.state.gov/on-the-african-union-led-peace-talks/, includes the following:

> We welcome the momentous step taken in Pretoria today to advance the African Union's campaign to "silence the guns" with the signing of a cessation of hostilities between the Government of Ethiopia and the Tigray People's Liberation Front. We commend the parties for taking this initial step to agree to end the fighting and continue dialogue to resolve outstanding issues to consolidate peace and bring an end to almost two years of conflict. We welcome

> the unimpeded delivery of humanitarian assistance and the protection of civilians that should result from implementation of this agreement.

8. Armenia and Azerbaijan and Nagorno-Karabakh

In May 2023, Secretary Blinken hosted Armenia-Azerbaijan bilateral peace negotiations. On May 4, 2023, Secretary Blinken deliver remarks at the bilateral peace negotiation closing session. The remarks are available at https://www.state.gov/secretary-antony-j-blinken-at-the-bilateral-peace-negotiation-closing-session-with-armenian-foreign-minister-ararat-mirzoyan-and-azerbaijani-foreign-minister-jeyhun-bayramov/, and excerpted below.

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The two sides have discussed some very tough issues over the last few days and they've made tangible progress on a durable peace agreement. I hope that they see – and I believe that they do, as I do – that there is an agreement within sight, within reach. And achieving that agreement would be, I think, not only historic, but would be profoundly in the interests of the people of Azerbaijan and Armenia, and would have very positive effects even beyond their two countries.

I think the pace of the negotiations and the foundation that our colleagues have built shows that we really are within reach of an agreement. The last mile of any marathon is always the hardest; we know that. But the United States is here to continue to help both of our friends cross the finish line. And as I say, I think we're very much within reach of that.

I have to say, finally, that the leadership that we're seeing from both Armenia and Azerbaijan, and from my friends the foreign ministers, is inspiring. None of this is easy, but the commitment, the determination to move forward, to deal with the remaining challenging issues is real. And we feel, coming out of these few days, that, as I said, we've made very tangible progress. A final agreement is within reach, and we're determined to continue to help our friends achieve it.

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Secretary Blinken issued a May 4, 2023 press statement following the negotiations, available at https://www.state.gov/armenia-azerbaijan-peace-negotiations/, which includes the following:

> Both Armenia and Azerbaijan agreed in principle to certain terms and have a better understanding of one another's positions on outstanding issues. I have proposed the Ministers to return to their capitals to share with their governments the perspective that, with additional goodwill, flexibility, and compromise, an agreement is within reach. They will continue to have the full support and engagement of the United States in their effort to secure a durable and sustainable peace.

On September 19, 2023, Secretary Blinken issued a press statement calling for an end of hostilities in Nagorno-Karabakh. The statement is available at https://www.state.gov/call-for-end-of-hostilities-in-nagorno-karabakh/, and follows:

> The United States is deeply concerned by Azerbaijan's military actions in Nagorno-Karabakh and calls on Azerbaijan to cease these actions immediately. These actions are worsening an already dire humanitarian situation in Nagorno-Karabakh and undermine prospects for peace. As we have previously made clear to Azerbaijan, the use of force to resolve disputes is unacceptable and runs counter to efforts to create conditions for a just and dignified peace in the region. We call for an immediate end to hostilities and for respectful dialogue between Baku and representatives of the population of Nagorno-Karabakh.

9. Sudan

For statements regarding atrocities in Sudan, see section C.6, *infra*.

On April 23, 2023, the Biden Administration submitted a report to Congress pursuant to the War Powers Resolution regarding actions taken in response to the deteriorating situation in Sudan. The War Powers Resolution report is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/23/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-3/, and excerpted below.

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At my direction, United States Armed Forces personnel have conducted an operation to evacuate United States personnel and others from Khartoum, Sudan, in response to the deteriorating security situation in Sudan. To conduct and support this operation, United States Armed Forces personnel with appropriate combat equipment deployed to Djibouti, Ethiopia, and Sudan. United States Armed Forces personnel will remain deployed in Djibouti to protect United States personnel and others until the security situation no longer requires their presence, and additional forces are prepared to deploy to the region if required.

I directed this action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations.

I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in these actions.

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On May 20, 2023, the United States of America and the Kingdom of Saudi Arabia announced that representatives of the Sudanese Armed Forces and the Rapid Support Forces signed an Agreement for Short-Term Ceasefire and Humanitarian Arrangements. The State Department media note is available at https://www.state.gov/agreement-on-a-short-term-ceasefire-and-humanitarian-arrangements-in-sudan/, and excerpted below.

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The short-term ceasefire, which enters into force 48 hours after the signing of the Agreement, shall remain in effect for seven days and may be extended with the agreement of both parties.

Under the Agreement, the parties agreed to facilitate the delivery and distribution of humanitarian assistance, restore essential services, and withdraw forces from hospitals and essential public facilities. The parties also agreed to facilitate the safe passage of humanitarian actors and commodities, allowing goods to flow unimpeded from ports of entry to populations in need.

Both parties have conveyed to the Saudi and U.S. facilitators their commitment not to seek military advantage during the 48-hour notification period after signing the agreement and prior to the start of the ceasefire. The ceasefire will go into effect at 09:45 p.m., Khartoum time, on May 22.

It is well known that the parties have previously announced ceasefires that have not been observed. Unlike previous ceasefires, the Agreement reached in Jeddah was signed by the parties and will be supported by a U.S.-Saudi and international-supported ceasefire monitoring mechanism. This short-term ceasefire is in line with the step-by-step approach agreed by the parties. It is anticipated that subsequent talks will focus on additional steps necessary to improve security and humanitarian conditions for civilians such as vacating forces from urban centers, including civilian homes, accelerating removal of impediments to the free movement of civilians and humanitarian actors, and enabling public servants to resume their regular duties.

Given the brutality of the conflict, our immediate focus has been on stopping the fighting to relieve the suffering of the Sudanese people. The Jeddah talks have focused on a short-term ceasefire to facilitate humanitarian assistance and restoration of essential services. They are not a political process and should not be perceived as one. We anticipate that subsequent talks in Jeddah will address steps needed to reach a permanent cessation of hostilities. We look forward to leadership by Sudanese civilian stakeholders, with the support of the regional and international community, on a political process to resume a democratic transition and form a civilian government.

The Sudanese people have now suffered for five terrible weeks as a result of this devastating conflict. The Kingdom of Saudi Arabia and the United States stand by them and we demand the parties fully abide by their commitments under this Agreement for a short-term humanitarian ceasefire to provide them with urgently needed relief.

The full text of the agreement is available here: **https://www.state.gov/agreement-on-a-short-term-ceasefire-and-humanitarian-arrangements/**

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On October 26, 2023, the Troika (Norway, the United Kingdom, and the United States) welcomed the meeting of Sudanese civilians in Addis Ababa to discuss next steps in restoring Sudan's democratic governance. The statement, which is available at https://www.state.gov/troika-welcomes-meeting-of-sudanese-civilians-in-addis-ababa-to-chart-next-steps-in-restoring-sudans-democratic-governance/, follows.

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The Troika (Norway, the United Kingdom, the United States) welcomes this week's meeting in Addis Ababa, Ethiopia of a broad group of Sudanese civilian actors and stakeholders as an important step towards the formation of an inclusive and representative pro-democracy civilian front.

This gathering speaks to the Sudanese people's commitment to a democratic future. We welcome the fact that, in the midst of an active conflict, a wide array of Sudanese civilian actors from both inside and outside Sudan—including representatives of historically marginalized groups and areas, Resistance Committees, trade unions, professional associations, civil society groups, political parties, new initiatives, and independent national figures—were able to come together for this important initial meeting. We are encouraged that the meeting led to a collective commitment to convene a larger gathering with more diverse representation from Sudan in the coming months.

Sudanese civilians continue to gather throughout Sudan and across the region to discuss their political future. We encourage them to seek areas of convergence and form a strong pro-democracy civilian front that can begin a process to address transitional and governance issues and reach a national consensus to press the warring parties to stop the fighting and facilitate badly needed humanitarian assistance. Securing a transitional civilian government after the conflict is critical for resuming Sudan's progress towards democracy. That effort requires broad participation of Sudanese from all walks of life and all parts of the country.

The Troika condemns the continuing violence and tragic loss of life across Sudan. Sudan will continue to require international support and attention. The Troika countries are proud to be among the largest donors in support of the Sudanese people, and we will continue to focus on efforts to ensure that diverse communities are able to participate meaningfully in building Sudan's democratic future, along with supporting displaced persons and other at-risk communities through life-saving humanitarian aid.

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On November 17, 2023, the Troika (the United States of America, Norway, and the United Kingdom) issued a joint statement on the attacks in Darfur, Sudan and the need for a cessation of violence. The statement follows and is available, as a State Department media note, at https://www.state.gov/troika-joint-statement-on-attacks-in-darfur-sudan-and-the-need-for-a-cessation-of-violence/.

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Norway, the United Kingdom, and the United States (The Troika), condemn the escalating violence and human rights abuses in Sudan, especially attacks by the Rapid Support Forces in West, Central and South Darfur. These have included – according to credible reports – mass killings including ethnic targeting of non-Arab and other communities, killings of traditional leaders, unjust detentions, and obstruction of humanitarian aid. We are also concerned by reports of violence in the town of Jebel Aulia, on the White Nile River, where there are reports of targeting of civilians.

We reiterate that there is no acceptable military solution to the conflict, and call for an end to the fighting. We urge the RSF and SAF to refrain from actions that would further divide Sudan along ethnic lines or draw other forces into their conflict. Both sides need to deescalate and engage in meaningful discussions that lead to a ceasefire and unhindered humanitarian access. To that end, we welcome the recent resumption of talks in Jeddah, co-facilitated by the Kingdom of Saudi Arabia, the United States, and the Intergovernmental Authority on Development (IGAD), which is also participating on behalf of the African Union, and recognise the initial humanitarian commitments made by the parties on November 7.

Achieving a sustainable solution requires ending violence and resuming a civilian-owned political process to form a civilian government and restore Sudan's democratic transition. We welcome the efforts of the Sudanese people as they work to support humanitarian responses, demand an end to the war, and resume the stalled political transition.

The Troika countries are proud to be among the largest donors in support of the Sudanese people, and we will continue to focus on efforts to ensure that diverse communities are able to participate meaningfully in building Sudan's democratic future, at the same time as supporting displaced persons and other at-risk communities through life-saving humanitarian aid.

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10. Mali

On June 19, 2023, the State Department released a press statement on the Malian transition government's withdrawal of consent for the UN Multinational Integrated Stabilization Mission in Mali ("MINUSMA"). The statement is available at https://www.state.gov/the-malian-transition-governments-withdrawal-of-consent-for-minusma/, and follows:

> The United States regrets the transition government of Mali's decision to revoke its consent for MINUSMA. We are concerned about the effects this decision will have on the security and humanitarian crises impacting the Malian people. We will continue to work with our partners in West Africa to help them tackle the urgent security and governance challenges they face. We welcome further consultations with regional leaders on additional steps to promote stability and prevent conflict. The United States extends its full support to MINUSMA and Special Representative of the Secretary-General El-Ghassim Wane for his leadership. MINUSMA's drawdown must be orderly and responsible, prioritizing

the safety and security of peacekeepers and Malians. The transition government must also continue to adhere to all its commitments, including the transition to a democratically elected, civilian-led government by March 2024 and implementation of the Algiers Accord.

On August 16, 2023, the State Department released a press statement on threats to peace and security in Mali. The statement is available at https://www.state.gov/threats-to-peace-and-security-in-mali/, and follows:

> The United States is deeply concerned about the threat of worsening violence in Mali as the UN Multidimensional Integrated Stabilization Mission there (MINUSMA) begins its withdrawal. Attacks as recently as August 13, which resulted in several injured peacekeepers, highlight that threat and the importance of all Malian parties settling their differences peacefully and in accordance with the 2015 Algiers Peace Accord.
>
> It is critical that MINUSMA be permitted to conduct its withdrawal in a safe and orderly manner, and we call on the transition government to cooperate fully until the final MINUSMA element departs. We urge all parties to facilitate MINUSMA's drawdown, withdrawal, and liquidation.
>
> Attacks on UN peacekeepers are unacceptable, and we condemn such violence and the larger threat posed by armed actors operating throughout Mali. We stand with the people of Mali in support of a future defined by peace, security, and prosperity.

11. Georgia

On August 7, 2023, Secretary Blinken issued a press statement on the fifteenth anniversary of the Russian invasion and occupation of Georgia. The statement is available at https://www.state.gov/marking-fifteen-years-since-russias-invasion-and-occupation-of-georgia/ and include the following:

> Russia's actions during its occupation, including the Kremlin's malign disinformation campaigns, so-called "borderization," and mass displacement still cause untold hardships. As in Ukraine, the people of Georgia have suffered the consequences of Russia's contempt for international law and desire to dominate its neighbors.
>
> The United States remains determined to hold Russia accountable for its obligation under the 2008 six-point ceasefire agreement to withdraw its forces to pre-conflict positions and allow unimpeded access for the delivery of humanitarian assistance. Russia must also reverse its recognition of the so-called independence of Georgia's Abkhazia and South Ossetia regions. These actions are essential for hundreds of thousands of internally displaced people to be able to return to their homes safely and live with dignity.

On October 5, 2022, the U.S. participated in the 56th Geneva International Discussions on the Conflict in Georgia. The U.S. delegation, led by Senior Advisor for Caucasus Negotiations Ambassador Philip Reeker, "urged participants to use the GID to find solutions to improve the lives of conflict-affected populations, including for the safe and voluntary return of internally displaced persons and refugees. The United States strongly supports Georgia's sovereignty and territorial integrity within its internationally recognized borders." See the U.S. Mission Geneva website at https://geneva.usmission.gov/2022/10/05/gid-october2022/.

12. Haiti

On October 2, 2023, the United Nations Security Council adopted resolution 2699, see U.N. Doc. S/RES/2699 available at https://digitallibrary.un.org/record/4022890?ln=en&v=pdf , which was co-penned by the United States and Ecuador, to authorize a Multinational Security Support mission to Haiti. Secretary Blinken's press statement is available at https://www.state.gov/un-security-council-authorizes-multinational-security-support-mission-to-haiti/, and includes the following:

> Today, the United Nations Security Council adopted the resolution co-penned by the United States and Ecuador to authorize a Multinational Security Support (MSS) mission to Haiti. This pivotal mission, which will launch in partnership with Haiti, responds to Haiti's request for international support to address insecurity and create the necessary security conditions for long-term stability and growth. The resolution authorizes the MSS mission to provide operational, static, and training support to the Haitian National Police.

On December 22, 2023, the State Department published as a media note a joint statement on the Multinational Security Support Mission pre-planning conference, which took place from December 14-15, 2023. The joint statement was released by the governments of the United States of America, the Republic of Kenya, the Republic of Haiti, and Jamaica, is available at https://www.state.gov/joint-statement-on-multinational-security-support-mission-pre-planning-conference/, and includes the following:

> 6. In response to Haiti's urgent call for security assistance, the United Nations Security Council authorized member states to deploy a Multinational Security Support (MSS) mission to Haiti through the adoption of United Nations Security Council Resolution 2699 (2023) on 2 October 2023.
>
> 7. The resolution, under Chapter VII of the Charter of the United Nations, authorizes member states to form and deploy the MSS mission, in close cooperation and coordination with the Government of Haiti, for an initial period of 12 months from the date of adoption of the resolution. The MSS is authorized to provide operational support to the Haitian National Police (HNP) by increasing

its capacity through the planning and conduct of joint security support operations, supporting the provision of security for critical infrastructure and transit locations, as well as ensuring unhindered and safe access to humanitarian aid. The MSS seeks to assist the HNP to stabilize security conditions conducive to holding inclusive, free and fair elections in Haiti.

13. Ethiopia and Eritrea

On December 12, 2023, the State Department released a press statement marking the 23rd anniversary of the Algiers Agreement between the governments of Ethiopia and Eritrea. The statement follows and is available at https://www.state.gov/23rd-anniversary-of-the-algiers-agreement-between-the-governments-of-ethiopia-and-eritrea/.

> Twenty-three years ago today, Ethiopia and Eritrea, with the support of the international community, concluded the Algiers Agreement and committed to demarcate a common border. In 2018, in a historic peace agreement, both countries recommitted to respect the borders as established. On this anniversary, it is more important than ever that the sovereignty and territorial integrity of both countries be respected. The United States reiterates our support for the Algiers Agreement and encourages Ethiopia and Eritrea to work together, in the spirit of the peace they forged, toward a more stable and prosperous region.

C. CONFLICT AVOIDANCE AND ATROCITIES PREVENTION

1. Elie Wiesel Congressional Report and New Atrocities Prevention Strategy

On August 2, 2023, the State Department announced in a media note that the 2023 annual report under the Elie Wiesel Genocide and Atrocities Prevention Act of 2018, Pub. L. No. 115-441, Section 5 ("the Elie Wiesel Act") had been submitted to Congress. The 2023 report is the fifth annual report to be submitted under the Elie Wiesel Act and addresses the U.S. government's efforts to prevent and respond to atrocities. As discussed in *Digest 2019* at 588, the Elie Wiesel Act took effect in January 2019. See State Department media note, available at https://www.state.gov/submission-to-congress-of-the-2023-elie-wiesel-act-report/, and included below.

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Today, the Department of State submitted the latest annual report to Congress consistent with section 5 of the Elie Wiesel Genocide and Atrocities Prevention Act. The 2023 Elie Wiesel Act Report details U.S. interagency efforts to address genocide, war crimes, and crimes against humanity around the world. It also chronicles whole-of-government work over the past year to promote atrocity prevention programs, protect civilians at risk of atrocities, and help hold perpetrators of atrocities accountable in places where some of the most heinous crimes have been committed – and unfortunately continue.

This year's Elie Wiesel Act Report reflects several Administration priorities. The report notes new U.S. atrocity prevention efforts, including through the application of the U.S. Atrocity Risk Assessment Framework and continued coordination with likeminded partners and civil society. As part of ongoing work to incorporate gender into atrocity prevention efforts, the report focuses on the role of gender-based violence, including conflict-related sexual violence, as a potential early warning sign for atrocities. The report also highlights the critical documentation work of the Conflict Observatory program for Ukraine, which has recently expanded to help address human rights violations and abuses in Sudan and aid humanitarian access there.

The report illustrates the efforts of the Atrocity Prevention Task Force as the U.S. government implements the **U.S. Strategy to Anticipate, Prevent, and Respond to Atrocities**. The United States is committed to promoting respect for human rights globally and pursuing accountability for those responsible for atrocities. Preventing atrocities, wherever and whenever possible, remains a core U.S. national security interest.

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The 2023 report is available at https://www.state.gov/2023-report-to-congress-on-section-5-of-the-elie-wiesel-genocide-and-atrocities-prevention-act-of-2018-p-l-115-441-as-amended/.

2. Responsibility to Protect

a. U.S. statements on Responsibility to Protect

On June 26, 2023, Jonathan Shrier, U.S. Deputy Representative to UN Economic and Social Council delivered remarks at a UN General Assembly Plenary on the responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing, and crimes against humanity. The remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-unga-plenary-on-the-responsibility-to-protect-and-the-prevention-of-genocide-war-crimes-ethnic-cleansing-and-crimes-against-humanity-2/.

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It has been 18 years since the General Assembly adopted its World Summit Outcome Document, which proclaimed that each state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and two years since the General Assembly decided to include this item in its annual agenda.

Despite these efforts, we continue to see the perpetration of atrocities in numerous situations around the world. We appreciate the Secretary-General's report's focus on the risks and drivers of atrocity crimes and on the importance of prevention.

As the Secretary-General has urged, we, the Member States of the United Nations, must do more to address the risks that can create conditions that lead to atrocities. It is vital that we continue to address food insecurity and poverty, and more generally accelerate progress toward achieving the Sustainable Development Goals in order to help lower the risk of atrocities occurring.

We must focus our attention and efforts on addressing atrocities that are taking place across the world. Far too often, critical infrastructure is targeted by armed actors, with civilians forced to leave homes to find electricity, running water and food supplies.

Civilians are facing the brunt of the destruction of the Kakhovka dam, with global repercussions, due to flooding. Destruction of the dam also endangers operations at the Zaporizhzhya Nuclear Power Plant and has damaged agricultural fields and facilities that will further set back food production that much of the world depends on.

We have also seen Russia use Iranian-supplied "kamikaze drones" to attack cities throughout Ukraine, killing hundreds, and destroying schools, hospitals and other civilian infrastructure. This is in addition to the Russian missiles that have targeted civilians and civilian infrastructure since the beginning of the full-scale invasion in February 2022.

In April, Burma's military conducted an airstrike on a village in Kanbulu township that killed over 160 people, including dozens of children. The regime's violence and oppression has perpetuated a humanitarian crisis in Burma, with reports indicating more than 3,600 killed, 19,000 detained, and more than 1.5 million displaced since the coup. And let us not forget the genocide and crimes against humanity perpetrated against the Rohingya in 2016 and 2017.

People's Republic of China authorities continue to commit genocide and crimes against humanity against predominantly Muslim Uyghurs and members of other ethnic and religious minority groups in Xinjiang. In response to the situation in Xinjiang, the Committee on the Elimination of Racial Discrimination, acting under its early warning system and urgent action procedure, referred the matter to the attention of the Special Advisor of the Secretary-General on the Responsibility to Protect in November 2022.

The United States condemns in the strongest terms the ongoing human rights violations and abuses and horrific violence in Sudan, especially reports of widespread sexual violence and killings based on ethnicity in West Darfur by the Rapid Support Forces – RSF – and allied militias.

The atrocities occurring in West Darfur and other areas are an ominous reminder of the horrific events that led the United States to determine in 2004 that genocide had been committed in Darfur. We specifically condemn the killing of West Darfur Governor Khamis Abbakar on June 14 after he accused the RSF and other forces of perpetrating genocide.

While the atrocities taking place in Darfur are primarily attributable to the RSF and affiliated militia, both sides have been responsible for abuses. In Darfur, the Sudanese Armed Forces have failed to protect civilians and has reportedly stoked conflict by encouraging mobilization of tribes.

The 2021 UN Security Council Resolution 2573 on the "Protection of Objects Indispensable to the Survival of the Civilian Population" condemned acts of violence in conflict areas – whether deliberate or not – that threaten or harm civilian populations and essential infrastructure.

Under this resolution, these acts are flagrant violations of international humanitarian law. All parties to armed conflict must immediately end such practices. The resolution further demanded that all parties comply fully with their obligations under international humanitarian law and urged all parties to protect civilian infrastructure.

All States and armed groups must comply with their obligations under international humanitarian law and should implement good practices to mitigate and respond to harm to civilians and civilian objects.

In an effort to continually improve its policies and practices relating to the protection of civilians in armed conflict, the United States released the Civilian Harm Mitigation and Response Action Plan. This Plan includes doctrine, guidance, and procedures to mitigate and respond to civilian harm in U.S. operations and multinational operations led by the United States.

The United States remains committed to upholding its obligations regarding the protection of civilians and to promoting accountability for those who are responsible for atrocities.

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b. Joint Statements on Responsibility to Protect

The Group of Friends of the Responsibility to Protect ("R2P") delivered several joint statements at the UN Human Rights Council ("HRC") in 2023. The 52nd regular session of the HRC took place between February and April of 2023 ("HRC 52"). See discussion of HRC 52 in Chapter 6 of this *Digest*. The Group of Friends' March 16, 2023 joint statement, which the United States joined, is available at https://geneva.usmission.gov/2023/03/16/group-of-friends-of-the-responsibility-to-protect-geneva-hrc52/, and excerpted below.

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We thank the Special Rapporteur for her report and for highlighting the crucial role of Human Rights Defenders documenting war crimes and other violations of international law and provide this information to the UN human rights system.

As highlighted by the UN Secretary General in his annual report on the R2P, Human Rights Defenders are often the first to witness warning signs of atrocity crimes and are equipped with in-depth expertise that states should incorporate into any atrocity prevention response. They are also at the forefront of promoting justice and accountability, reporting on international law violations, and working with governments to build capacity to better protect populations under threat and uphold R2P.

Yet, around the world, Human Rights Defenders are at risk of, or are experiencing, harassment, reprisals, arbitrary criminal proceedings or legal and administrative obstacles used to jeopardize their work. This not only puts at risk their own safety and security but can also have disastrous consequences for vulnerable communities dependent on their support.

We strongly condemn actions taken that limit or endanger the crucial work of Human Rights Defenders and call on all states to uphold their obligations under international law. We also call on all governments systematically to engage with local actors, particularly victim and survivor communities, to develop prevention strategies and responses that are rights-based and community-informed, to better prevent atrocity crimes before they occur.

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On July 4, 2023, the Group of Friends delivered a joint statement during the interactive dialogue with the Special Adviser to the UN Secretary General on the prevention of genocide at the 53rd regular session of the HRC ("HRC 53"), which took place between June and July 2023. See discussion of HRC 53 in Chapter 6 of this *Digest*. The joint statement, which the United States joined, is available at https://geneva.usmission.gov/2023/07/04/joint-statement-by-the-group-of-friends-of-r2p-on-the-prevention-of-genocide/, and excerpted below.

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We thank the Special Adviser and would like to reaffirm our support to the UN Office on Genocide Prevention and R2P. The Special Adviser on the Prevention of Genocide and the Special Adviser on R2P can and should play an instrumental role in raising awareness of situations at risk of atrocity crimes and providing UN Member States with targeted recommendations for action. These complimentary and mutually reinforcing mandates require equal support, including from within the UN system, to ensure their effectiveness.

We urge the two Special Advisers to use their leadership role to seize any opportunity to advance atrocity prevention efforts, including at the Human Rights Council and through regular early warning and horizon-scanning briefings to UN Member States on concrete situations at risk. Public statements on situations at imminent risk of escalation can contribute to mobilizing early action.

We also urge the Special Adviser to enhance her collaboration with the OHCHR and relevant HRC mechanisms and procedures in order to promote addressing atrocity prevention holistically across the UN system, as well as to systematically engage with civil society and affected communities.

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On September 29, 2023, the Group of Friends delivered a joint statement during the interactive dialogue on the UN Secretary General's report on reprisals at the 54th regular session of the HRC ("HRC 54"), which took place between September and

October 2023. See discussion of HRC 54 in Chapter 6 of this *Digest*. The joint statement, which the United States joined, is available at https://geneva.usmission.gov/2023/09/29/joint-statement-by-the-group-of-friends-of-the-responsibility-to-protect-geneva-2/, and excerpted below.

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We thank the Secretary General for his report and are deeply alarmed about ongoing reprisals against civil society actors.

Repression of civic space and independent voices can be one of the early warning signs for, and precursors to human rights crises and possible atrocity crimes. This includes reprisals against and harassment of those cooperating with the UN system, legislation curtailing the exercise of fundamental freedoms, arbitrary criminal prosecutions, systematic violations of due process rights, arbitrary detention, smear campaigns, and intimidation of activists' family members.

We stand in solidarity with human rights defenders. Ensuring their protection, both in online and offline environments, helps make societies more resilient to human rights violations and atrocity crimes. HRDs are vital actors in documenting, mitigating, and preventing violations and abuses, including those at risk of escalating into atrocity crimes, and are often the first to witness warning signs.

We must become better at ensuring the protection of human rights defenders and wider civic space, including through targeted follow-up action on information provided by the UN system, including the Secretary General's report. We call on all Member States to put into place protection mechanisms for victims, survivors and human rights defenders and to speak up loudly, clearly and consistently against reprisals.

We must speak up, not only for the victims, but indeed for the integrity of the UN human rights system.

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3. Atrocities in Burma

On January 31, 2023, the High Representative on behalf of the European Union, and the Foreign Ministers of Albania, Armenia, Australia, Bosnia and Herzegovina, Canada, the Federated States of Micronesia, Georgia, Ghana, Iceland, Liechtenstein, Montenegro, New Zealand, North Macedonia, Norway, the Republic of Korea, the Republic of the Marshall Islands, the Republic of Palau, Serbia, Switzerland, Ukraine, the United Kingdom and the United States issued a joint statement on the two-year anniversary of the military coup in Myanmar. The joint statement appears below, and as a State Department media note at https://www.state.gov/joint-statement-on-marking-two-years-since-the-military-coup-in-myanmar/.

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On 1 February 2021, the Myanmar military staged a coup d'état and seized power against the will of the people, plunging the country into a deep political, economic and humanitarian crisis.

Over the last two years, the people of Myanmar have courageously demonstrated their commitment to a democratic country, demanding respect for human rights and fundamental freedoms, and showing determined resilience in the face of unspeakable atrocities.

Since the coup, the military regime has violently cracked down on any form of opposition, including peaceful protests. Credible reports indicate that thousands of civilians, including children, have been jailed, tortured and killed.

There are mounting reports that air strikes, bombardments and the mass burning of villages and places of worship have targeted civilians and civilian infrastructure. Reports of torture and sexual violence by the security forces are widespread. The prolonged conflict has seen thousands of civilian casualties, over 17 million people in need and 1.5 million people displaced from their homes.

We welcome and support the central role of ASEAN in addressing the crisis in Myanmar, including the efforts of the ASEAN Chair and ASEAN Special Envoy to Myanmar.

We welcome the UN Security Council Resolution 2669 (2022) on the situation in Myanmar which calls for the immediate cessation of violence and the upholding of universal human rights, the provision of full and unhindered humanitarian access and the protection of civilians. It calls on the military regime to effectively and fully implement ASEAN's Five-Point Consensus, and to immediately release all arbitrarily detained prisoners, including President Win Myint and State Counsellor Aung San Suu Kyi. It reaffirms our support for the ASEAN Special Envoy to Myanmar and the UN Special Envoy to Myanmar and encourages their close coordination. It also urges all parties in Myanmar to work constructively with both Envoys to commence dialogue to seek a peaceful solution.

The military overruled the democratic wishes of the people of Myanmar as expressed in the November 2020 General Election, when they seized power on 1 February 2021. We reiterate our call for the return of Myanmar to a democratic path. The military regime must end violence and create space for meaningful and inclusive dialogue to allow for any democratic process to resume.

We once again call on all members of the international community to support all efforts to hold those responsible for human rights violations and abuses to account; to cease the sale and transfer of arms and equipment which facilitate atrocities; and to meet the urgent humanitarian needs of Myanmar's people, including its most vulnerable communities.

We remain resolute in our support for all those working peacefully towards an inclusive and democratic future for the people of Myanmar.

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On August 23, 2023, the United Kingdom delivered a joint statement on behalf of thirteen states, including the United States, on Myanmar. The statement was published on the website of the U.S. Mission to the UN at https://mm.usembassy.gov/joint-

statement-on-myanmar/. The joint statement of Albania, Brazil, Ecuador, France, Gabon, Ghana, Japan, Malta, Mozambique, Switzerland, the United Arab Emirates, the United States, and the United Kingdom follows.

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The Security Council met in closed consultations today to discuss the situation in Myanmar. We heard briefings from Under-Secretary-General Martin Griffiths following his visit to Myanmar and Assistant Secretary-General Khiari for an update on efforts to resolve the crisis.

More than two and a half years since the state of emergency imposed by the military in Myanmar on 1 February 2021, we remain deeply concerned at the situation in Myanmar and its impact on the people of Myanmar.

The last months have seen unrelenting violence across Myanmar. We strongly condemn the killing of civilians and in particular the continued use of air strikes, and reaffirm the need to respect international law and protect civilians.

Over 18 million people are in need of humanitarian assistance in Myanmar; 2 million are displaced; and over 15 million people are food insecure. We reiterate the call this Council has repeatedly made on the need for full, safe and unhindered humanitarian access to all people in need, including to ensure aid reaches those most vulnerable, including ethnic and other minority populations.

We remain deeply concerned about the situation in Rakhine State. It has been six years since nearly a million Rohingya were forced to flee their homes in Myanmar. We encourage international partners to support the provision of humanitarian assistance to displaced Rohingya. We express our support for diplomatic efforts to create conditions conducive to the voluntary, safe, dignified, and sustainable return of Rohingya to their homeland. We urge Myanmar to address the fundamental causes of the crisis and restore the rights of Rohingya.

The Council set out its expectations clearly in UN Security Council Resolution 2669, including: for the immediate release of all arbitrarily detained prisoners, including President Win Myint and State Counsellor Aung San Suu Kyi; on the need to fully respect human rights and uphold the rule of law; on respect for the democratic will of the people of Myanmar; on the swift and full implementation of ASEAN's Five Point Consensus; on the need to address the root causes of the crisis in Rakhine State; and for the rights of persons belonging to minorities to be fully protected. We note with concern that there has been insufficient progress against these calls.

We reiterate our strong support to ASEAN and the efforts of the ASEAN Chair, and call again on the Myanmar military to take concrete and immediate actions to effectively and fully implement the Five Point Consensus.

In closing, we call again for the full implementation of UN Security Council Resolution 2669 and underline our commitment to using all tools at the Council's disposal to support ASEAN's efforts to find a peaceful solution to the crisis. We reaffirm our strong support for the people of Myanmar.

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On August 24, 2023, Secretary Blinken issued a press statement marking six years since Burma's military launched a campaign against Rohingya, which involved genocide, crimes against humanity, and ethnic cleansing. The statement follows and is available at https://www.state.gov/the-sixth-anniversary-of-genocide-against-rohingya/.

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On August 25, the sixth anniversary of genocide against Rohingya, the United States stands with the victims and survivors and reaffirms our commitment to pursue justice and accountability for the atrocities committed by the Burma military. We are deeply grateful to the Government and the people of Bangladesh for giving shelter and refuge to nearly one million Rohingya, as well as other countries in the region hosting Rohingya refugees.

The United States has provided over $2.1 billion to assist those affected by the crisis in Burma, Bangladesh, and elsewhere in the region since 2017, remaining the leading single largest donor of life-saving humanitarian assistance to those whose lives have been upended by the violence. The escalation of violence throughout the country has exacerbated the dire humanitarian situation, particularly for members of ethnic and religious minority communities, including Rohingya. Since December 2017, the United States has imposed sanctions and visa restrictions on individuals and entities most responsible for the ongoing violence.
The United States remains committed to advancing justice and accountability for all the people of Burma and will continue to stand in solidarity with the people of Burma in their aspirations for a democratic, inclusive, and peaceful future.

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On August 25, 2023, Under Secretary for Civilian Security, Democracy, and Human Rights Uzra Zeya delivered remarks at a Rohingya Genocide Remembrance Day event. The remarks are available at https://www.state.gov/under-secretary-zeyas-remarks-at-rohingya-genocide-remembrance-day-event/, and excerpted below.

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Over the course of 2016 and 2017, Burma's military brutally attacked Rohingya communities. Systematic acts of violence, including torture, sexual and gender-based violence, and mass killings, led to largescale displacement and loss of thousands of innocent lives. They targeted one of the most vulnerable and marginalized populations in Burma, forcing over 740,000 Rohingya to seek refuge in Bangladesh.

The rippling impact of those attacks continues today – six years later. Bangladesh hosts nearly one million Rohingya refugees, with significant numbers seeking refuge in nearby countries. Many more remain internally displaced in Rakhine State. During my visit to Bangladesh in July, I met with Rohingya refugees, who shared personal stories of the horrific

violence they and their families endured in Burma and the fear of continued persecution that prevents their return.

The gradual loss of rights, citizenship, homes, and even their lives in the years leading up to the 2016-2017 outbreak of atrocities made clear that the regime sought to destroy Rohingya communities based on a false, discriminatory narrative of ethnic and religious differences. This false narrative attempted to obscure the fact that Rohingya have been an integral part of Burma's society for generations.

The United States remembers what Rohingya have lost and continue to lose. Today, we are unwavering in our commitment to provide assistance to survivors and victims, seek accountability for those responsible, and pursue justice for the survivors and victims.

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We are not alone in seeking accountability. On Wednesday, we joined 12 other nations on the UN Security Council in a joint statement calling out the continued, unrelenting violence perpetrated by the military regime. This statement called on the regime to restore the rights of the Rohingya and served to keep high-level focus on your plight.

Also on Wednesday, the United States expanded its Burma-related sanctions authorities to include any foreign individual or entity operating in the jet fuel sector of Burma's economy and designated two individuals and three entities under this authority. This expansion follows U.S. sanctions actions already taken this year that designated Burma's Ministry of Defense, its two largest regime-controlled banks, the Ministry of Energy, and other individual military-affiliated cronies. We will continue to use our sanctions authorities to deprive the military regime of the resources that enable it to oppress its people and urge others to take similar accountability measures.

Justice for victims is also crucial. The United States coordinates with international partners and NGOs to support Rohingya courageously seeking justice in the courts of Argentina for the atrocities committed against them.

We actively work with civil society and members of the Rohingya community to document the atrocities and other abuses committed against them. We stand ready to support a holistic transitional justice process to address the long history of atrocities once such a process becomes viable to respect the demands of victims and survivors for truth, reparation, justice, and non-recurrence.

Secretary Blinken's determination in March 2022 that members of Burma's military committed genocide and crimes against humanity against Rohingya was a historic occasion. This marked only the eighth time the United States has come to such a critical conclusion.

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On September 13, 2023, Ambassador-at-Large for Global Criminal Justice Beth Van Schaack testified before the Tom Lantos Human Rights Commission of the United States Congress for a hearing on human rights in Burma in the aftermath of the February 2021 military coup. Excerpts from the testimonyare below and available at https://www.state.gov/statement-for-the-record-from-ambassador-beth-van-schaack/.

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As a result of these developments in international justice, multiple pathways to justice and accountability exist for the genocide, crimes against humanity, and ethnic cleansing committed against Rohingya by members of Burma's military. These pathways include the International Court of Justice, the International Criminal Court (ICC), and domestic courts around the world that have jurisdiction.

In 2019, The Gambia, with encouragement from the Organization of Islamic Cooperation (OIC), brought a case against Burma under the Genocide Convention before the International Court of Justice for genocide against Rohingya. The United States applauds this initiative, and we have shared relevant information with The Gambia as it presses its claims. We also welcome the OIC's support for The Gambia as it confronts a regime intent on genocide and crimes against humanity against a mostly Muslim ethno-religious minority.

The ICC investigation, authorized in 2019, is looking into the atrocities committed against Rohingya in Burma who fled to neighboring Bangladesh, which is a State Party to the Court's founding treaty. It is anticipated that the main charge will be forcible deportation of the civilian population. The United States is in favor of a UN Security Council referral of the situation in Burma to the International Criminal Court—which would allow the ICC to address all alleged atrocity crimes in the situation in Burma—but we are cognizant that China and Russia will block such an effort.

Finally, victims and NGOs have filed criminal complaints in Argentina and Germany against those deemed responsible for atrocities against Rohingya. The case filed in Germany is also on behalf of post-coup victims and survivors, broadening the pathways for justice for the atrocities committed in Burma. Last June, with assistance from State Department funding, seven witnesses traveled from Cox's Bazar to Buenos Aires to give testimony about what they witnessed and what they experienced in the 2017 violence. During a trip to Argentina, I met with the prosecutors who are pursuing this case on behalf of Rohingya survivors to express our support for their work.

Since 2018, justice efforts have been aided by the United Nations Independent Investigative Mechanism for Myanmar (IIMM). The mandate of the IIMM is to collect, consolidate, preserve, and analyze evidence of atrocities committed in Myanmar since 2011 and to facilitate criminal proceedings in courts that have jurisdiction. Following the 2021 coup d'état, the IIMM is also investigating post-coup violence that may constitute atrocity crimes. Consistent with the "Burma Act," as included in the National Defense Authorization Act for Fiscal Year 2023, we continue to advance the work of this mechanism through our votes and interventions in the United Nations, with State Department funding, and by sharing relevant information in our possession. We also support the mandates of the U.N. Special Rapporteur on the Situation of Human Rights in Myanmar, former Congressman Tom Andrews of Maine, and that of the Special Envoy for Myanmar, a position recently vacated.

While justice pathways are being pursued, the United States has taken other concrete actions to promote accountability on behalf of victims and survivors of this tragedy. The Office of Global Criminal Justice works closely with the Bureau of Democracy, Human Rights, and Labor to support civil society organizations doing vitally important documentation work and assisting witnesses who are engaging in accountability efforts. We work closely with the Burma desk, the teams responsible for sanctions and visa restrictions, and other offices and bureaus in

the Department to ensure that our efforts to promote justice and accountability for the atrocities committed in Burma marshal the best expertise and resources the Department has to offer.

That said, enhanced monitoring and public reporting on the conflict in Burma could fill critical information gaps to bolster accountability measures, raise the profile of emerging and ongoing atrocity risks, and enable the United States and our partners to create clear and targeted messaging. Subject to resource availability, we are exploring how we can marshal innovative tools, such as the Department's Conflict Observatory, which has demonstrated significant success in identifying, tracking, and documenting war crimes and other atrocities in Ukraine and Sudan.

The United States supports UN Security Council Resolution 2669, adopted last December, which "demands an immediate end to all forms of violence throughout the country" and "urges the Myanmar military to immediately release all arbitrarily detained prisoners." We welcome the Security Council's closed briefing held on August 23rd on Burma over the objections of Russia and the People's Republic of China. We also favor a Security Council resolution that would impose sanctions—such as an embargo on arms and/or jet fuel—that would reduce the military's ability to kill civilians in Burma.

Notwithstanding all of these interlocking efforts, pursuing these pathways to justice for mass atrocities is challenging. These processes take a long time. The hope is that they will one day be complemented by the implementation of a comprehensive transitional justice agenda, should the day come when that is possible in Burma. I would like to thank Congress for its unwavering support for all these initiatives to advance the cause of justice and accountability in Burma and elsewhere in the world.

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4. Atrocities in Ukraine

On February 14, 2023, The Conflict Observatory, a program supported by the State Department, released its report finding evidence that Russia's unlawful transfer and deportation of Ukraine's children to areas under Russian control was a grave breach of the Fourth Geneva Convention. The State Department announced the reporting in a media note available at https://www.state.gov/evidence-of-russias-war-crimes-and-other-atrocities-in-ukraine-recent-reporting-on-child-relocations/, and follows.

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The Conflict Observatory, a program supported by the U.S. Department of State, released an independent report today detailing a vast network of Russia-run sites and processes used to relocate thousands of Ukraine's children to areas under Russian government control. The unlawful transfer and deportation of protected persons is a grave breach of the Fourth Geneva Convention on the protection of civilians and constitutes a war crime. The fact that these are transfers and deportations of children is unconscionable by any standard. Russia must immediately halt forced transfers and deportations and return the children to their families or legal guardians. Russia must provide

registration lists of Ukraine's relocated and deported children and grant access for outside independent observers to related facilities within Russia-occupied areas of Ukraine and inside Russia itself.

This latest report, prepared by program partner Yale Humanitarian Research Lab, is available in its entirety on the Conflict Observatory's **website**. It identifies 43 facilities to which the Russian government has relocated Ukraine's children—for some, thousands of miles away from their homes. The report provides evidence of the Russian government's systematic efforts to sever communication between the taken children and their relatives at home in Ukraine, prevent the children's return to Ukraine, and "re-educate" them to become pro-Russia. It also describes the taking of children from Ukraine and placing them for adoption by families in Russia.

The Conflict Observatory is a program that independently compiles and documents evidence to support investigations of abuses during Russia's war of aggression against Ukraine. Yale's research identified several dozen Russian Federation officials and other individuals implicated in the relocation and deportation of Ukraine's children. It makes clear that Russia's systematic efforts reflect decisions made and actions taken at all levels of the Russian government. This report and others like it reinforce U.S. and international resolve to pursue accountability for all individuals involved in war crimes and other atrocities committed in Ukraine.

Mounting evidence of Russia's actions lays bare the Kremlin's aims to deny and suppress Ukraine's identity, history, and culture. The devastating impacts of Putin's war on Ukraine's children will be felt for generations. The United States will stand with Ukraine and pursue accountability for Russia's appalling abuses for as long as it takes.

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A February 14, 2023 Foreign Press Center briefing by representatives of The Conflict Observatory is available at https://www.state.gov/briefings-foreign-press-centers/evidence-of-russias-war-crimes-and-other-atrocities-in-ukraine-recent-reporting-on-child-relocations.

On February 18, 2023, Vice President Kamala Harris announced Secretary Blinken's determination, based on a careful analysis of the law and available facts, that members of Russia's forces and other Russian officials committed crimes against humanity in Ukraine. Vice President Harris's remarks are available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/18/remarks-by-vice-president-harris-at-the-munich-security-conference-2/, and excerpted below.

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In the case of Russia's actions in Ukraine, we have examined the evidence. We know the legal standards. And there is no doubt these are crimes against humanity….

The United States has formally determined that Russia has committed crimes against humanity.

And I say to all those who have perpetrated these crimes and to their superiors who are complicit in these crimes: You will be held to account.

In the face of these indisputable facts, to all of us here in Munich: Let us renew our commitment to accountability. Let us renew our commitment to the rule of law.

As for the United States, we will continue to support the judicial process in Ukraine and international investigations, because justice must be served.

Let us all agree, on behalf of all the victims, both known and unknown, justice must be served. Such is our moral interest.

We also have a significant strategic interest. The fight in Ukraine has far-reaching global ramifications.

No nation is safe in a world where one country can violate the sovereignty and territorial integrity of another … where crimes against humanity are committed with impunity; where a country with imperialist ambitions can go unchecked.

Our response to the Russian invasion is a demonstration of our collective commitment to uphold international rules and norms. Rules and norms which, since the end of World War Two, have provided unprecedented security and prosperity not only for the American people, not only for the people of Europe, but people around the world.

Principles that state that sovereign nations have a right to peacefully exist, that borders must not be changed by force, that there are inalienable human rights which governments must respect, and that the rule of law must be preserved.

Indeed, this moment has tested our willingness to defend and uphold these rules and norms. And we have remained strong, and we must stay strong. Because if Putin were to succeed with his attack on these fundamental principles, other nations could feel emboldened to follow his violent example. Other authoritarian powers could seek to bend the world to their will through coercion, disinformation, and even brute force. The international order upon which we all rely could be at risk.

So, in the interest of global security and prosperity, one of our defining missions is to uphold international rules-based order. And nations around the world agree.

Consider, more than 140 countries voted at the United Nations to condemn Russia's aggression and to support Ukraine's sovereignty and territorial integrity in defense of the core principles of the U.N. Charter.

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Secretary Blinken's February 18, 2023 determination follows and is available at https://www.state.gov/crimes-against-humanity-in-ukraine/.

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Based on a careful analysis of the law and available facts, I have determined that members of Russia's forces and other Russian officials have committed crimes against humanity in Ukraine. Members of Russia's forces have committed execution-style killings of Ukrainian men, women, and children; torture of civilians in detention through beatings, electrocution, and mock executions; rape; and, alongside other Russian officials, have deported hundreds of thousands of Ukrainian civilians to Russia, including children who have been forcibly separated from their

families. These acts are not random or spontaneous; they are part of the Kremlin's widespread and systematic attack against Ukraine's civilian population.

We reserve crimes against humanity determinations for the most egregious crimes. Today's determination underlines staggering extent of the human suffering inflicted by Moscow on the Ukrainian civilian population. This determination also reflects the deep commitment of the United States to holding members of Russia's forces and other Russian officials accountable for their atrocities against the people of Ukraine.

There can be no impunity for these crimes. All those responsible must be held accountable. As today's determination shows, the United States will pursue justice for the people of Ukraine for as long as it takes.

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In addition, the State Department released a fact sheet entitled, "Supporting Justice and Accountability in Ukraine" on February 18, 2023. The fact sheet is available at https://www.state.gov/supporting-justice-and-accountability-in-ukraine/.

On February 22, 2023, Ambassador-at-Large for Global Criminal Justice Beth Van Schaack delivered remarks at a special press briefing on Secretary Blinken's February 22, 2023 crimes against humanity determination. The remarks are available at https://www.state.gov/press-briefing-on-crimes-against-humanity-designation-by-dr-beth-van-schaack-ambassador-at-large-for-global-criminal-justice/, and follow.

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Vice President Kamala Harris announced at the Munich Security Conference that the Secretary of State Antony Blinken has determined that members of Russia's forces and other Russian officials have committed crimes against humanity. This determination follows extensive analysis by the Department, including my office, the Office of Global Criminal Justice, of information indicating that members of Russia's forces

- committed execution-style killings of Ukrainian men, women and children;
- tortured civilians in detention, including through beatings, electrocutions, and mock executions;
- raped women and girls;
- and, alongside other Russian officials, deported hundreds of thousands of Ukrainian civilians to Russia, including children.

As Secretary Blinken explained in his statement, "These acts are not random or spontaneous; they are part of the Kremlin's widespread and systematic attack against Ukraine's civilian population." When it comes to the abduction and deportation of thousands of Ukrainian children in particular, President Joe Biden observed in his remarks in Poland this weekend that Russia has "stolen Ukrainian children in an attempt to steal Ukraine's future."

Crimes against humanity are a constellation of acts made criminal under international law when they are committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. This key element—a widespread or systematic attack against a civilian population—is generally what distinguishes crimes against humanity from other

crimes. In the case of Ukraine, the Secretary determined that the attack against the Ukrainian civilian population is both widespread and systematic. He also noted: "We reserve crimes against humanity determinations for the most egregious crimes."

Although crimes against humanity are as old as humanity, the legal concept traces its origins to World War II and the Charter of the International Military Tribunal at Nuremberg. Some crimes by the Nazis—such as the mass deportation or the imprisonment and enslavement of Germany's own citizens and the citizens of its allies in the war—could not be prosecuted under the traditional formulation of war crimes. And the Genocide Convention was not drafted until 1948. To capture the scope of horrors suffered by civilians, crimes against humanity were included in the Nuremberg Charter. Senior Nazi military and other government officials were prosecuted for this crime, including those who helped to forcibly deport thousands of civilians.

This weekend's determination that members of Russia's forces and other Russian officials are committing crimes against humanity is part of the United States' multi-faceted policy to hold Russia to account for atrocities in Ukraine. As President Biden reminded the world yesterday: "no one should turn away their eyes from the atrocities Russia is committing against the Ukrainian people." The United States, working together with the international community, is committed to holding those responsible—the direct perpetrators and the architects of these atrocities—to account, no matter how long that takes. This includes supporting existing pathways to accountability in Ukrainian courts, the International Criminal Court, and cases that might be brought in courts around the world once they establish jurisdiction over individuals accused of committing international crimes in Ukraine. This is a new Nuremberg moment, and the world must remain united in support of justice.

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On February 24, 2023, Ambassador Linda Thomas-Greenfield issued a statement marking the one-year anniversary of Russia's invasion of Ukraine. The statement is available at https://usun.usmission.gov/statement-by-ambassador-linda-thomas-greenfield-marking-the-one-year-anniversary-of-russias-brutal-invasion-of-ukraine/, and includes the following:

> One year ago today, Russia launched an illegal, unprovoked, and brutal invasion of Ukraine. In the past year, the world has seen mounting evidence of Russia's unspeakable atrocities. Members of Russia's forces have perpetrated war crimes and, along with other Russian officials, crimes against humanity, including the deportation of Ukrainian children to far flung locations in Russia….
>
> Over the last year, the United States and our partners have taken numerous actions at the UN to hold Russia to account for its violations of Ukraine's sovereignty and territorial integrity, of the UN Charter, and of international humanitarian law. Days after Russia's full-scale invasion of Ukraine, the UN General Assembly came together, and 141 countries voted to condemn Russia's invasion. And just yesterday, one year later, 141 countries showcased our unity and voted for a comprehensive, just, and lasting peace in Ukraine, one that is in line with the UN Charter's most fundamental principles of sovereignty and territorial integrity. The General Assembly reiterated its clear demand for

> Russia to withdraw immediately from Ukraine's internationally recognized borders. The international community has been clear. And Russia remains isolated on the world stage.
>
> On April 19, 2023, Ambassador-at-Large Beth Van Schaak delivered testimony for the record at the Senate Judiciary Committee hearing entitled "Holding Russian Kleptocrats and Human Rights Violators Accountable for their Crimes Against Ukraine." The remarks are available at https://www.state.gov/ambassador-at-large-beth-van-schaacks-testimony-for-the-record-senate-judiciary-committee-hearing, and excerpted below.

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Supporting Comprehensive Accountability for the Commission of International Crimes, Including the Crime of Aggression

Following the Second World War, the prosecution of the crime of aggression—"crimes against the peace" in the lexicon of the era—was deemed necessary to reinforce the inviolability of the principles of territorial sovereignty and political independence that Nazi Germany so egregiously violated through its multiple invasions across Europe. Over 75 years later, the investigation and prosecution of this crime has again become imperative to reaffirm and reinforce the principles that undergird the UN Charter, which Russia has so flagrantly violated with its invasion of Ukraine.

The U.S. government's broader approach to the crisis in Ukraine involves three main pillars: (1) strengthening Ukraine's hand on the battlefield so it can be in a better position at the negotiating table; (2) alleviating the humanitarian crisis caused by Russia's unprovoked war; and (3) supporting multiple pathways towards justice and accountability. My office is working to strengthen this third pillar. To this end, and together with the broader U.S. government and many friends and allies, we are pursuing several lines of efforts to promote justice and accountability for Ukraine.

Four pathways to justice exist, and we are working to enhance each. The **first** pathway involves international courts and institutions. Our efforts here include working toward the establishment and renewal of the Independent International Commission of Inquiry on Ukraine and twice invoking the Moscow Mechanism of the Organization for Security and Co-operation in Europe. The United States has also intervened in Ukraine's case against Russia under the Convention on the Prevention and Punishment of the Crime of Genocide before the International Court of Justice. Finally, the Prosecutor of International Criminal Court received an unprecedented number of state referrals to open his investigation into Ukraine. We are grateful for the bipartisan legislation Congress has enacted to support the ICC's investigation in Ukraine.

The **second** pathway aims to increase the capacity of Ukrainian institutions to document, investigate, and prosecute war crimes in Ukrainian courts. There are thousands of war crimes investigations already underway, with investigators and prosecutors working under harrowing conditions. Nonetheless, the Ukrainian Office of the Prosecutor General (OPG) has recorded more than 80,000 incidents that may constitute prosecutable crimes—a daunting task that would overwhelm even the most well-resourced prosecutorial team. Alongside the United Kingdom and the European Union, we are coordinating multifaceted support to the OPG through the Atrocity Crimes Advisory Group (ACA). ACA experts—many of whom are veterans of national and

international war crimes prosecutorial teams—provide technical assistance and training in international criminal law and practice to assist Ukrainian investigators and prosecutors in Kyiv and out in the field.

The **third** pathway is aimed at enabling strategic litigation in other courts around the world. In Europe, we have witnessed the mass mobilization of prosecutorial and investigative authorities operating under the Eurojust umbrella to coordinate strategies, track potential defendants, and share information and evidence. European prosecutors are opening structural investigations into the conflict in order to enable them to move quickly once a suspect comes within reach. The U.S. government is supporting these efforts through memoranda of understanding with different states, through engagement with the Joint Investigative Team that was set up through Eurojust, and by working with civil society organizations that are providing potential evidence to national authorities.

Prosecutions for the crime of aggression offer a **fourth** pathway to justice. The Ukrainians rightfully see Russia's war of aggression—which began in 2014 and greatly intensified in 2022—as having unleashed all the subsequent horrors they have experienced. The United States agrees. We condemn Russia's war of aggression and efforts at territorial conquest. There are compelling reasons to prosecute the crime of aggression in this context to preserve and protect the values the UN Charter was designed to uphold. Permitting impunity for Russia's malign conduct will embolden other actors to engage in similar blatant violations of state sovereignty, territorial integrity, and political independence.

In terms of what a tribunal dedicated to prosecuting the crime of aggression should look like, various proposals are under discussion. Since World War II, a range of international criminal justice models have emerged, and we have the benefit of having seen what works and what does not. At this critical moment, it is important to draw upon these past practices. In formulating our position, the State Department has been guided by several core principles: **maximizing accountability** for the crime of aggression; generating the **greatest international support and legitimacy** for this effort; ensuring the **effective marshaling of international resources**, which are already stretched in the face of multiple competing crises, including those caused by this very war; ensuring best practices in terms of **fair trial and due process**; continuing to **enhance Ukraine's domestic legal capacity**; and promoting and ensuring respect for **core principles of international law**.

With these principles in mind, we favor a tribunal on the crime of aggression that is rooted in Ukraine's judicial system, enhanced with international elements in the form of personnel and expertise, structure, and support (including in terms of funding and cooperation). Such a tribunal would likely be located elsewhere in Europe to enhance security and facilitate international involvement. This includes potentially positioning the tribunal alongside Eurojust and the newly established Centre for the Prosecution of the Crime of Aggression (ICPA), which will commence investigations into the crime and begin to develop dossiers on potential perpetrators.

A tribunal with these features is the one most likely to achieve meaningful accountability for the crime of aggression against Ukraine. It is a model with a clear legal basis under international law that respects the UN Charter. It is also the one most likely to garner widespread and diverse international support. By rooting the court within Ukraine's judicial system, international investment will not only capacitate accountability for the crime of aggression, but it will also enhance Ukraine's own domestic processes, further institutionalize the rule of law, and enable multiple forms of international support that will have a lasting impact for generations thereafter. Such an internationalized tribunal will be more likely to enjoy dependable financial support as compared with other past tribunals whose funding has withered over time.

These will be the first prosecutions of the crime of aggression in the modern era. It is critical that we, as an international community, get the tribunal's establishment right and proceed in a manner that is best supported by international law and practice and that garners broad international support. We believe this is the model that can do just that. We understand, of course, there are limitations with this proposal, as there are for all models under consideration, including the issue of immunities. But that issue is implicated by other proposals as well and does not prevent robust investigations in the meantime.

We also understand this model may require the United States to work with Ukraine to ensure that its legal system, including its Constitution, permits the creation of this new court. That is an issue that may need to be confronted regardless of which model is chosen. And the international community has faced—and successfully navigated—the need to make careful changes to domestic legal frameworks to internationalize justice before in relation to other situations, including in Cambodia and Kosovo. It may take time—as international justice always has—but any potential hurdles can be overcome here as well.

Third, since it is rooted in Ukraine's judicial system, we believe this model is the one most likely to garner diverse and prolonged international support, including the long-term funding needed for an exercise that may take years to complete if key defendants remain out of reach.

Finally, the modalities of such a tribunal remain under discussion and debate internationally, and we recognize that there will be significant legal, policy, and logistical challenges to be overcome in the weeks and months ahead.

Nonetheless, joining the many nations that have announced support for a special tribunal on the crime of aggression in Ukraine was a milestone moment for the United States. We are committed to working with Ukraine, and countries around the world, to stand up, staff, and resource such a tribunal in a way that will help support comprehensive accountability for the international crimes being committed in Ukraine. The egregiousness of Russia's actions demands accountability. The U.S. government is behind this initiative, and we will reach out for Congressional support when discussions become concretized.

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At the Fourth Summit of Heads of State and Government of the Council of Europe, which took place in Reykjavik, Iceland from May 16-17, 2023, the Council of Europe established the Register of Damage caused by the Aggression of the Russian Federation against Ukraine ("Register of Damage for Ukraine"). Information on the Register of Damage for Ukraine is available at https://rd4u.coe.int/en/. See *Digest 2022* at 287 for discussion of UN General Assembly resolution A/RES/ES-11/5, "Furtherance of remedy and reparation for aggression against Ukraine," which recommended the creation of an international register of damage. The Register will receive and record in documentary form evidence and claims of damage caused by Russia's internationally wrongful acts on or after February 24, 2022, in the territory of Ukraine's internationally recognized borders, extending to its territorial waters. On May 15, 2023, Ambassador Linda Thomas-Greenfield announce the United States' intent to join the Register of Damage for Ukraine as a founding Associate Member. The announcement follows and is available as a media note at https://usun.usmission.gov/media-note-ambassador-linda-

thomas-greenfield-announces-united-states-to-join-council-of-europes-register-of-damage-for-ukraine/.

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The United States has expressed its intent to join the Council of Europe's "Register of Damage Caused by the Aggression of the Russian Federation against Ukraine on or after February 24, 2022," as a founding Associate Member. The Register is a key deliverable of the Fourth Summit of Heads of State and Government of the Council of Europe taking place May 16-17 in Reykjavik, Iceland.

As head of the U.S. delegation to the Summit, Ambassador Linda Thomas-Greenfield, U.S. Representative to the United Nations, will represent the United States in joining the enlarged partial agreement establishing the Register.

"As President Biden has stated, the United States has committed to holding Russia accountable for its war of aggression against Ukraine," said Ambassador Thomas-Greenfield. "Establishing a Register of Damage to document claims of damage from Russia's brutal war is a critical step in this effort. Together with the Council of Europe, we stand with Ukraine."

The UN General Assembly in November 2022 passed a resolution recommending the creation of an international register of damage caused by Russia's "internationally wrongful acts" in Ukraine. In establishing such a register, the Council of Europe is taking an important step to hold Russia to account for its war of aggression. The United States plans to provide funding, working with Congress, to support the Register.

The Council of Europe was established in 1949 to promote human rights, democracy, and the rule of law. Based in Strasbourg, France, it includes 46 Member States, 27 of which are members of the European Union. The United States participates as an Observer State.

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On May 19, 2023, the G7 released a joint statement on Ukraine. The statement is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/19/g7-leaders-statement-on-ukraine/. Excerpts from the statement related to accountability for atrocities follow.

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9. Accountability

There must be no impunity for war crimes and other atrocities, such as Russia's attacks against civilians and critical civil infrastructure. We acknowledge the efforts made at the United for Justice international conference organized by the Government of Ukraine, and recall the Bucha Declaration that calls for accountability for the most serious crimes under international law committed on the territory of Ukraine.

In this context, we reiterate our commitment to holding those responsible to account consistent with international law, including by supporting the efforts of international mechanisms, such as the International Criminal Court (ICC). We strongly condemn the unlawful

deportation and transfer of Ukrainians, including children, from the occupied areas of Ukraine to Russia, and will continue to follow the progress of the ICC investigation in this regard, with the utmost attention and call for the return of these children. We also deplore instances of conflict-related sexual and gender-based violence against Ukrainians. We welcome the establishment of the International Centre for the Prosecution of the Crime of Aggression against Ukraine.

In addition, welcoming the efforts by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in this context, we underscore the importance of the protection of education of all children, in particular those impacted as well as the preservation of Ukrainian cultural properties and heritage damaged and threatened by the war of aggression. We are also paying attention to the impact of Russia's aggression on international sport. While fully respecting the autonomy of sporting organizations, we are focused on fair sporting competition as well as on ensuring that Russian and Belarusian athletes are in no way appearing as representatives of their states.

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5. Atrocities in Northern Ethiopia

On March 20, 2023, Secretary Blinken announced a determination that members of the Ethiopian National Defense Forces, Eritrean Defense Forces, Tigray People's Liberation Front forces, and Amhara forces committed war crimes and other crimes against humanity in northern Ethiopia. Secretary Blinken's press statement is available at https://www.state.gov/war-crimes-crimes-against-humanity-and-ethnic-cleansing-in-ethiopia/, and excerpted below.

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After careful review of the law and the facts, I have determined that members of the Ethiopian National Defense Forces (ENDF), Eritrean Defense Forces (EDF), Tigray People's Liberation Front (TPLF) forces, and Amhara forces committed war crimes during the conflict in northern Ethiopia.

Members of the ENDF, EDF, and Amhara forces also committed crimes against humanity, including murder, rape and other forms of sexual violence, and persecution.

Members of the Amhara forces also committed the crime against humanity of deportation or forcible transfer and committed ethnic cleansing in western Tigray.

Formally recognizing the atrocities committed by all parties is an essential step to achieving a sustainable peace. Those most responsible for atrocities, including those in positions of command, must be held accountable.

We welcome the commitment that the parties to the Cessation of Hostilities Agreement have made to acknowledge the atrocities committed and their devastating consequences. We urge all parties to follow through on their commitments to one another and implement a credible, inclusive, and comprehensive transitional justice process. We additionally call on the

Government of Eritrea to ensure comprehensive justice and accountability for those responsible for abuses in Ethiopia.

These steps – acknowledgement, accountability, and reconciliation – are key to breaking the cycle of ethnic and political violence that has gripped Ethiopia and prevented it from reaching its unlimited potential for too long.

The United States will partner with Ethiopia as it implements a credible transitional justice process for the benefit of all victims and affected communities. We will stand with Ethiopia as it honestly faces the abuses in its past, provides accountability for the harms committed against its citizens, and moves toward a future of lasting peace.

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On October 25, 2023, Ambassador Mary Beth Leonard, U.S. Senior Adviser for African Affairs, delivered a statement at a UN General Assembly Third Committee (Social, Humanitarian & Cultural Issues) interactive dialogue with the International Commission of Human Rights Experts on Ethiopia. The remarks are excerpted below and available at https://usun.usmission.gov/remarks-at-a-third-committee-interactive-dialogue-with-the-international-commission-of-human-rights-experts-on-ethiopia-2/.

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The United States welcomes the report of the International Commission of Human Rights Experts on Ethiopia. We commend the dedication and professionalism of the Commissioners and their staff in preparing a credible report.

We condemn the atrocities – including sexual violence and mass killings – perpetrated against civilians during the conflict in northern Ethiopia and reportedly after the signing of the November 2022 Cessation of Hostilities Agreement.

We are concerned by rising violence – in Amhara, Oromia, and elsewhere – including increasing reports of extrajudicial killings, arbitrary detentions, and other human rights violations and abuses. We are also concerned by restrictions on press freedom and arrests of journalists.

The United States calls on all actors to cease the use of hate speech, toxic rhetoric, and arbitrary or unlawful discrimination and violence based on gender and ethnicity.

We call on the Government of Ethiopia to hold perpetrators accountable, including any within the Government of Ethiopia.

We welcome cooperation with the UN's Office of the High Commissioner for Human Rights, although we are disappointed by the lack of cooperation with ICHREE in carrying out its mandate. We call for full cooperation with international human rights monitors, access by journalists and restoration of the internet in conflict areas.

We reaffirm our support for a credible, inclusive, and victim-centered transitional justice process and we will continue to assess its progress.

The United States is committed to working with the government and people of Ethiopia toward a more peaceful and prosperous future.

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6. Atrocities in Sudan

On June 15, 2023, the State Department released a press statement condemning atrocities in Darfur. The statement is available at https://www.state.gov/condemning-atrocities-in-darfur/ and follows.

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The United States condemns in the strongest terms the ongoing human rights violations and abuses and horrific violence in Sudan, especially reports of widespread sexual violence and killings based on ethnicity in West Darfur by the Rapid Support Forces (RSF) and allied militias. Local groups estimate that up to 1,100 civilians have been killed in El Geneina alone, and the UN has reported more than 273,000 people are displaced in West Darfur state. The Sudan Conflict Observatory and media outlets have documented satellite imagery of sections of El Geneina and whole settlements in West, South and North Darfur states razed to the ground by marauding forces, which credible Sudanese voices claim is part of an emerging pattern of targeted ethnic violence against non-Arab populations. Women are bearing the brunt of this violence, and victims and human rights groups have credibly accused soldiers of the RSF and allied militias of rape and other forms of conflict-related sexual violence.

The atrocities occurring today in West Darfur and other areas are an ominous reminder of the horrific events that led the United States to determine in 2004 that genocide had been committed in Darfur. We specifically condemn the killing of West Darfur Governor Khamis Abbakar on June 14 after he accused the RSF and other forces of perpetrating genocide. We also express our concern over reports that the brother of the sultan of the Masalit tribe and 16 others were killed in El Geneina on June 12.

While the atrocities taking place in Darfur are primarily attributable to the RSF and affiliated militia, both sides have been responsible for abuses. In Darfur, the Sudanese Armed Forces (SAF) has failed to protect civilians and has reportedly stoked conflict by encouraging mobilization of tribes. SAF attacks by military aircraft or drones have also impeded humanitarian efforts. Both sides must cease fighting in the area, control their forces, and hold accountable those responsible for violence or abuses, and enable delivery of desperately needed humanitarian assistance.

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On August 4, 2023, the Troika (Norway, the United Kingdom, and the United States) issued a statement condemning atrocities in Darfur. The statement is available as a State Department media note at https://www.state.gov/statement-on-atrocities-in-darfur-sudan/ and follows.

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The Troika (Norway, the United Kingdom, and the United States) condemn in the strongest terms the ongoing violence in Darfur, especially reports of killings based on ethnicity and widespread sexual violence by the Rapid Support Forces (RSF) and allied militias. We call on all parties to immediately cease attacks and prevent the further spread of fighting. Those responsible must be held to account. Full access to conflict-affected areas must be granted so that abuses can be properly investigated and so that life-saving humanitarian aid can reach survivors who urgently need it. We are gravely concerned about reports of a military build-up near El Fasher, North Darfur, and Nyala, South Darfur, where further violence will put more civilians at risk.

The expansion of the needless and ruinous conflict between RSF and the Sudanese Armed Forces (SAF) to Darfur has caused incalculable human suffering. Those responsible for any atrocities against civilians, especially those including Conflict Related Sexual Violence and the targeting of humanitarian relief actors, medical personnel, and other service providers, must be held to account. We remind the parties to the conflict of their obligations under international humanitarian law related to the protection of civilians. We call on all parties to the conflict to enable humanitarian access in Darfur and throughout the country.

The SAF and the RSF must silence their guns and find a negotiated exit from the conflict they started. The security forces must relinquish their hold on power to a civilian transitional government that fulfills the Sudanese people's aspirations for freedom, peace, and justice.

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On November 7, 2023, the United States, the Kingdom of Saudi Arabia, and the Intergovernmental Authority on Development participating on behalf of the African Union issued a joint statement on commitments from talks between Sudanese Armed Forces and Rapid Support Forces in Jeddah, Saudi Arabia. The joint statement is available as a State Department media note at https://www.state.gov/joint-statement-on-commitments-from-jeddah-talks-between-sudanese-armed-forces-and-rapid-support-forces/, which follows.

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As co-facilitators of the talks in Jeddah between the Sudanese Armed Forces (SAF) and Rapid Support Forces (RSF), the Kingdom of Saudi Arabia, the Intergovernmental Authority on Development (IGAD), also participating on behalf of the African Union, and the United States are able to announce that the SAF and RSF have committed to take steps to facilitate increased humanitarian assistance, and to implement confidence-building measures (CBMs).

The talks in Jeddah remain focused on a narrow set of objectives – to facilitate the delivery of humanitarian assistance, establish ceasefires and other confidence building measures, and build toward a permanent cessation of hostilities.

Reaffirming their obligations under the May 11, 2023, Jeddah Declaration of Commitment to Protect the Civilians of Sudan, both the SAF and RSF committed to:

1. Participate in a joint humanitarian forum led by the UN Office for the Coordination of Humanitarian Affairs to resolve impediments to humanitarian access and deliveries of assistance.

2. Identify points of contact to assist with movements of humanitarian personnel and assistance.
3. Implement confidence-building measures related to the following themes:
    - Establishment of communication between SAF and RSF leaders
    - Arrest of prison escapees and fugitives
    - Improvement of each side's official media discourse, and reduction of inflammatory rhetoric
    - Actions concerning each side's warmongers and pro-war elements.

Implementation of these measures will be in parallel.

The belligerent parties also made specific, individual commitments regarding the facilitation of humanitarian access, which are detailed in these SAF (**English**; **Arabic**) and RSF (**English**; **Arabic**) documents.

These shared and individual commitments can represent important steps toward facilitating increased humanitarian access to help ease the suffering of the Sudanese people. It is now up to the SAF and RSF to fully implement their commitments.

The co-facilitators regret that the parties were unable to agree on ceasefire implementation arrangements during this first round of talks. There is no acceptable military solution to this conflict. The Kingdom of Saudi Arabia, IGAD, also on behalf of the African Union, and the United States call upon the SAF and RSF to put the Sudanese people first, silence the guns, and seek a negotiated end to this needless war.

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On December 6, 2023, Secretary Blinken announced a determination that members of the Sudanese Armed Forces and the Rapid Support Forces committed war crimes in Sudan. Secretary Blinken's press statement is available at https://www.state.gov/war-crimes-crimes-against-humanity-and-ethnic-cleansing-determination-in-sudan/, and follows.

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Since the outbreak of fighting on April 15, the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF) have unleashed horrific violence, death, and destruction across Sudan. Civilians have borne the brunt of this needless conflict. Detainees have been abused and some killed at SAF and RSF detention sites. Across Sudan, the RSF and allied militias have terrorized women and girls through sexual violence, attacking them in their homes, kidnapping them from the streets, or targeting those trying to flee to safety across the border. In haunting echoes of the genocide that began almost 20 years ago in Darfur, we have seen an explosion of targeted violence against some of the same survivors' communities. Masalit civilians have been hunted down and left for dead in the streets, their homes set on fire, and told that there is no place in Sudan for them.

Based on the State Department's careful analysis of the law and available facts, I have determined that members of the SAF and the RSF have committed war crimes in Sudan. I have also

determined that members of the RSF and allied militias have committed crimes against humanity and ethnic cleansing.

The expansion of the needless conflict between RSF and the SAF has caused grievous human suffering. The SAF and the RSF must stop this conflict now, comply with their obligations under international humanitarian and human rights law, and hold accountable those responsible for atrocities. They also must adhere to the commitments they made to allow unhindered humanitarian assistance and implement confidence building measures that can lead to a sustainable cessation of hostilities. Arms and funding flowing to the warring parties only prolong a conflict that has no acceptable military solution.

This determination provides force and renewed urgency to African and international efforts to end the violence, address the humanitarian and human rights crisis, and work towards meaningful justice for victims and the affected communities that ends decades of impunity. Today's determination does not preclude the possibility of future determinations as additional information about the parties' actions becomes available. The United States is committed to building on this determination and using available tools to end this conflict and cease committing the atrocities and other abuses that are depriving the Sudanese people of freedom, peace, and justice.

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Cross References

International tribunals and other accountability mechanisms, **Ch. 3.C**
Crimes against humanity, **Ch. 3.C.1**
ICC and Sudan, **Ch. 3.C.2.b**
ICC and Russia, **Ch. 3.C.2.c**
Accountability for atrocity crimes in Ukraine, **Ch. 3.C.4.a**
Accountability in Syria, **Ch. 3.C.4.b**
Promoting Security and Justice for Victims of Terrorism Act, **Ch. 5.A.1**
UN Third Committee on accountability, **Ch. 6.A.3**
UN Third Committee on international humanitarian law, **Ch. 6.A.3**
HRC on accountability, **Ch. 6.A.4**
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Russia, **Ch. 6.A.5.a**
Statements on the situation of women and girls in Afghanistan, **Ch. 6.B.2.a**
ILC Draft Articles on Crimes Against Humanity, **Ch. 7.C.1**
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Russia sanctions, **Ch. 16.A.4**
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Sudan protection of civilians, **Ch. 18.A.5.a(i)**
Chemical weapons in Syria, **Ch. 19.D.1**

CHAPTER 18

Use of Force

A. GENERAL

1. Political Declaration on Responsible Military Use of Artificial Intelligence and Autonomy

In February 2023, the United States launched a Political Declaration on Responsible Military Use of Artificial Intelligence and Autonomy. The Declaration, finalized on November 9, 2023, is available at https://www.state.gov/political-declaration-on-responsible-military-use-of-artificial-intelligence-and-autonomy-2/ and follows.

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An increasing number of States are developing military AI capabilities, which may include using AI to enable autonomous functions and systems. Military use of AI can and should be ethical, responsible, and enhance international security. Military use of AI must be in compliance with applicable international law. In particular, use of AI in armed conflict must be in accord with States' obligations under international humanitarian law, including its fundamental principles. Military use of AI capabilities needs to be accountable, including through such use during military operations within a responsible human chain of command and control. A principled approach to the military use of AI should include careful consideration of risks and benefits, and it should also minimize unintended bias and accidents. States should take appropriate measures to ensure the responsible development, deployment, and use of their military AI capabilities, including those enabling autonomous functions and systems. These measures should be implemented at relevant stages throughout the life cycle of military AI capabilities.

The endorsing States believe that the following measures should be implemented in the development, deployment, or use of military AI capabilities, including those enabling autonomous functions and systems:

A. States should ensure their military organizations adopt and implement these principles for the responsible development, deployment, and use of AI capabilities.
B. States should take appropriate steps, such as legal reviews, to ensure that their military AI capabilities will be used consistent with their respective obligations under international law, in particular international humanitarian law. States should also consider how to use military AI capabilities to enhance their implementation of

international humanitarian law and to improve the protection of civilians and civilian objects in armed conflict.

C. States should ensure that senior officials effectively and appropriately oversee the development and deployment of military AI capabilities with high-consequence applications, including, but not limited to, such weapon systems.
D. States should take proactive steps to minimize unintended bias in military AI capabilities.
E. States should ensure that relevant personnel exercise appropriate care in the development, deployment, and use of military AI capabilities, including weapon systems incorporating such capabilities.
F. States should ensure that military AI capabilities are developed with methodologies, data sources, design procedures, and documentation that are transparent to and auditable by their relevant defense personnel.
G. States should ensure that personnel who use or approve the use of military AI capabilities are trained so they sufficiently understand the capabilities and limitations of those systems in order to make appropriate context-informed judgments on the use of those systems and to mitigate the risk of automation bias.
H. States should ensure that military AI capabilities have explicit, well-defined uses and that they are designed and engineered to fulfill those intended functions.
I. States should ensure that the safety, security, and effectiveness of military AI capabilities are subject to appropriate and rigorous testing and assurance within their well-defined uses and across their entire life-cycles. For self-learning or continuously updating military AI capabilities, States should ensure that critical safety features have not been degraded, through processes such as monitoring.
J. States should implement appropriate safeguards to mitigate risks of failures in military AI capabilities, such as the ability to detect and avoid unintended consequences and the ability to respond, for example by disengaging or deactivating deployed systems, when such systems demonstrate unintended behavior.

In order to further the objectives of this Declaration, the endorsing States will:

- implement these measures when developing, deploying, or using military AI capabilities, including those enabling autonomous functions and systems;
- make public their commitment to this Declaration and release appropriate information regarding their implementation of these measures:
- support other appropriate efforts to ensure that military AI capabilities are used responsibly and lawfully;
- pursue continued discussions among the endorsing States on how military AI capabilities are developed, deployed, and used responsibly and lawfully;
- promote the effective implementation of these measures and refine these measures or establish additional measures that the endorsing States find appropriate; and
- further engage the rest of the international community to promote these measures, including in other fora on related subjects, and without prejudice to ongoing discussions on related subjects in other fora.

The endorsing States recognize that concepts of artificial intelligence and autonomy are subject to a range of interpretations. For the purpose of this Declaration, artificial intelligence may be understood to refer to the ability of machines to perform tasks that would otherwise require human intelligence. This could include recognizing patterns, learning from experience,

drawing conclusions, making predictions, or generating recommendations. An AI application could guide or change the behavior of an autonomous physical system or perform tasks that remain purely in the digital realm. Autonomy may be understood as a spectrum and to involve a system operating without further human intervention after activation.

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Additional information on the Declaration, including remarks, fact sheets, and a list of endorsing States, is available at https://www.state.gov/political-declaration-on-responsible-military-use-of-artificial-intelligence-and-autonomy/.

2. Use of Force Issues Related to Counterterrorism Efforts

In 2023, the Biden administration sent letters to the U.S. Senate and House of Representatives consistent with the War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973), regarding military operations in support of U.S. counterterrorism efforts. The Biden administration also submitted letters to the UN Security Council in accordance with Article 51 of the UN Charter regarding actions taken in self-defense.

On March 25, 2023, the President sent a letter to Congress, consistent with the War Powers Resolution, which is below and available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/25/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-2/.

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As I have reported previously, militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) have perpetrated a series of attacks against United States personnel and facilities in Iraq and Syria. On March 23, 2023, a one-way unmanned aerial system attack tragically killed one American contractor supporting the United States military, and wounded six others, including five United States service members. The March 23 attack followed a number of prior attacks against United States forces in Syria. These attacks have placed the lives of United States and Coalition personnel under ongoing threat.

At my direction, on March 23, 2023, United States forces conducted targeted strikes against facilities in eastern Syria in response to this series of attacks and continuing threats of future attacks. The precision strikes were directed at facilities used by groups affiliated with the IRGC for command and control, munitions storage, and other purposes. They were conducted in a manner intended to establish deterrence, limit the risk of escalation, and avoid civilian casualties. I directed the March 23 strikes in order to protect and defend the safety of our personnel, to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter the Islamic Republic of Iran and Iran-backed militia groups from conducting or supporting further attacks on United States personnel and facilities.

I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and

foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations. The United States took this necessary and proportionate action consistent with international law, and in the exercise of the United States' inherent right of self-defense as reflected in Article 51 of the United Nations Charter. The United States stands ready to take further action, as necessary and appropriate, to address further threats or attacks.

I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). Additional information is provided in a classified annex. I appreciate the support of the Congress in this action.

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On March 27, 2023, Ambassador Linda Thomas-Greenfield submitted an Article 51 letter regarding targeted strikes against facilities in eastern Syria taken on March 23, 2023. The letter addressed to the President of the Security Council, U.N. Doc. S/2023/227, available at https://digitallibrary.un.org/record/4007685?ln=en&v=pdf, is excerpted below.

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I wish to report, on behalf of my Government, that the United States has undertaken precision strikes against facilities in eastern Syria used by militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) that have perpetrated an ongoing series of armed attacks against United States personnel and facilities in Iraq and Syria. This action was in response to those armed attacks and was taken in the exercise of the United States' inherent right of self-defense, as reflected in Article 51 of the Charter of the United Nations. This letter supplements prior letters provided to this Council, including on February 27, 2021, June 29, 2021, and August 26, 2022, which further explain the basis for such actions in self-defense.

As has been previously reported, IRGC-backed militia groups have perpetrated a series of attacks against U.S. personnel and facilities in Syria. On March 23, 2023, a one-way unmanned aerial system attack tragically killed one American contractor supporting the United States military, and wounded six others, including five United States service members. This March 23 attack followed a number of similar prior attacks against United States forces in Syria. These attacks, and the continuing threat of future attacks, have placed the lives of United States and Coalition personnel under ongoing threat.

On March 23, 2023, the United States conducted targeted strikes against facilities in eastern Syria in response to this series of attacks and continuing threats of future attacks. The precision strikes were directed at facilities used by groups affiliated with the IRGC for command and control, munitions storage, and other purposes. These necessary and proportionate actions were conducted in a manner intended to establish deterrence, limit the risk of escalation, and avoid civilian casualties. The military action of the United States was taken to protect and defend the safety of our personnel, to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter the Islamic Republic of Iran and Iran-backed militia groups from conducting or supporting further attacks on U.S. personnel and

facilities.

This military response was taken after non-military options proved inadequate to address the threat, with the aim of deescalating the situation and preventing further attacks. As the United States has noted in prior letters to the Security Council, States must be able to defend themselves, in accordance with the inherent right of self-defense reflected in Article 51 of the Charter of the United Nations, when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory by non-State militia groups responsible for such attacks. This action was conducted together with diplomatic measures.

The United States remains prepared to use necessary and proportionate force in self-defense in response to future threats or attacks.

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On June 8, 2023, the President sent a supplemental consolidated report to Congress regarding deployment of U.S. combat forces, as required by the War Powers Resolution. The communication to Congress is excerpted below and available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/08/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-on-war-powers-report/.

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MILITARY OPERATIONS IN SUPPORT OF UNITED STATES COUNTERTERRORISM EFFORTS

In furtherance of counterterrorism efforts, the United States continues to work with partners around the globe, with a particular focus on the United States Central and Africa Commands' areas of responsibility. In this context, the United States has deployed forces to conduct counterterrorism operations and to advise, assist, and accompany security forces of select foreign partners on counterterrorism operations. In the majority of these locations, the mission of United States military personnel is to facilitate counterterrorism operations of foreign partner forces and does not include routine engagement in combat. In many of these locations, the security environment is such that United States military personnel may be required to defend themselves against threats or attacks, and, to that end, the United States may deploy United States military personnel with weapons and other appropriate equipment for force protection. Specific information about counterterrorism deployments to select countries is provided below, and a classified annex to this report provides further information.

Military Operations Conducted Pursuant to the 2001 Authorization for Use of Military Force and in Support of Related United States Counterterrorism Objectives

Since October 7, 2001, United States Armed Forces, including Special Operations Forces, have conducted counterterrorism combat operations, including against al-Qa'ida and associated forces. Since August 2014, these operations have included targeting the Islamic State of Iraq and Syria (ISIS), also known as the Islamic State of Iraq and the Levant (ISIL), which was formerly known as al-Qa'ida in Iraq. In support of these and other overseas operations, the United States has deployed combat-equipped forces to several locations in the United States

Central, European, Africa, Southern, and Indo-Pacific Commands' areas of responsibility. Such operations and deployments have been reported previously, consistent with Public Law 107-40, Public Law 107-243, the War Powers Resolution, and other statutes. These ongoing operations, which the United States has carried out with the assistance of numerous international partners, have been successful in seriously degrading ISIS capabilities in Syria and Iraq. If necessary, in response to terrorist threats, I will direct additional measures to protect the people and interests of the United States. It is not possible to know at this time the precise scope or the duration of the deployments of United States Armed Forces that are or will be necessary to counter terrorist threats to the United States.

Afghanistan. United States military personnel remain postured outside Afghanistan to address threats to the United States homeland and United States interests that may arise from inside Afghanistan.

Iraq and Syria. As part of a comprehensive strategy to defeat ISIS, United States Armed Forces are working by, with, and through local partners to conduct operations against ISIS forces in Iraq and Syria and against al-Qa'ida in Syria to limit the potential for resurgence of these groups and to mitigate threats to the United States homeland. A small presence of United States Armed Forces remains in strategically significant locations in Syria to conduct operations, in partnership with local, vetted ground forces, to address continuing terrorist threats emanating from Syria. United States Armed Forces in Iraq continue to advise, assist, and enable select elements of the Iraqi security forces, including Iraqi Kurdish security forces. United States Armed Forces also provide limited support to the North Atlantic Treaty Organization mission in Iraq. United States Armed Forces, as part of the Global Coalition to Defeat ISIS, remain present in Iraq at the invitation of the Government of Iraq.

As reported on March 25, 2023, I directed United States forces to conduct precision strikes on March 23, 2023, against facilities in eastern Syria used by groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) for command and control, munitions storage, and other purposes. This followed a series of attacks against United States personnel and facilities in Iraq and Syria that threatened the lives of United States and Coalition personnel and that were perpetrated by militia groups affiliated with the IRGC. One such attack, on March 23, 2023, tragically killed one American contractor supporting the United States military, and wounded six others, including five United States service members. I directed this discrete military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations.

Arabian Peninsula Region. A small number of United States military personnel are deployed to Yemen to conduct operations against al-Qa'ida in the Arabian Peninsula and ISIS. The United States military continues to work closely with the Republic of Yemen government and regional partner forces to degrade the terrorist threat posed by those groups.

United States Armed Forces, in a non-combat role, continue to provide military advice and limited information to the Saudi-led Coalition for defensive and training purposes only as they relate to territorial defense. Such support does not involve United States Armed Forces in hostilities with the Houthis for the purposes of the War Powers Resolution.

United States Armed Forces are deployed to the Kingdom of Saudi Arabia to protect United States forces and interests in the region against hostile action by Iran and Iran-backed groups. These forces, operating in coordination with the Government of the Kingdom of Saudi

Arabia, provide air and missile defense capabilities and support the operation of United States military aircraft. The total number of United States forces in the Kingdom of Saudi Arabia is approximately 2,657.

Jordan. At the request of the Government of Jordan, approximately 2,936 United States military personnel are deployed to Jordan to support Defeat-ISIS operations, to enhance Jordan's security, and to promote regional stability.

Lebanon. At the request of the Government of Lebanon, approximately 89 United States military personnel are deployed to Lebanon to enhance the government's counterterrorism capabilities and to support the counterterrorism operations of Lebanese security forces.

Turkey. United States Armed Forces remain deployed to Turkey, at the Turkish government's request, to support Defeat-ISIS operations and to enhance Turkey's security.

East Africa Region. United States Armed Forces continue to counter the terrorist threat posed by ISIS and al-Shabaab, an associated force of al-Qa'ida. United States Armed Forces remain prepared to conduct airstrikes in Somalia against ISIS and al-Shabaab terrorists. United States military personnel conduct periodic engagements in Somalia to train, advise, and assist regional forces, including Somali and African Union Transition Mission in Somalia forces, during counterterrorism operations. Since the last periodic report, United States Armed Forces have conducted a number of airstrikes in Somalia against al-Shabaab in defense of our Somali partner forces. Additionally, I directed a direct action raid on January 25, 2023, at a remote location in northern Somalia to capture Bilal al-Sudani, an ISIS leader in Somalia and key facilitator of ISIS's global network. Approximately 11 ISIS operatives, including al-Sudani, were killed during the operation. United States military personnel are deployed to Kenya to support counterterrorism operations in East Africa. On January 10, 2023, United States Armed Forces acted in self-defense using small arms and mortar fire during an al-Shabaab attack on United States and Kenyan forces at a forward operating base in Kenya near the Kenya-Somalia border. No United States or Kenyan personnel were killed or injured during the engagement. United States military personnel continue to partner with the Government of Djibouti, which has permitted use of Djiboutian territory for basing of United States Armed Forces. United States military personnel remain deployed to Djibouti, including for purposes of staging for counterterrorism and counter-piracy operations in the vicinity of the Horn of Africa and the Arabian Peninsula, and to provide contingency support for embassy security augmentation in East Africa, as necessary.

Lake Chad Basin and Sahel Region. United States military personnel in the Lake Chad Basin and Sahel Region continue to conduct airborne intelligence, surveillance, and reconnaissance operations and to provide support to African and European partners conducting counterterrorism operations in the region, including by advising, assisting, and accompanying these partner forces. Approximately 1,016 United States military personnel remain deployed to Niger.

Cuba. United States Armed Forces continue to conduct humane and secure detention operations for detainees held at Guantanamo Bay, Cuba, under the authority provided by the 2001 Authorization for Use of Military Force (Public Law 107-40), as informed by the law of war. There are 30 such detainees as of the date of this report.

Philippines. United States military personnel deployed to the Philippines are providing support to the counterterrorism operations of the armed forces of the Philippines.

MILITARY OPERATIONS IN EGYPT IN SUPPORT OF THE MULTINATIONAL FORCE AND OBSERVERS

Approximately 451 United States military personnel are assigned to or are supporting the United States contingent of the Multinational Force and Observers, which have been present in Egypt since 1981.

UNITED STATES AND NORTH ATLANTIC TREATY ORGANIZATION OPERATIONS IN KOSOVO

The United States continues to contribute forces to the Kosovo Force (KFOR), led by the North Atlantic Treaty Organization in cooperation with local authorities, bilateral partners, and international institutions, to deter renewed hostilities in Kosovo. Approximately 591 United States military personnel are among KFOR's approximately 3,800 personnel.

UNITED STATES ARMED FORCES IN NORTH ATLANTIC TREATY ORGANIZATION COUNTRIES

Approximately 80,000 United States Armed Forces personnel are assigned or deployed to North Atlantic Treaty Organization countries in Europe, including those deployed to reassure our allies and to deter further Russian aggression.

MILITARY OPERATIONS IN SUDAN IN SUPPORT OF THE EVACUATION OF UNITED STATES PERSONNEL AND OTHERS

As reported on April 23, 2023, I directed United States Armed Forces personnel to conduct an operation to evacuate United States personnel and others from Khartoum, Sudan, in response to the deteriorating security situation in Sudan. To conduct and support this operation, United States Armed Forces personnel with appropriate combat equipment deployed to Djibouti, Ethiopia, and Sudan. I directed this action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations.

I have directed the participation of United States Armed Forces in all of the above-described operations pursuant to my constitutional and statutory authority as Commander in Chief and as Chief Executive (including the authority to carry out Public Law 107-40, Public Law 107-243, and other statutes), as well as my constitutional and statutory authority to conduct the foreign relations of the United States. Officials of my Administration and I communicate regularly with congressional leadership, relevant congressional committees, and other Members of Congress with regard to these deployments, and we will continue to do so.

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On October 27, 2023, the President sent a letter to Congress consistent with the War Powers Resolution, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/27/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-4/, and follows.

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As I have reported previously, militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) have perpetrated a series of attacks against United States personnel and facilities

in Iraq and Syria. Since October 17, 2023, these militia groups have conducted numerous attacks using unmanned aerial systems and indirect fire, injuring several United States service members. A United States contractor suffered a fatal cardiac incident while moving to shelter during one of these attacks. These attacks have placed under grave threat the lives of United States personnel and of Coalition forces operating alongside United States forces.

In response to this series of attacks and continuing threats of future attacks, at my direction, on the night of October 26, 2023, United States forces conducted targeted strikes against facilities in eastern Syria. The precision strikes targeted facilities used by the IRGC and IRGC-affiliated groups for command and control, munitions storage, and other purposes. The strikes were intended to establish deterrence and were conducted in a manner to limit the risk of escalation and avoid civilian casualties. I directed the strikes in order to protect and defend our personnel, to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on United States personnel and facilities.

I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations. The United States took this necessary and proportionate action consistent with international law and in the exercise of the United States' inherent right of self-defense as reflected in Article 51 of the United Nations Charter. The United States stands ready to take further action, as necessary and appropriate, to address further threats or attacks.

I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in this action.

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The Article 51 Letter dated October 30, 2023 from Ambassador Linda Thomas-Greenfield addressed to the President of the Security Council, U.N. Doc. S/2023/813, available at https://digitallibrary.un.org/record/4025903?ln=en&v=pdf, is excerpted below.

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I wish to report, on behalf of my Government, that the United States has undertaken precision strikes against two facilities in eastern Syria in response to an ongoing series of armed attacks by militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) against U.S. personnel and facilities in Iraq and Syria. This action was taken in the exercise of the United States' inherent right of self-defense, as reflected in Article 51 of the Charter of the United Nations. This letter supplements prior letters provided to this Council, including on February 27, 2021, June 29, 2021, August 26, 2022, and March 27, 2023.

In those prior letters, the United States reported that militia groups affiliated with Iran's IRGC perpetrated a series of attacks against U.S. personnel and facilities in Iraq and Syria. Since October 17, 2023, these militia groups have conducted numerous attacks using unmanned aerial systems and indirect fire, injuring several U.S. service members. A U.S. contractor suffered a

fatal cardiac incident while moving to shelter during one of these attacks. These attacks have placed under grave threat the lives of U.S. personnel and of Coalition forces operating alongside U.S. forces.

In response to this series of attacks and continuing threats of future attacks, on the evening of October 26, the United States conducted targeted strikes against two facilities in eastern Syria. The precision strikes targeted facilities used by the IRGC and IRGC-affiliated groups for command and control, munitions storage, and other purposes. These necessary and proportionate actions were intended to establish deterrence and were conducted in a manner to limit the risk of escalation and avoid civilian casualties. The military action was taken in order to protect and defend our personnel, to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on U.S. personnel and facilities. These narrowly- tailored strikes are separate and distinct from the ongoing conflict in Gaza, and do not constitute a shift in our approach to the conflict in Gaza. We continue to urge all State and non-State entities not to take action that would escalate into a broader regional conflict.

This military response was taken after non-military options proved inadequate to address the threat, with the aim of deescalating the situation and preventing further attacks. As the United States has noted in prior letters to the Security Council, States must be able to defend themselves, in accordance with the inherent right of self-defense reflected in Article 51 of the Charter of the United Nations, when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory by non-State militia groups responsible for such attacks. This action was conducted together with diplomatic measures.

The targeted strikes on October 26 follow prior military actions that were reported to this Council in the letters referenced above. The United States has taken these military actions in Syria and Iraq against the IRGC and IRGC-backed militia groups in response to armed attacks, and will take further such action in the region as may be necessary in the exercise of its inherent right of self-defense to respond to future attacks or threats of attacks against U.S. nationals and U.S. personnel and facilities.

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On November 10, 2023, the President sent a letter to Congress consistent with the War Powers Resolution, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/10/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-5/, and follows.

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As I have reported previously, militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) have perpetrated a series of attacks against United States personnel and facilities in Iraq and Syria. These attacks, including more than a dozen attacks over the last week, have

placed under grave threat the lives of United States personnel and Coalition operating alongside United States forces.

As I reported on October 27, 2023, in response to this series of attacks and continuing threats of future attacks, at my direction, United States forces conducted targeted strikes against facilities in eastern Syria used by the IRGC and IRGC-affiliated groups.

On the night of November 8, 2023, at my direction, United States forces conducted a precision strike against a facility in eastern Syria used by the IRGC and IRGC-affiliated groups for weapons storage and other purposes. The strike was taken to establish deterrence and was conducted in a manner designed to limit the risk of escalation and avoid civilian casualties. I directed the strike in order to protect and defend our personnel, to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on United States personnel and facilities.

I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations. The United States took this necessary and proportionate action consistent with international law and in the exercise of the United States' inherent right of self-defense as reflected in Article 51 of the United Nations Charter. The United States stands ready to take further action, as necessary and appropriate, to address further threats or attacks.

I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in this action.

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On November 14, 2023, the President sent a letter to Congress pursuant to the War Powers Resolution, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/14/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-6/, and follows.

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As I have reported previously, militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) have perpetrated a series of attacks against United States personnel and facilities in Iraq and Syria. These attacks have placed under grave threat the lives of United States personnel and Coalition forces operating alongside United States forces.

As I reported on October 27, 2023, and November 10, 2023, in response to this series of attacks and continuing threats of future attacks, at my direction, United States forces conducted targeted strikes against facilities in eastern Syria used by the IRGC and IRGC-affiliated groups.

On the night of November 12, 2023, at my direction, United States forces conducted precision strikes against two facilities in eastern Syria used by the IRGC and IRGC-affiliated groups for weapons storage, training, command and control, and other purposes. The strikes were taken to reaffirm deterrence and were conducted in a manner to limit the risk of escalation and avoid civilian casualties. I directed the strikes in order to protect and defend our personnel, to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on United States personnel and facilities.

I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations. The United States took this necessary and proportionate action consistent with international law and in the exercise of the United States' inherent right of self-defense as reflected in Article 51 of the United Nations Charter. The United States stands ready to take further action, as necessary and appropriate, to address further threats or attacks.

I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in this action.

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The Article 51 Letter dated November 14, 2023 from Ambassador Linda Thomas-Greenfield addressed to the President of the Security Council, U.N. Doc. S/2023/877, available at https://digitallibrary.un.org/record/4027823?ln=en&v=pdf, is excerpted below.

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I wish to report, on behalf of my Government, that the United States has undertaken measures in the exercise of the United States' inherent right of self-defense, as reflected in Article 51 of the Charter of the United Nations. The United States took these measures in response to armed attacks by militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) against U.S. personnel and facilities in Iraq and Syria. This letter supplements prior letters provided to this Council, including on February 27, 2021; June 29, 2021; August 26, 2022; March 27, 2023; and October 30, 2023.

In the days since my letter to this Council of October 30, militia groups affiliated with Iran's IRGC perpetrated a series of attacks against U.S. personnel and facilities in Iraq and Syria. These attacks have placed under grave threat the lives of U.S. personnel and Coalition forces operating alongside U.S. forces.

In response to these attacks and continuing threats of future attacks, on November 8 and November 12, the United States conducted precision strikes against facilities in eastern Syria used by the IRGC and IRGC-affiliated groups for weapons storage and other purposes. These necessary and proportionate actions were intended to reaffirm deterrence and were conducted in a manner to limit the risk of escalation and avoid civilian casualties. These military actions were taken in order to protect and defend our personnel, to degrade and disrupt the ongoing series of

attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on U.S. personnel and facilities. These narrowly-tailored strikes are separate and distinct from the ongoing conflict in Gaza, and do not constitute a shift in our approach to the conflict in Gaza. We continue to urge all State and non-State entities not to take action that would escalate into a broader regional conflict.

These military responses were taken after non-military options proved inadequate to address the threat, with the aim of deescalating the situation and preventing further attacks. As the United States has noted in prior letters to the Security Council, States must be able to defend themselves, in accordance with the inherent right of self-defense reflected in Article 51 of the Charter of the United Nations, when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory by non-State militia groups responsible for such attacks. These actions were conducted together with diplomatic measures.

The targeted strikes on November 8 and November 12 follow prior military actions that were reported to this Council in the letters referenced above. The United States has taken these military actions in Syria and Iraq against the IRGC and IRGC-backed militia groups in response to armed attacks, and will take further such action as may be necessary in the exercise of its inherent right of self-defense to respond to future attacks or threats of attacks against U.S. nationals and U.S. personnel and facilities.

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On November 22, 2023, the President sent a letter to Congress consistent with the War Powers Resolution, available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/22/letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-7/, and follows.

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As I have reported previously, militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) have perpetrated a series of attacks against United States personnel and facilities in Iraq and Syria. These attacks, which have caused injuries to United States personnel, have placed under grave threat the lives of United States personnel and of Coalition forces operating alongside United States forces.

As I reported on October 27, 2023, November 10, 2023, and November 14, 2023, in response to this series of attacks and the threat of future attacks, at my direction, United States forces conducted targeted strikes against facilities in Syria used by IRGC and IRGC-affiliated groups.

On the night of November 21, 2023, at my direction, United States forces conducted discrete strikes against facilities in Iraq used by the IRGC and IRGC-affiliated groups for command and control, logistics, and other purposes. The strikes were taken to deter future attacks and were conducted in a manner designed to limit the risk of escalation and avoid civilian casualties. I directed the strikes in order to protect and defend our personnel who are in Iraq and

Syria conducting military operations pursuant to the 2001 Authorization for Use of Military Force. The strikes were intended to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on United States personnel and facilities.

I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations. The United States took this necessary and proportionate action consistent with international law and in the exercise of the United States' inherent right of self-defense as reflected in Article 51 of the United Nations Charter. The United States stands ready to take further action, as necessary and appropriate, to address further threats or attacks. I am providing this report a part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in this action.

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The Article 51 Letter dated November 28, 2023 from Ambassador Linda Thomas-Greenfield addressed to the President of the Security Council, U.N. Doc. S/2023/923, available at https://digitallibrary.un.org/record/4028899?ln=en&v=pdf, is excerpted below.

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I wish to report, on behalf of my Government, that the United States has undertaken measures in the exercise of its inherent right of self-defense, as reflected in Article 51 of the Charter of the United Nations, in response to armed attacks by militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) against U.S. personnel and facilities in Iraq and Syria. This letter supplements prior letters provided to this Council, including on February 27, 2021; June 29, 2021; August 26, 2022; March 27, 2023; October 30, 2023; and November 14, 2023.

In the days since my letter to this Council of November 14, militia groups affiliated with Iran's IRGC perpetrated attacks against U.S. personnel and facilities in Iraq and Syria. These attacks notably included an attack targeting U.S. and coalition forces on Al-Asad Airbase, Iraq. These attacks have continued to place under grave threat the lives of U.S. personnel and of other Coalition forces operating alongside U.S. forces.

In response to these attacks and continuing threats of future attacks, on the evening of November 21, the United States conducted targeted strikes against facilities in Iraq used by the IRGC and IRGC-affiliated groups for command and control, logistics, and other purposes. This necessary and proportionate action was taken in the exercise of the United States' inherent right of self-defense and conducted in a manner to limit the risk of escalation.

The purpose for which the United States has taken these military actions against the IRGC and IRGC-backed militia groups in Syria and Iraq, and the circumstances under which they have been taken, are further described in the letters referenced above. The United States will

take further such action as may be necessary in the exercise of its inherent right of self-defense to respond to future attacks or threats of attacks against U.S. nationals and U.S. personnel and facilities.

* * * *

On November 28, 2023, Ambassador Linda Thomas-Greenfield delivered remarks at a UN Security Council briefing on the political and humanitarian situations in Syria. The remarks are available at https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-briefing-on-the-political-and-humanitarian-situations-in-syria-5/. Remarks related to U.S. targeted strikes in response to Iranian-aligned militia attacks on U.S. personnel are excerpted below.

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We also condemn the attacks by Iranian-aligned militia groups on U.S. personnel and facilities in Iraq and Syria. The mission of these U.S. forces remains to lead the international effort to defeat Da'esh.

Just like any other Member State, the United States has the right to self-defense, as outlined in Article 51 of the UN Charter. We have, therefore, conducted targeted response strikes. And we stand ready to take further action, as necessary and appropriate, to address further threats of attacks.

It is in the interest of national defense that earlier this month, we also designated Kata'ib Sayyid al-Shuhada and its Secretary-General as Specially Designated Global Terrorists. This terrorist group has threatened the lives of both U.S. and Global Coalition personnel in Iraq and Syria.

Additionally, we designated six individuals affiliated with the Iran-aligned militia [group] Kata'ib Hizballah. Iran, through the Islamic Revolutionary Guard Corps-Qods Force, has supported these and other militant groups. It has supplied them with training, funding, and sophisticated weapons, including increasingly accurate and lethal unmanned aerial systems. This escalatory behavior is unacceptable. And it does nothing to address the oppressive and dire economic conditions facing Syrian civilians today.

To that end, we cannot allow the Assad regime to distract our attention from protests in Al-Suwaida, where for months Syrian people have exercised their rights to peaceful assembly and freedom of expression, and called for peace, dignity, security, and justice.

* * * *

On December 7, 2023, the President sent a supplemental consolidated report to Congress regarding deployment of U.S. combat forces, as required by the War Powers Resolution. The communication to Congress is excerpted below and available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/07/letter-to-

the-speaker-of-the-house-of-representatives-and-president-pro-tempore-of-the-senate-regarding-the-war-powers-report/.

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MILITARY OPERATIONS IN SUPPORT OF UNITED STATES COUNTERTERRORISM EFFORTS

In furtherance of counterterrorism efforts, the United States continues to work with partners around the globe, with a particular focus on the United States Central and Africa Commands' areas of responsibility. In this context, the United States has deployed forces to conduct counterterrorism operations and to advise, assist, and accompany security forces of select foreign partners on counterterrorism operations. In the majority of these locations, the mission of United States military personnel is to facilitate counterterrorism operations of foreign partner forces and does not include routine engagement in combat. In many of these locations, the security environment is such that United States military personnel may be required to defend themselves against threats or attacks, and, to that end, the United States may deploy United States military personnel with weapons and other appropriate equipment for force protection. Specific information about counterterrorism deployments to select countries is provided below, and a classified annex to this report provides further information.

Military Operations Conducted Pursuant to the 2001 Authorization for Use of Military Force and in Support of Related United States Counterterrorism Objectives

Since October 7, 2001, United States Armed Forces, including Special Operations Forces, have conducted counterterrorism combat operations, including against al-Qa'ida and associated forces. Since August 2014, these operations have included targeting the Islamic State of Iraq and Syria (ISIS), also known as the Islamic State of Iraq and the Levant (ISIL), which was formerly known as al-Qa'ida in Iraq. In support of these and other overseas operations, the United States has deployed combat-equipped forces to several locations in the United States Central, European, Africa, Southern, and Indo-Pacific Commands' areas of responsibility. Such operations and deployments have been reported previously, consistent with Public Law 107-40, Public Law 107-243, the War Powers Resolution, and other statutes. These ongoing operations, which the United States has carried out with the assistance of numerous international partners, have been successful in seriously degrading ISIS capabilities in Syria and Iraq. If necessary, in response to terrorist threats, I will direct additional measures to protect the people and interests of the United States. It is not possible to know at this time the precise scope or the duration of the deployments of United States Armed Forces that are or will be necessary to counter terrorist threats to the United States.

Afghanistan. United States military personnel remain postured outside Afghanistan to address threats to the United States homeland and United States interests that may arise from inside Afghanistan.

Iraq and Syria. As part of a comprehensive strategy to defeat ISIS, United States Armed Forces are working by, with, and through local partners to conduct operations against ISIS forces in Iraq and Syria and against al-Qa'ida in Syria to limit the potential for resurgence of these groups and to mitigate threats to the United States homeland. A small presence of United States Armed Forces remains in strategically significant locations in Syria to conduct

operations, in partnership with local, vetted ground forces, to address continuing terrorist threats emanating from Syria. United States Armed Forces in Iraq continue to advise, assist, and enable select elements of the Iraqi security forces, including Iraqi Kurdish security forces. United States Armed Forces also provide limited support to the North Atlantic Treaty Organization mission in Iraq. United States Armed Forces, as part of the Global Coalition to Defeat ISIS, remain present in Iraq at the invitation of the Government of Iraq.

As reported on October 27, 2023, November 10, 2023, and November 14, 2023, I directed United States forces to conduct precision strikes on October 26, 2023, November 8, 2023, and November 12, 2023, against facilities in eastern Syria used by Iran's Islamic Revolutionary Guard Corps (IRGC) and IRGC-affiliated groups for command and control, munitions storage, training, weapons storage, and other purposes. As reported on November 22, 2023, I directed United States forces to conduct discrete strikes on the night of November 21, 2023, against facilities in Iraq used by the IRGC and IRGC-affiliated groups for command and control, logistics, and other purposes. These strikes followed attacks against United States personnel and facilities in Iraq and Syria that threatened the lives of United States personnel and Coalition forces operating alongside United States forces, and that were perpetrated by the IRGC and militia groups affiliated with the IRGC. A United States contractor suffered a fatal cardiac incident while moving to shelter during one of these attacks. I directed these discrete military actions consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations.

Arabian Peninsula Region. A small number of United States military personnel are deployed to Yemen to conduct operations against al-Qa'ida in the Arabian Peninsula and ISIS. The United States military continues to work closely with the Republic of Yemen government and regional partner forces to degrade the terrorist threat posed by those groups.

United States Armed Forces, in a non-combat role, continue to provide military advice and limited information to the Saudi-led Coalition for defensive and training purposes only as they relate to territorial defense. Such support does not involve United States Armed Forces in hostilities with the Houthis for the purposes of the War Powers Resolution.

United States Armed Forces are deployed to the Kingdom of Saudi Arabia to protect United States forces and interests in the region against hostile action by Iran and Iran-backed groups. These forces, operating in coordination with the Government of the Kingdom of Saudi Arabia, provide air and missile defense capabilities and support the operation of United States military aircraft. The total number of United States forces in the Kingdom of Saudi Arabia is approximately 2,088.

Jordan. At the request of the Government of Jordan, approximately 3,188 United States military personnel are deployed to Jordan to support Defeat-ISIS operations, to enhance Jordan's security, and to promote regional stability.

Lebanon. At the request of the Government of Lebanon, approximately 76 United States military personnel are deployed to Lebanon to enhance the government's counterterrorism capabilities and to support the counterterrorism operations of Lebanese security forces.

Turkey. United States Armed Forces remain deployed to Turkey, at the Turkish government's request, to support Defeat-ISIS operations and to enhance Turkey's security.

East Africa Region. United States Armed Forces continue to counter the terrorist threat posed by ISIS and al-Shabaab, an associated force of al-Qa'ida. Since the last periodic report,

United States Armed Forces have conducted a number of airstrikes in Somalia against al-Shabaab in defense of our Somali partner forces. United States Armed Forces remain prepared to conduct airstrikes in Somalia against ISIS and al-Shabaab terrorists. United States military personnel conduct periodic engagements in Somalia to train, advise, and assist regional forces, including Somali and African Union Transition Mission in Somalia forces, in connection with counterterrorism operations. United States military personnel are deployed to Kenya to support counterterrorism operations in East Africa. United States military personnel continue to partner with the Government of Djibouti, which has permitted use of Djiboutian territory for basing of United States Armed Forces. United States military personnel remain deployed to Djibouti, including for purposes of staging for counterterrorism and counter-piracy operations in the vicinity of the Horn of Africa and the Arabian Peninsula, and to provide contingency support for embassy security augmentation in East Africa, as necessary.

Lake Chad Basin and Sahel Region. United States military personnel in the Lake Chad Basin and Sahel Region continue to conduct airborne intelligence, surveillance, and reconnaissance operations and to provide support to African and European partners conducting counterterrorism operations in the region, including by advising, assisting, and accompanying these partner forces. Approximately 648 United States military personnel remain deployed to Niger.

Cuba. United States Armed Forces continue to conduct humane and secure detention operations for detainees held at Guantanamo Bay, Cuba, under the authority provided by the 2001 Authorization for Use of Military Force (Public Law 107-40), as informed by the law of war. There are 30 such detainees as of the date of this report.

Philippines. United States military personnel deployed to the Philippines are providing support to the counterterrorism operations of the armed forces of the Philippines.

MILITARY OPERATIONS IN EGYPT IN SUPPORT OF THE MULTINATIONAL FORCE AND OBSERVERS

Approximately 416 United States military personnel are assigned to or are supporting the United States contingent of the Multinational Force and Observers, which have been present in Egypt since 1981.

UNITED STATES AND NORTH ATLANTIC TREATY ORGANIZATION OPERATIONS IN KOSOVO

The United States continues to contribute forces to the Kosovo Force (KFOR), led by the North Atlantic Treaty Organization in cooperation with local authorities, bilateral partners, and international institutions, to deter renewed hostilities in Kosovo. Approximately 578 United States military personnel are among KFOR's approximately 4,487 personnel.

UNITED STATES ARMED FORCES IN NORTH ATLANTIC TREATY ORGANIZATION COUNTRIES

Approximately 80,000 United States Armed Forces personnel are assigned or deployed to North Atlantic Treaty Organization countries in Europe, including those deployed to reassure our allies and to deter further Russian aggression.

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On December 27, 2023, the President sent a letter to Congress consistent with the War Powers Resolution, available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/27/letter-to-the-speaker-of-the-house-and-

president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution-public-law-93-148-8/, and follows.

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As I have reported previously, militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) have perpetrated a series of attacks against United States personnel and facilities in Iraq and Syria. These attacks, including the recent attack on the Erbil Air Base by Iran-affiliated Kataib Hezbollah and affiliated groups, have caused injuries to United States personnel and have placed under grave threat the lives of both United States personnel and Coalition forces operating alongside United States forces.

Previously, in response to these attacks and the threat of future attacks, at my direction, United States forces have conducted targeted strikes against facilities in Iraq and Syria used by IRGC and IRGC-affiliated groups.

On the night of December 25, 2023, at my direction, United States forces conducted discrete strikes against three facilities in Iraq used by Iran-affiliated groups for training, logistics support, and other purposes. The strikes were taken to deter future attacks and were conducted in a manner designed to limit the risk of escalation and minimize civilian casualties. I directed the strikes in order to protect and defend our personnel who are in Iraq conducting military operations pursuant to the 2001 Authorization for Use of Military Force. The strikes were intended to degrade and disrupt the ongoing series of attacks against the United States and our partners, and to deter Iran and Iran-backed militia groups from conducting or supporting further attacks on United States personnel and facilities.

I directed this military action consistent with my responsibility to protect United States citizens both at home and abroad and in furtherance of United States national security and foreign policy interests, pursuant to my constitutional authority as Commander in Chief and Chief Executive and to conduct United States foreign relations. The United States took this necessary and proportionate action consistent with international law and in the exercise of the United States' inherent right of self-defense as reflected in Article 51 of the United Nations Charter. The United States stands ready to take further action, as necessary and appropriate, to address further threats or attacks.

I am providing this report as part of my efforts to keep the Congress fully informed, consistent with the War Powers Resolution (Public Law 93-148). I appreciate the support of the Congress in this action.

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The Article 51 Letter dated December 29, 2023 from Chargé d'Affaires Gregory Campbell addressed to the President of the Security Council, U.N. Doc. S/2023/1070, available at https://digitallibrary.un.org/record/4032353?ln=en&v=pdf, is excerpted below.

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I wish to report, on behalf of my Government, that the United States has undertaken measures in the exercise of its inherent right of self-defense, as reflected in Article 51 of the Charter of the United Nations, in response to armed attacks by militia groups affiliated with Iran's Islamic Revolutionary Guard Corps (IRGC) against U.S. personnel and facilities in Iraq and Syria. This letter supplements prior letters provided to this Council, including on February 27, 2021; June 29, 2021; August 26, 2022; March 27, 2023; October 30, 2023; November 14, 2023; and November 28, 2023.

As previously reported in those prior letters, militia groups affiliated with Iran's IRGC have perpetrated a series of attacks against U.S. personnel and facilities in Iraq and Syria. In the latest attacks, Kata'ib Hezbollah and affiliated groups attacked U.S. and coalition forces on December 25, 2023, at the Erbil Air Base and injured U.S. personnel. These attacks have continued to place under grave threat the lives of U.S. personnel and of other coalition forces operating alongside U.S. forces.

In response to these attacks and continuing threats of future attacks, on the night of December 25, the United States conducted targeted strikes against facilities in Iraq used by IRGC-affiliated groups for training, logistics support, and other purposes. This necessary and proportionate action was taken in the exercise of the United States' inherent right of self-defense and conducted in a manner to limit the risk of escalation.

The purpose for which the United States has taken military actions against IRGC-affiliated militia groups in Syria and Iraq, and the circumstances under which they have been taken, are further described in the letters referenced above. The United States will take further such action as may be necessary in the exercise of its inherent right of self-defense to respond to future attacks or threats of attacks against U.S. nationals and U.S. personnel and facilities.

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3. Department of Defense Updated Law of War Manual

On July 31, 2023, the Department of Defense (DoD) issued an update to the 2015 Law of War Manual, pursuant to Department directives. See *Digest 2015* at 758-59 for discussion of the 2015 Law of War Manual. The updated Manual is available at https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF. DoD issued a press release, available at https://www.defense.gov/News/Releases/Release/Article/3477385/defense-department-updates-its-law-of-war-manual/, and includes the following:

> The Manual provides authoritative legal guidance for DoD personnel in implementing the law of war and executing military operations. It reflects America's long and deep tradition of respect for the rule of law and the law of war. This is the third update to the Manual since it was first issued in June 2015.
>
> The updated Manual substantially enhances the discussion of what the law of war requires when determining whether a person or object is a lawful target in planning and conducting attacks. It describes the legal duty to presume

that persons or objects are protected from being targeted for attack unless the available information indicates that they are military objectives.

The Manual also includes a new section discussing the obligation to take feasible precautions to verify that potential targets are military objectives, including providing examples of common precautionary measures. The update affirms that the law of war does not prevent commanders and other personnel from making decisions and acting at the speed of relevance, including in high-intensity conflicts, based on their good-faith assessments of the information available at the time.

4. The Path Forward on Authorizations for the Use of Military Force

On March 16, 2023, the Biden Administration released a statement of administration policy in support of S.316, a bill to repeal the 2002 and 1991 Authorizations for Use of Military Force Against Iraq ("AUMF"). The statement is available at https://www.whitehouse.gov/wp-content/uploads/2023/03/S316-SAP.pdf and follows.

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In keeping with President Biden's longstanding commitment to replacing outdated authorizations for the use of military force, the Administration supports Senate passage of S. 316, to repeal the Authorization for Use of Military Force Against Iraq Resolution of 2002 ("2002 AUMF") and the
Authorization for Use of Military Force Against Iraq Resolution of 1991 ("1991 AUMF"). This bipartisan legislation would terminate the October 16, 2002 statutory authorization for the use of military force against Iraq, and the January 14, 1991 statutory authorization for use of military force in the Gulf War pursuant to relevant UN Security Council Resolutions.

The Administration notes that the United States conducts no ongoing military activities that rely primarily on the 2002 AUMF, and no ongoing military activities that rely on the 1991 AUMF, as a domestic legal basis. Repeal of these authorizations would have no impact on current U.S. military operations and would support this Administration's commitment to a strong and comprehensive relationship with our Iraqi partners. That partnership, which includes cooperation with the Iraqi Security Forces, continues at the invitation of the Government of Iraq in an advise, assist, and enable role.

Furthermore, President Biden remains committed to working with the Congress to ensure that outdated authorizations for the use of military force are replaced with a narrow and specific framework more appropriate to protecting Americans from modern terrorist threats. Toward that end, the Administration will ensure that Congress has a clear and thorough understanding of the effect of any such action and of the threats facing U.S. forces, personnel, and interests around the world.

As the Administration works with Congress, it will be will be critical to maintain the clear
authority to address threats to the United States' national interests with appropriately decisive and effective military action.

As Commander-in-Chief, the President has no higher priority than ensuring the safety and security of the American people and defending this nation.

* * * *

On September 28, 2023, Acting Deputy Secretary of State Victoria Nuland, Acting Legal Adviser Richard C. Visek, Assistant Secretary of Defense for Special Operations and Low Intensity Conflict Christopher P. Maier, and U.S. Department of Defense (DoD) General Counsel Caroline Krass testified at a House Foreign Affairs Committee hearing on the possible repeal and replacement of the 2001 AUMF. All witness statements for the records are available at https://www.congress.gov/118/chrg/CHRG-118hhrg53676/CHRG-118hhrg53676.pdf. Mr. Visek's statement for the record follows.

* * * *

Thank you, Chairman McCaul, Ranking Member Meeks, and Members of the Committee for providing this opportunity to address the question of repealing and replacing Authorizations for Use of Military Force (AUMFs) that have been used for counterterrorism operations over the past two decades. The Biden-Harris Administration is committed to working with Congress to repeal outdated AUMFs and to replace the 2001 AUMF with a more specific framework that will ensure that we can continue to address threats to the United States with appropriately decisive and effective military action. President Biden and the entire Administration recognize that the power and strength of the United States are greatest when the President and Congress work together to address external threats.

Since Congress passed the 2001 AUMF shortly after the September 11, 2001, terrorist attacks, the 2001 AUMF has served as the cornerstone of our domestic legal authority for the use of force against al-Qa'ida and associated forces. The Executive Branch has provided Congress with a complete list of all groups that have been determined to be covered by the 2001 AUMF. These groups include al-Qa'ida, the Taliban, certain other terrorist or insurgent groups affiliated with al-Qa'ida and the Taliban in Afghanistan, al-Qa'ida in the Arabian Peninsula, al Shabaab, al-Qa'ida in the Lands of the Islamic Maghreb, al-Qa'ida in Syria, and ISIS.

Replacing the 2001 AUMF is not an easy task, and we welcome the opportunity to work with you as you consider new legislation. The terrorist threat has evolved since the 2001 AUMF was enacted, and it will continue to change going forward. Any new or updated AUMF should reflect those changes. It should maintain the critical authority needed to protect our country and people from terrorist threats, and it should ensure continued transparency and collaboration between the Executive Branch and Congress on the use of military force in the following ways.

First, any new counterterrorism AUMF should include explicit authority to use force against al-Qa'ida and ISIS**,** given that we are in an ongoing armed conflict with both groups. It should also include a mechanism to add associated forces of these groups. We know from experience that terrorist groups splinter and re-organize over time, and that new, associated groups may in the future pose a threat to the United States and Americans abroad.

In this connection, the Administration does not believe it is necessary to name groups in a new authorization against whom the United States is not currently in an armed conflict. There are other tools to appropriately and effectively address threats from such groups. In particular, Article II of the Constitution empowers the President to direct certain military action without prior Congressional approval in order to protect the national security interests of the United States. This authority has been recognized over more than two centuries, across Presidential Administrations, and has been effectively utilized to authorize discrete actions to address threats, including threats to our forces when deployed overseas. If the nature of a threat changes and the President determines additional authorities are appropriate and necessary, the Administration would consult with Congress.

Second, a new or updated AUMF should include periodic review of the locations where force is used. We have over 20 years of experience in the fight against al-Qa'ida and associated forces, and we know that these terrorist groups' operations are not constrained by international boundaries. At the same time, the countries where the United States has used force under the 2001 AUMF have been limited. We are committed to transparency with Congress and the American people about the locations where military force is used.

Third, and most importantly, a new AUMF should *not* include a set end date. Sunsetting the authority based on a specific date-rather than conditions bearing on the need to use force-risks a lapse of this vital legal authority for ongoing operations, including detention operations, at a point in time in which it is still critically needed. The Administration fully recognizes the interest in having a more specific authorization, and we are committed to working with you to find a solution that ensures regular, transparent reviews of the authority. But it is essential that we avoid a possible gap or lapse in this vital authority. The expiration of the authority should be based on the threat posed by terrorist groups to the United States and the American people.

In addition to the 2001 AUMF, there are other AUMFs currently in effect, namely the 1957 "Joint Resolution to promote peace and stability in the Middle East" (Public Law 85-7), the 1991 "Authorization for Use of Military Force Against Iraq Resolution" (Public Law 102-1), and the "Authorization for Use of Military Force Against Iraq Resolution of 2002" (Public Law 107-243). The Administration supports repeal of these AUMFs.

No current U.S. military operations rely on the 1991 AUMF as a domestic legal basis. The United States also does not engage in any ongoing military activities that are dependent on the 2002 AUMF as a domestic legal basis. At least since 2015, the U.S. Government has at most referred to the 2002 AUMF as an "additional authority," alongside the 2001 AUMF and, at times, the President's Article II authority, underpinning ongoing counterterrorism operations against ISIS in Iraq and Syria. Repeal of the 2002 AUMF would have no impact on current U.S. military operations.

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5. International Humanitarian Law

a. Protection of civilians

(1) Sudan

See Chapter 17 for discussion of atrocities in Sudan.

On May 11, 2023, the United States and the Kingdom of Saudi Arabia announced as a media note that representatives of the Sudanese Armed Forces and the Rapid Support Forces signed a Declaration of Commitment to Protect the Civilians of Sudan in Jeddah, Saudi Arabia. The Declaration is available at https://www.state.gov/jeddah-declaration-of-commitment-to-protect-the-civilians-of-sudan/. See State Department media note available at https://www.state.gov/on-the-declaration-of-commitment-to-protect-the-civilians-of-sudan/ and includes the following:

> The Declaration of Commitment recognizes the obligations of both sides under international humanitarian and human rights law to facilitate humanitarian action to meet the emergency needs of civilians.
>
> The Declaration of Commitment will guide the conduct of the two forces to enable the safe delivery of humanitarian assistance, the restoration of essential services, the withdrawal of forces from hospitals and clinics, and the respectful burial of the dead. Following the signing, the Jeddah Talks will focus on reaching agreement on an effective ceasefire of up to approximately ten days to facilitate these activities. The security measures will include a U.S.- Saudi and international-supported ceasefire monitoring mechanism.
>
> In line with the step-by-step approach agreed by the parties, the Jeddah Talks will address proposed arrangements for subsequent talks – with Sudanese civilians and regional and international partners – on a permanent cessation of hostilities. In consultation with the Sudanese Armed Forces and the Rapid Support Forces, the facilitators look forward to discussions with Sudanese civilians and regional and international partners about participation in subsequent rounds of talks.

(2) Civilian Harm Mitigation and Response

On December 21, 2023, the Department of Defense (DoD) released a new DoD Instruction (DoDI 3000.17) on Civilian Harm Mitigation and Response. The instruction establishes DoD-wide policies, responsibilities, and procedures relating to civilian harm mitigation and response. This is the first DoD Instruction on this topic. This policy instruction is available at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300017p.pdf.

6. Bilateral and Multilateral Agreements and Arrangements

a. Papua New Guinea

On May 22, 2023, the United States and Papua New Guinea signed an Agreement on Defense Cooperation at Port Moresby. The agreement entered into force August 16, 2023, and is available at https://www.state.gov/papua_new_guinea-23-816. The State Department media announcing the signing is available at https://www.state.gov/the-united-states-and-papua-new-guinea-sign-new-defense-cooperation-agreement-and-an-agreement-concerning-counter-illicit-transnational-maritime-activity-operations/.

Secretary Blinken delivered remarks at the signing ceremony, which are available at https://www.state.gov/secretary-antony-j-blinken-at-a-defense-cooperation-agreement-and-shiprider-signing-ceremony/, and includes the following:

> The Defense Cooperation Agreement, drafted by Papua New Guinea and the United States as equal and sovereign partners, will enhance the PNG's Defence Force's capability to deliver humanitarian assistance and disaster relief, including through providing medical care and temporary shelter to those who are affected by crises. The agreement will also make it easy for PNG and U.S. forces to train together in new ways and in more places as part of our joint effort to uphold peace and security across the Indo-Pacific. We will be fully transparent of the details of the agreement, which contains elements from our previous agreement and updates to reflect our shared commitment to deepen cooperation on issues that matter most to people here as well as in the United States.

b. Czech Republic

On May 23, 2023, the United States and the Czech Republic signed an Agreement on Defense Cooperation at Washington, DC. The agreement entered into force September 22, 2023, and is available at https://www.state.gov/czech-republic-23-922. The Department of Defense released a read out of the signing ceremony, available at https://www.defense.gov/News/News-Stories/Article/Article/3404724/us-czech-defense-leaders-sign-security-agreement/.

c. Bahrain

On September 13, 2023, the United States and the Kingdom of Bahrain signed the Comprehensive Security Integration and Prosperity Agreement. The Agreement entered into force October 20, 2023, and is available at https://www.state.gov/bahrain-23-1020. See also State Department media note available at https://www.state.gov/comprehensive-security-integration-and-prosperity-agreement/. Secretary Blinken delivered remarks at https://www.state.gov/secretary-antony-j-blinken-and-bahraini-crown-prince-and-prime-minister-salman-bin-hamad-al-khalifa-at-a-security-integration-and-prosperity-agreement-signing-ceremony/, and excerpted below.

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SECRETARY BLINKEN: Crown Prince Salman, Your Royal Highness, welcome back to the State Department, to Washington, a city that I know you know very well from your student days just up the road at American University. We've had the chance to discuss that before. Things have changed a little bit on campus, but we're delighted to have you back in Washington.

And to the National Security Advisor Sheikh Nasser, to my friend the Foreign Minister Al-Zayani, to the entire delegation from Bahrain: Welcome, welcome, welcome.

This moment reflects a great deal of hard work from our teams, and I want to applaud as well all of my colleagues on the American side for the work that they've put into this and, I believe, helps us define the very promising work ahead. As both a major non-NATO ally and a major security partner, Bahrain is already one of the United States' longest-standing and closest partners in the Middle East. In today's meeting, we'll discuss how to deepen our strategic partnership, including through the framework that brings us here today: the Comprehensive Security Integration and Prosperity Agreement.

This agreement deepens our cooperation in three very important ways.

First, it expands our security and defense collaboration. For more than 25 years, of course, Bahrain has hosted the U.S. Navy's Fifth Fleet, and we stand shoulder to shoulder in our mission to secure critical shipping lanes that sustain the entire global economy. This agreement will strengthen coordination between our armed forces and the integration of our intelligence capacities, allowing us to even better deter and respond to threats as they arise.

Second, it enhances our economic relationship. Since 2006, our free trade agreement has more than tripled trade and investment to about $3 billion a year. Today's agreement builds on this, in part by identifying new investment opportunities for the private sector partners in the United States.

And third, at a moment when technology holds so much potential to better our lives, this agreement advances scientific and technical cooperation between our countries, including through increased information sharing and exchanges between our people. And already we're collaborating in areas like health security and digital technology. I think we'll see with today's signing all of this become elevated. We'll start the process of working together on renewable energy, on carbon capture technologies, and other cutting-edge endeavors.

This agreement is also the first binding U.S. international agreement of its kind to promote cooperation in developing and deploying trusted technologies, which are vital to protecting our critical systems and our peoples' privacy – all of this from bad actors.

But I think when you step back, at the heart of the agreement is a shared goal: working together to build a region that is more secure, that's more prosperous, and that's more connected to the world economy. We're looking forward to using this agreement as a framework for additional countries that may wish to join us in strengthening regional stability, economic cooperation, and technological innovation.

In our meeting, Your Royal Highness, I also very much look forward to discussing ways to continue advancing regional integration – something that Bahrain has been in the forefront of doing. This is the third anniversary, this week, of the Abraham Accords through which Bahrain became one of the first countries to normalize relations with Israel. Bahrain has continued its leadership through the Negev Forum. The foreign minister and I were participants in its first – in its first meeting. Our two countries are co-leading efforts in the forum to strengthen cooperation on regional security and health, another very important item on our agenda today.

We'll also continue our dialogue on the full range of human rights issues which are a core pillar of the United States foreign policy. That includes areas like combating trafficking in persons, where Bahrain continues to make important headway. It also includes ensuring that fundamental freedoms are protected, which contributes to Bahrain's progress.

For more than 130 years now, Bahrain and the United States have forged a partnership that has evolved to meet the challenging needs of our people and the changing needs of our people, from

Americans building a school and a hospital in Manama in the early 20th century, to the start of our diplomatic relations more than five decades ago, to our troops serving side by side in Operation Desert Storm in the 1990s.

Today's agreement that we're about to sign builds on that very proud and important history. It ensures that this vital relationship between our countries will continue to do what it needs to do, which is deliver for our people and, I believe, help build a more positive future for people throughout the region.

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d. Sweden

On December 5, 2023, the United States and Sweden signed an Agreement on Defense Cooperation at Washington, DC. The State Department media note on the signing is available at https://www.state.gov/u-s-signs-defense-cooperation-agreement-with-sweden/.

e. Finland

On December 18, 2023, the United States and Finland signed an Agreement on Defense Cooperation at Washington, DC. Secretary Blinken delivered remarks at the signing ceremony, which are available at https://www.state.gov/secretary-antony-j-blinken-at-the-defense-cooperation-agreement-signing-ceremony/, and excerpted below.

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Secretary Blinken: Good morning, everyone. To Defense Minister Häkkänen, to Foreign Minister Valtonen, so wonderful to have you here. And welcome to all of you. Welcome to the State Department. Welcome as the United States and Finland take yet another step in what has truly been an historic year for our friendship. We throw around the word "historic" sometimes; this really meets the mark.

Back in April, I stood alongside our NATO Allies, including President Niinistö, to see Finland's flag fly over NATO headquarters for the first time. In June, I had an opportunity to visit Helsinki, where we took further steps to strengthen our partnership in very concrete ways.

Today NATO is bigger, it's stronger, it is more united than at any point in its nearly 75-year history, and that's in no small part thanks to Finland's accession. And soon, Sweden will join as well.

Already Finland is making significant contributions to the Alliance, sharing technical expertise, hosting and joining NATO military exercises, meeting and exceeding the NATO target of spending 2 percent of GDP on defense.

Finland has been a steadfast partner to Ukraine as it defends its people, its territory, its right to shape its own future – providing more than $2 billion in defense support, in humanitarian aid, and other assistance since Russia's full-scale aggression.

Today we will further strengthen our security bonds by signing a Defense Cooperation Agreement in just a couple of minutes. When it goes into effect, our militaries will be able to collaborate more efficiently and more effectively. Our troops will have more opportunities to train together, and we will bolster NATO's interoperability.

This agreement builds on three decades of security cooperation between our nations on everything from countering terrorism to boosting Finland's defense capabilities, including through the recent purchase of F-35 fighter jets.

Today is just the latest demonstration of the United States comprehensive effort to bolster transatlantic security. Last year we amended our Defense Cooperation Agreement with Norway. Earlier this month we signed a new defense agreement with Sweden. Later this week we will sign a new agreement with Denmark. And of course, today we will be doing this with Finland.

We now have a network of Defense Cooperation Agreements that stretches from northern to southern Europe, from the Norwegian Sea to the Black Sea – providing security and stability for people all across the continent.

And together, we'll also keep supporting Ukraine. America's assistance is critical to building Ukraine's capacity to stand on its own feet – militarily, economically, democratically – and ensuring that President Putin's war of aggression remains a strategic failure. We'll continue to work with Congress to pass President Biden's supplemental budget request, which is vital to ensuring that result.

As I said in Helsinki when I visited, Finland knows almost better than anyone what is at stake for Ukraine. In 1939, the Finns also faced a Russian invasion and proved that a free nation can put up an incredibly powerful and resilient resistance.

Your history is also a reminder of why it's so important that we all continue to stand with Ukraine, for autocrats who try to redraw one nation's border by force almost certainly will not stop there. And that's precisely why we'll continue to work together to defend the values of freedom, independence, and sovereignty that NATO and agreements like this one were created to protect in the first place.

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f. Denmark

On December 21, 2023, the United States and Denmark signed an Agreement on Defense Cooperation at Washington, DC. Secretary Blinken delivered remarks at the signing ceremony, which are available at https://www.state.gov/secretary-antony-j-blinken-at-a-defense-cooperation-agreement-signing-ceremony-with-danish-foreign-minister-lars-rasmussen/, and excerpted below.

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SECRETARY BLINKEN: Well, good afternoon, everyone. First, let me just say I'm so delighted to welcome Foreign Minister Rasmussen here to the State Department, to the United States, and for this, I think, very important occasion. We've had the opportunity, Lars and I, to spend a fair bit of quality time at NATO and other places, but it's particularly good to have you here in Washington.

For nearly 75 years, the United States and Denmark have been close security partners and NATO Allies. Our forces are working to protect communities from terror in the Sahel. We're upholding freedom of navigation in the Straits of Hormuz. We're strengthening deterrence together in the Baltics.

Denmark continues to play a leading role in ensuring Putin's war on Ukraine remains a strategic failure.

It was one of the first countries to commit to supplying F-16s to Ukraine and to train Ukrainian pilots to fly them. Earlier this month, Denmark pledged to provide $1 billion worth of tanks, drones, ammunition, and to jointly fund the donation of new Swedish armored personnel characters – carriers, excuse me – all of which will help Ukraine defend its territory and its democracy.

Our countries together are committed to enabling Ukraine to stand on its own, to stand on its own strongly – militarily, economically, democratically. That's why President Biden's supplemental budget request is so critical, and why we'll continue to work with Congress to pass it.

The Defense Cooperation Agreement that we're about to sign will further strengthen security collaboration between our two countries.

When it takes effect, our militaries will be able to coordinate more effectively, even more effectively than they already are. Our troops will train together more seamlessly and more often. We'll enhance NATO's interoperability, allowing our Alliance to better safeguard peace and stability for people all across the continent.

Today's agreement builds on the work that we've done to deepen defense cooperation with allies across the Atlantic – from Northern to Southern Europe, from the Baltics to the Black Sea.

In 2021, we signed a Defense Cooperation Agreement with Norway. Earlier this month, we signed a similar accord with Sweden. Earlier this week, we signed one with Finland. Collectively, these agreements underscore the shared commitment by the United States and our European partners to bolster European and transatlantic security.

Denmark remains an essential partner in this effort. Lars and I will have a chance to sit down after we sign this agreement, to go through the many issues and the many areas where the United States and Denmark together are dealing with the challenges of our time. We could not be more grateful to have such a strong, such a valued, such an important partner. It gives me a great source of confidence as we head into the future, knowing that our two countries not only remain strongly allied but, after today, even stronger.

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B. CONVENTIONAL WEAPONS

1. U.S. Policy on Conventional Arms Transfer

On February 23, 2023, the President issued a National Security Memorandum ("NSM-18"), updating U.S. policy on conventional arms transfers ("CAT"). The memorandum is

available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/23/memorandum-on-united-states-conventional-arms-transfer-policy/. See *Digest 2018* at 687 for discussion of the 2018 CAT policy. The State Department announced the release of the 2023 revised policy in a media note, available at https://www.state.gov/white-house-releases-updated-u-s-conventional-arms-transfer-policy/. The State Department published a fact sheet, which is available at https://www.state.gov/the-u-s-conventional-arms-transfer-policy/, and includes the following:

- The newly revised CAT Policy is committed to strengthening U.S. national security by reinforcing respect for human rights, international humanitarian law, democratic governance, and rule of law, by:
  - Denying arms transfers that risk facilitating or otherwise contributing to violations of human rights or international humanitarian law;
  - Enhancing ally and partner capacity to respect their obligations under international law and reduce the risk of civilian harm, including through U.S. arms transfers bundled with appropriate tools, training, advising, and institutional capacity-building efforts;
  - Helping to ensure that arms transfers do not fuel corruption or undermine good governance, while incentivizing effective, transparent, and accountable security sector governance.

2. Convention on Certain Conventional Weapons

The United States continues to view the Group of Governmental Experts on emerging technologies in the area of lethal autonomous weapons systems ("LAWS GGE"), convened under the auspices of the Convention on Certain Conventional Weapons ("CCW"), as the best opportunity to advance international efforts on LAWS. In 2023, the United States, along with Australia, Canada, Japan, Poland, the Republic of Korea, and the United Kingdom, submitted a proposal to the LAWS GGE titled "Draft Articles on Autonomous Weapon Systems – Prohibitions and Other Regulatory Measures on the Basis of International Humanitarian Law ('IHL')." The proposal is available at https://docs-library.unoda.org/Convention_on_Certain_Conventional_Weapons_-Group_of_Governmental_Experts_on_Lethal_Autonomous_Weapons_Systems_(2023)/CCW_GGE1_2023_WP.4_US_Rev2.pdf.

On May 15, 2023, the Deputy Legal Adviser Joshua Dorosin delivered the opening statement at the second session of the 2023 GGE on LAWS in Geneva. The U.S. opening statement is included below and available at https://geneva.usmission.gov/2023/05/15/second-session-in-2023-of-the-gge-on-emerging-technologies-in-the-area-of-laws/.

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Thank you, Mr. Chair. We wanted to begin by thanking you, your team and the ISU for your skilled leadership and organization of our March session and of this week's session. We also want to express our appreciation for your work during the intersessional period, and in particular for circulating the draft report well in advance of this session and for an indicative timetable that provides ample time for negotiating the report. Having sufficient time this week to discuss the conclusions in the draft report is critical to fulfilling our mandate, part of which is to "elaborate, by consensus, possible measures … and other options related to the normative and operational framework."

Our delegation would have preferred a more ambitious outcome in line with the approach taken by the revised joint proposal submitted by the United States and our co-sponsors. And in this connection we are pleased to welcome Poland as a co-sponsor along with Australia, Canada, Japan, Korea, the United Kingdom and our delegation. At the same time, we think your draft provides a good basis for negotiation and we will engage constructively this week to achieve a substantive outcome.

Mr. Chair, the GGE has the opportunity this week to reach consensus on a report that represents the GGE starting to issue concrete guidance for States to implement in their national practice. This would be an important step forward. Although there remain divergences about what form those measures should take and what all those measures should be, for the GGE to adopt a report that addresses measures would represent significant progress.

When we think about what the GGE has accomplished, our delegation believes we already have a good story to tell. Through the GGE's work over the past several years, we have shared national practice and views and promoted common understandings and dialogue between States with diverse perspectives on cutting edge military, technological, and legal issues. This is a success story for multilateralism, and we continue to believe that the CCW offers a unique forum in which all States and civil society can participate. But after our work this week, we will hopefully have begun writing a new chapter of the story. In this draft report, the GGE is developing guidance for States — measures that would strengthen the implementation of international humanitarian law (IHL) and promote responsible behavior by States. To borrow your analogy of the convoy, we hope that this week we are able to seize on the opportunity before us and continue sailing in this new direction by adopting a report along the lines that you have proposed.

I will now offer four general, thematic points on the substance of the report, and our overall views on the mandate. We will of course offer more detailed points later in the week.

One theme is that the report must be legally accurate and precise. One example of this is the use of the word "must", a term also noted by the delegation of India. My delegation can accept the word "must"; in fact, we've used it in our revised joint proposal. But, it is critical to ground any "must" language in the requirements of existing IHL. If the report is not reflecting an existing legal requirement, the word "must" will be very difficult for my delegation to accept; as noted by the delegation of India, in those cases it will be important to identify non-binding terminology that clearly allows us to distinguish between existing legal requirements and other measures.

A second theme is that we should be as clear and specific as possible in articulating measures. If we want States to implement these measures effectively and in a way that is consistent from State to State, then we need to move beyond labels and dig into the details of specific prohibitions, regulations, and other measures. For example, what does it mean to say that

weapon systems must be "sufficiently predictable, reliable, understandable and explainable, and traceable"? These are not terms in existing IHL. However, some of the concepts underlying these terms may support compliance with IHL. For example, our revised joint proposal tries to get at some of these underlying concepts with more specificity and with terminology reflected in existing IHL. It is important for my delegation that the GGE avoid vague, overarching terminology that is not part of existing IHL, and instead adopt more detailed concepts that States can readily implement to strengthen their implementation of IHL.

A third theme is the "two-tier" approach. We have an opportunity in this report to bring greater clarity to existing prohibitions on weapons that by their nature are incapable of being used in compliance with IHL. We also have an opportunity to strengthen the implementation of IHL governing the use of weapons.

Fourth, for the United States it is important that the GGE craft realistic and practical measures that are informed by existing State practice in using autonomy in weapon systems. For the United States, we understand the weapons systems that can select and engage targets, along the lines of what are described in paragraph 19, as including existing weapon systems that have been fielded for many years without legal controversy. We do not think it is appropriate to develop new requirements for these systems that haven't previously been viewed as necessary or appropriate. For example, with respect to paragraph 23, there are many existing weapon systems that the operators are unable to interrupt, disable, or otherwise control after activating the system. These systems are consistent with IHL and fielded by many States.

Turning to the mandate, in our view it would be wise to exhaust our discussion on the report's conclusions before focusing on the GGE's recommendations for CCW Parties on the GGE's mandate for next year. The GGE's mandate will be directly related to the substantive progress on the measures that we are able to achieve this week. The more substantive consensus we can achieve, the more ambitious we can be about our work next year.

With that point in mind, I did want to offer an initial reaction to your proposal regarding the mandate. We like that your proposal for a mandate refines the existing GGE mandate. While we are open to considering revisions to the mandate, it is important to note that the GGE's existing mandate has been flexible enough to permit work on any number of outcomes, and it has also been successful in stimulating rich dialogue and hopefully, consensus measures, through the submissions of proposals. Just last week, as noted this morning by the delegation of Argentina, we received a proposal for a legally binding instrument from a number of delegations. Thus, we think that refining and focusing our existing mandate, as your draft proposes, is the correct approach rather than starting with entirely new language for a mandate.

The concept of proposals has been a very useful tool for our work this year and last year to help the GGE make progress. Is there a similar construct that would help structure our work next year? We're still thinking about this, but we encourage you and all delegations to consider how the mandate might structure our work to give the GGE and the Chair next year the best possible chance of achieving a robust outcome.

Mr. Chair, we again express our delegation's thanks for your efforts and commit to engage in a constructive spirit this week in the hopes that we can achieve a substantive consensus report that advances our work on measures to guide States in this area. Thank you.

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On October 24, 2023, Deputy Permanent Representative Alison Storsve delivered the U.S. statement at a thematic discussion on conventional weapons at the UN General Assembly First Committee (Disarmament and International Security). The statement is available at https://geneva.usmission.gov/2023/10/24/thematic-discussion-on-conventional-weapons-unfc-october-2023/, and excerpted below.

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We must also strive to reduce the risks created by ammunition diverted into the hands of unauthorized recipients, such as terrorist groups and criminal organizations. To this end, the United States actively and constructively participated in the Open-Ended Working Group on Ammunition and endorsed its final report and recommendation to establish the Global Framework for Through-Life Conventional Ammunition Management. We welcome the report's adoption without a vote, but were disappointed Russia and Belarus disassociated from it and broke consensus on the Global Framework. The United States supports the proposed draft resolution on conventional ammunition, and we look forward to the establishment of the Global Framework and its implementation and review process. The United States also welcomes the continued work of the Group of Governmental Experts (GGE) on emerging technologies in the area of lethal autonomous weapons systems (LAWS) under the framework of the Convention on Certain Conventional Weapons. The LAWS GGE is a uniquely appropriate forum for multilateral discussions on LAWS, because it benefits from contributions by diplomatic, military, legal, technical, and policy experts, as well as civil society. This expertise has resulted in a significant body of work and continues to provide the best opportunity to advance international efforts on LAWS. We recognize the contribution a balanced and inclusive UN Secretary General's report on LAWS could make to the LAWS GGE's work, and we plan to support the resolution submitted by Austria. We look forward to the November meeting of High Contracting Parties to the Convention, where States Parties will discuss the GGE's 2024 mandate. We support a mandate to develop measures strengthening the implementation of existing International Humanitarian Law principles with respect to the use of LAWS. While we continue to support these crucial discussions, we also see a need to address the broader implications of Artificial Intelligence in the military domain. We are therefore encouraging countries to join us in the Political Declaration on Responsible Military Use of AI and Autonomy. When used lawfully and responsibly, advanced technologies such as autonomy and AI can improve the protection of civilians in armed conflict.

The United States reaffirms and recognizes the equal, full, and effective participation of women at all levels of decision-making processes, such as the ones I've mentioned, as one of the essential factors for the promotion and attainment of sustainable peace and security. Turning to further recent steps the United States has taken to promote security in this thematic cluster, last February, the United States announced a revised Conventional Arms Transfer Policy, which provides the framework under which the U.S. government reviews and evaluates proposed arms transfers using a more holistic approach. All proposed defense sales are assessed on their individual merits and on a case-by-case basis, taking into account multiple factors to determine if a potential arms transfer is in our national interest, and factoring in considerations of human rights, international humanitarian law, and security sector governance.

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On November 15, 2023, the United Kingdom delivered a joint statement on Ukraine at the 2023 Annual Meeting of the High Contracting Parties to the Convention on Certain Conventional Weapons ("CCW HCP") on behalf of the United States and Albania, Austria, Australia, (Bosnia and Herzegovina), Belgium, Bulgaria, Canada, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Guatemala, Hungary, Ireland, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg (Kingdom of the), Malta, the Principality of Monaco, Montenegro, Netherlands, New Zealand (Kingdom of), New Zealand, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Ukraine, and the (European Union). The meeting took place in Geneva in from November 15-17. The joint statement is excerpted below and available at https://geneva.usmission.gov/2023/11/15/joint-statement-on-ukraine-at-the-ccw-annual-meeting/.

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We reiterate our strong support for Ukraine and resolute condemnation of Russia's war of aggression against Ukraine, which brings unspeakable suffering and hardship to millions of affected civilians daily and has damaged civilian infrastructure throughout the country. We also remain gravely concerned about reports of Russia's failure to comply with its obligations under the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW) and its Protocols during its invasion of Ukraine.

Approximately six million people in Ukraine are at risk due to Russia's use of mines. Two hundred sixty-one people have been killed, including children, and over 500 injured by landmine blasts. More than one third of Ukraine's territory, including sea areas, need to be surveyed for explosive hazards. Deminers have already discovered over 707 thousand explosive objects. We continue to condemn any use of mines, booby traps, and other devices prohibited by Amended Protocol II and we stress the severe humanitarian crisis that is resulting from Russia's use of such devices, in particular in urban environments, and the negative effect on the security, stability and socio-economic development of Ukraine. We are alarmed by reports that Russia's forces are planting mines near critical infrastructure facilities…

We appreciate the efforts made by governments, including many of those who have joined this statement, and numerous humanitarian organizations in clearing and securing areas in Ukraine that have been contaminated as a result of Russia's aggression against Ukraine. We highly value measures undertaken by the Government of Ukraine in humanitarian demining, victim assistance and rehabilitation to ensure the safety of civilians and to create conditions for sustainable development in the affected regions. It is crucial to ensure the full recovery, safety and stability of the affected Ukrainian territories. In this regard we call upon all States to strengthen the support for Ukraine, as Ukraine continues to regain control over its territory, in clearing its territory from mines

and explosive ordnance in compliance with international mine action standards, in supporting risk education, victim assistance and rehabilitation efforts.

We reiterate the importance of holding Russia to account for any violations of its obligations under the CCW and its Protocols, and for the damage caused by its illegal invasion of Ukraine. And we continue call on Russia to take all appropriate steps to prevent and suppress violations of the CCW and its Protocols and to end its senseless and illegal invasion of Ukraine, in accordance with its obligations under international law.

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On November 17, 2023, Deputy Legal Adviser Joshua Dorosin, Head of the U.S. Delegation to the 2023 Annual Meeting of the CCW HCP in Geneva from November 15-17, delivered the U.S. statement. The statement is available at https://geneva.usmission.gov/2023/11/17/annual-meeting-of-high-contracting-parties-to-the-convention-on-certain-conventional-weapons-ccw/, and excerpted below.

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The United States places great value on the CCW as an IHL treaty that brings together States with diverse security interests to discuss issues related to weapons that may be deemed to be excessively injurious or to have indiscriminate effects. The CCW forum is uniquely situated to address these issues due its mix of diplomatic, military, legal, policy, and technical expertise. We welcome the statements yesterday from Singapore and the United Kingdom, whose actions are furthering the universalization of this important convention.

Mr. President, for more than 40 years the work of this forum has also been greatly enhanced by the active participation of observers, including the ICRC, international organizations and civil society. We deeply regret the unfortunate circumstances that have led to the need to proceed in an informal setting today. The voices of our observers are critical to our deliberations. They must be heard.

The importance of our work this year is especially clear. The United States is gravely concerned about the suffering of civilians in armed conflicts around the world. Parties to any armed conflict must respect their obligations under IHL. We remain gravely concerned about reports of Russia's failure to comply with its obligations under the CCW and its Protocols during its unlawful, full-scale invasion of Ukraine, which has littered the country with landmines, unexploded ordnance, and other explosive devices. We reiterate our strong support for Ukraine, as expressed in the Joint Statement read by the delegation of the United Kingdom yesterday, and the United States has committed $182 million for humanitarian demining efforts in Ukraine to support clearance efforts.

The tragic suffering that we have witnessed in connection with the current conflict in Gaza must also be acknowledged and addressed. It is also a grave concern. While there can be no

question that Israel has the right and responsibility to defend itself in the wake of the horrific Hamas terrorist attacks on October 7 – and no question that Israeli military operations must comply with IHL – it is also necessary to recognize that one party's suffering during an armed conflict does not negate or detract from another's. We must acknowledge the pain and suffering of innocent Palestinians that has been described here yesterday and today by many delegations. Innocent civilians have been killed and wounded; there is no family that has not suffered. And people are in dire need of humanitarian assistance.

But we also cannot look away from the Israeli civilian lives that were lost on October 7th. Or from the pain and suffering of families who wait to know the fate of more than 200 civilians — women, children, the elderly — still held hostage by Hamas.

Mr. President, the United States was proud to announce our endorsement of the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas. We believe this Declaration can help States do critically important work to improve the protection of civilians in armed conflict.

Mr. President, the United States also continues to be the world's largest contributor to conventional weapons destruction programs. These programs respond to the humanitarian, social, and economic effects generated by all manner of explosive remnants of war and at-risk arms and munitions. These activities include humanitarian mine action, destruction of small arms, light weapons, and munitions, including at-risk man-portable air defense systems or MANPADS, and physical security and stockpile management assistance. Since 1993, the United States has provided more than $4.6 billion in such assistance to more than 120 countries.

Finally, Mr. President, we appreciate the significant effort that you have made over the last several months to develop consensus on the mandate for next year's LAWS GGE. We are also deeply grateful to Ambassador Flavio Damico of Brazil for his skill, dedication and patience during his tenure as the Chair of the LAWS GGE, and in particular for his work to bring about a substantive report that meaningfully advanced the work of the GGE. We believe that it is vitally important to continue our discussions on this issue at CCW. The LAWS GGE needs a mandate that reflects a common vision of what work the GGE will do and how we will do it.

We continue to believe that it would not be responsible to begin negotiations on a legally binding instrument at this time, or to conclude that a binding Protocol is the only acceptable outcome of our work. But we acknowledge that the mandate must continue to give every delegation an equal opportunity to make their case for their preferred outcome – this is the only way that our continued deliberations can advance our important work.

We believe that our discussions over the last two years were very successful in producing a number of proposals that advanced our substantive discussions and offered various options for future work. These included multiple proposals for a legally binding instrument. These also included proposals for non-binding instruments and other options, like the Draft Articles proposal that was submitted earlier this year by Australia, Canada, Japan, Poland, the Republic of Korea, the United Kingdom and the United States.

We suggest that we build upon last year's mandate and work by considering existing and new proposals with the goal of identifying and further developing common elements of these proposals that would strengthen the implementation of existing IHL principles related to emerging technologies in the area of LAWS. If you look across the proposals, there were many commonalities in terms of both the topics addressed and the substance presented. Further progress in the elaboration of prohibitions and regulations on the basis of existing IHL would represent meaningful and important progress in 2024.

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On December 21, 2023, the United States provided input to the Human Rights Council ("HRC") Advisory Committee related to the study "examining the human rights implications of new and emerging technologies in the military domain, while taking into account ongoing discussions within the United Nations system" to be presented to the HRC at its sixtieth session in September 2025 in accordance with HRC Resolution 51/22. See U.N. Doc. A/HRC/RES/51/22 available at https://undocs.org/A/HRC/RES/51/22. The U.S. submission is available at https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/advisorycommittee/techmilitarydomain/submissions/8-states-united-states.pdf and excerpted below.

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Compliance with International Law and the Centrality of International Humanitarian Law in the Military Domain

A fundamental aspect of the U.S. approach to new and emerging technologies is the general recognition that international law continues to apply to the conduct governed by it, notwithstanding the introduction of new and emerging technologies. Thus, the United States believes that compliance with applicable international law is critical as States develop and use new and emerging technologies. For example, if States use new and emerging technologies within contexts in which their international human rights law obligations apply, then they must comply with those obligations when using new and emerging technologies. The United States reiterates its view that international human rights law and international humanitarian law are in many respects complementary and mutually reinforcing. The United States recognizes that advancements in new and emerging technologies, such as advancements in the field of AI, are often being led by the private sector and that these advancements have the potential to affect many different sectors or kinds of activities. The analysis of whether or what international law applies with regard to a particular activity inevitably will be a context-specific analysis, taking into account the State's obligations, the context of the activity, and the nature of the actor, among other relevant facts and circumstances.

The United States recognizes that IHL is the *lex specialis* governing armed conflict and, as such, is the controlling body of law with regard to the conduct of hostilities and the protection of war victims. For example, as the LAWS GGE has recognized, including in Guiding Principle (a), IHL continues to apply fully with respect to all weapons systems, including the potential development and use of LAWS. The GGE has also consistently reaffirmed that "the potential use of weapons systems based on emerging technologies in the area of LAWS must be conducted in accordance with international law, in particular IHL and its requirements and principles, including inter alia distinction, proportionality and precautions in attack." *See, e.g.,* LAWS GGE 2019 report, para 17(a) (CCW/GGE.1/2019/3).

The United States believes that in addressing new and emerging technologies in the military domain, it is important for States to go beyond simply reaffirming the applicability of IHL or particular IHL rules. States should also articulate specifically how IHL applies and how IHL can be effectively implemented. In 2023, the United States, along with Australia, Canada,

Japan, Poland, the Republic of Korea, and the United Kingdom, submitted a proposal to the GGE titled "Draft Articles on Autonomous Weapon Systems – Prohibitions and Other Regulatory Measures on the Basis of International Humanitarian Law ('IHL')," CCW/GGE.1/2023/WP.4/Rev.2.[4] The Draft Articles proposal follows the so-called "two-tier approach." Such an approach reflects a distinction in IHL between, on the one hand, categories of prohibited weapons and, on the other hand, regulations for the use of other weapons not categorically prohibited from use in all circumstances. The Draft Articles proposal is centered on articulating measures to effectively implement IHL and proposes new understandings and clarifications of how IHL, in particular the key principles and requirements of distinction, proportionality, and precautions in attack, apply in the context of autonomous weapon systems. The Draft Articles proposal also specifies what States need to do during development, deployment, and use of autonomous weapon systems to implement these IHL principles and requirements.

Responsibility and Accountability

With respect to questions about responsibility and accountability, the United States notes the relevance of its general view that international law continues to apply to matters within its scope, even when new and emerging technologies are involved. In particular, well-established international legal principles of State and individual responsibility continue to apply when States and persons use new and emerging technologies in the military domain. For example, under principles of State responsibility, every internationally wrongful act of a State, including such acts involving the use of new and emerging technologies in the military domain, entails the international responsibility of that State. A State remains responsible for all acts committed by persons forming part of its armed forces, including any such use of new and emerging technologies in the military domain, in accordance with applicable international law. Under applicable international and domestic law, an individual remains responsible for his or her conduct in violation of IHL. The use of new and emerging technologies does not provide a basis for excluding legal responsibility.

In the context of armed conflict, States and parties to a conflict remain responsible for meeting their obligations under IHL. These obligations are not imposed on systems, capabilities, or technologies; of course, an inanimate object could not assume an "obligation" in any event. Rather, the State, party to the conflict, or person using the new system or capability based on new and emerging technologies must comply with the applicable IHL rule, such as affirmative obligations with respect to the protection of civilians and other classes of persons. These obligations, such as the requirement to take feasible precautions in planning and conducting attacks, can be particularly relevant when States are relying on autonomous or AI capabilities, and they are assessed in light of the general practice of States. As a case in point, whether the use of a new AI system or capability reduces the risk of harm to civilians and civilian objects as compared to the existing means and methods of warfare that States would generally use instead of this new

[4] Australia, Canada, Japan, the Republic of Korea, the United Kingdom, and the United States also submitted a proposal to the GGE in 2022 titled "Principles and Good Practices on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems" (CCW/GGE.1/2022/WP.2). This proposal was intended to transform the GGE's extensive body of past consensus work into a document that could guide State practice, strengthen the implementation of IHL, and promote responsible behavior.

system or capability, would be relevant in assessing whether the use of the new system or capability would be consistent with due diligence in the implementation of the requirements and principles of distinction, proportionality, and precautions in attack.

Just as existing legal principles of responsibility continue to apply, existing mechanisms for implementing legal requirements and ensuring accountability also continue to apply, notwithstanding the introduction of new and emerging technologies in the military domain. For example, IHL obligations are implemented in military operations through responsible commands, and it is important to note that not every duty will be implemented by every individual within the command. The responsibilities of any particular individual in implementing a State or a party to a conflict's obligations under IHL may depend on that person's role in the organization or military operations, including whether that individual has the authority to make the decisions and judgments necessary to the performance of that duty under IHL. Rather than necessarily creating an accountability gap, in our view the appropriate use of new technologies could enhance accountability. For example, the use of autonomous weapon systems involving new technologies could strengthen efforts to ensure accountability over the use of force by having system logs that automatically record the operation of the weapon system. This kind of recording could facilitate
investigations of both the weapon system's performance and use. This and other issues are discussed in a U.S. Working Paper, Implementing International Humanitarian Law in the Use of Autonomy in Weapon Systems, CCW/GGE.1/2019/WP.5.

* * * *

On December 22, 2023, the United States co-sponsored UN General Assembly Resolution 78/241 on LAWS. See U.N. Doc. A/RES/78/241 available at https://www.undocs.org/A/RES/78/241. The United States provided views and information about U.S. practices to the Secretary-General. The U.S. submission is available at https://docs-library.unoda.org/General_Assembly_First_Committee_-Seventy-Ninth_session_(2024)/78-241-US-EN.pdf and excerpted below.

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* * * *

The United States appreciates the opportunity to provide its views and information about its practice to the Secretary-General in accordance with operative paragraph 2 of General Assembly Resolution 78/241 "Lethal autonomous weapons systems," which states:

> *Requests* the Secretary-General to seek the views of Member States and observer States on lethal autonomous weapons systems, inter alia, on ways to address the related challenges and concerns they raise from humanitarian, legal, security, technological and ethical perspectives and on the role of humans in the use of force, and to submit a substantive report reflecting the full range of views received with an annex containing these views, to the General Assembly at its seventy-ninth session for further discussion by Member States;

The United States robustly engages in discussions in multilateral fora regarding lethal autonomous weapon systems (LAWS), and we encourage other States to do so as well. We also

strongly support the role of international organizations, civil society, and other appropriate actors in observing and contributing to international discussions on these issues.

The United States continues to view the Group of Governmental Experts on emerging technologies in the area of lethal autonomous weapons systems (LAWS GGE), convened under the auspices of the Convention on Certain Conventional Weapons (CCW), as the best opportunity to advance international efforts on LAWS. The United States appreciates the recognition of the work of the LAWS GGE in Resolution 78/241 and sees this effort led by the Secretary-General to seek the views of Members States on this issue as a valuable opportunity to provide greater awareness of the ongoing work of the LAWS GGE, as well as to provide contributions and perspectives to inform the LAWS GGE's work.

The LAWS GGE is a uniquely suitable forum for international work on LAWS. It is an inclusive, consensus forum in which all interested States and civil society participate. Efforts outside the GGE that do not include all interested States or that do not operate by consensus may lead to fragmentation and divergent approaches. The GGE has a clear and robust mandate to formulate, by consensus, a set of elements of an instrument, without prejudging its nature, and other possible measures to address emerging technologies in the area of LAWS. This mandate clearly orients the GGE's work towards the ultimate goal of producing an instrument.

The LAWS GGE focuses on international humanitarian law (IHL), and benefits from the participation of delegations that routinely include members with military, technical, legal, and policy experience. This expertise has resulted in a significant body of work, including 11 guiding principles and multiple reports with many substantive conclusions that reflect the consensus of a diverse group of participating States. GGE delegations have also submitted many substantive proposals since 2022, including proposals for legally binding instruments, non- binding instruments, and other outcomes.

The United States' approach to LAWS starts with the recognition that IHL already provides the applicable framework of prohibitions and regulations on the use of LAWS in armed conflict. States should articulate specifically with regard to LAWS how IHL rules apply and how IHL requirements can be effectively implemented. To this end, the United States and a number of other States have submitted a proposal to the LAWS GGE titled "Draft Articles on Autonomous Weapon Systems – Prohibitions and Other Regulatory Measures on the Basis of International Humanitarian Law."

The U.S. Department of Defense (DoD) has also issued a policy directive on Autonomy in Weapon Systems (DoD Directive 3000.09), as well as a range of policies and other issuances to fulfill DoD's commitment to developing and employing new and emerging technologies in a responsible manner, including the DoD AI Ethical Principles, the DoD Responsible AI Strategy and Implementation Pathway, and the DoD 2023 Data, Analytics, and Artificial Intelligence Adoption Strategy. The United States has made these policies, and related resources such as a Responsible AI Toolkit, publicly available to demonstrate this commitment and encourage transparency internationally.

The United States also seeks to build international consensus around norms of responsible behavior for the development, deployment, and use of military AI and autonomy, namely through the Political Declaration on Responsible Military Use of AI and Autonomy, which is complementary to but independent from the LAWS GGE. The United States launched the Political Declaration in February 2023 to begin to build a consensus around norms of responsible behavior to ensure that military use of these technologies is responsible, ethical, and

enhances international security. This Political Declaration creates a foundation for an inclusive, international dialogue and articulates ten foundational measures that apply across the full range of military applications of AI.

* * * *

C. DETAINEES

1. Transfers

The number of detainees remaining at Guantanamo Bay declined further in 2023 as part of U.S. government efforts to close the facility, resulting in 30 detainees remaining by the end of the year.

On February 2, 2023, the Department of Defense ("DOD") announced the transfer of Majid Khan from the detention facility at Guantanamo Bay to Belize. The February 2, 2023 DOD release is available at https://www.defense.gov/News/Releases/Release/Article/3286127/guantanamo-bay-detainee-transfer-announced/, and includes the following:

> Majid Khan pled guilty before a Military Commission in February 2012. Pursuant to the terms of the plea agreement, Khan pledged to cooperate with the U.S. Government and honored his cooperation commitment. He was sentenced in 2021 to a term of confinement for over 10 years with credit for the years he spent cooperating with U.S. personnel. He has subsequently completed his sentence.
>
> On December 22, 2022, Secretary of Defense Austin notified Congress of his intent to transfer Majid Khan to the Government of Belize, and, in consultation with Belize partners, we completed the requirements for responsible transfer.

On February 23, 2023, the DOD announced the repatriations of Abdul Rabbani and Mohammed Rabbani from the detention facility at Guantanamo Bay to Pakistan. Abdul and Mohammed Rabbani were recommended for transfer by the Periodic Review Board established by E.O. 13567. The February 23, 2023 DOD release is available at https://www.defense.gov/News/Releases/Release/Article/3308522/guantanamo-bay-detainee-transfer-announced/.

On March 8, 2023, the DOD announced the repatriation of Ghassan Al Sharbi from the detention facility at Guantanamo Bay to the Kingdom of Saudi Arabia. Sharbi was recommended to transfer by the Periodic Review Board established by E.O. 13567. The March 8, 2023 DOD release is available at https://www.defense.gov/News/Releases/Release/Article/3323397/guantanamo-bay-detainee-transfer-announced/.

On April 20, 2023, the DOD announced the repatriation of Said bin Brahim bin Umran Bakush from the detention facility at Guantanamo Bay to the Government of Algeria. Bakush was recommended for transfer by the Periodic Review Board

established by E.O. 13567. The April 20, 2023 DOD release is available at https://www.defense.gov/News/Releases/Release/Article/3368848/guantanamo-bay-detainee-transfer-announced/.

2. Litigation

a. *Bin Lep v. Biden*

On March 30, 2023, the U.S. District Court for the District of Columbia entered judgment in favor of the government in the case of Guantanamo detainee Bin Lep. *Bin Lep v. Biden*, No. 20-cv-03344. The detainee sought a mixed medical commission to evaluate his eligibility for medical repatriation under U.S. Army Regulation 190-8, which the court found implements parts of the Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 ("Third Geneva Convention"). The court ruled that Guantanamo detainees are not entitled to mixed medical commissions under the Regulation since the regulation applies to international armed conflicts and Guantanamo detainees are detained in a non-international armed conflict. Excerpts from the court's opinion follow (footnotes omitted).

* * * *

C. Entitlement to a Mixed Medical Commission

Having resolved the parties' jurisdictional and procedural arguments, the Court will now turn to the merits of whether Bin Lep is entitled to an MMC as a matter of law. See Mot. to Dismiss at 22–26

AR 190-8 implements parts of the Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 ("Third Geneva Convention"), which offers certain protections to some categories of enemy combatants detained during armed conflicts. Mot. to Dismiss at 10 (citing AR 190-8 § 1-1(b), available at https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r190_8.pdf (last accessed Mar. 30, 2023)). Most of the Third Geneva Convention's protections apply only in the context of international armed conflicts, defined as "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties." Third Geneva Convention art. 2. The classification of an armed conflict as international or non-international is important because the Third Geneva Convention affords fewer protections to enemy combatants captured during an "armed conflict not of an international character." Id. art. 3.

One protection of the Third Geneva Convention is prisoner-of-war status, which only applies in international armed conflicts and is given to

> (1) members of the armed forces of a state that is a party to the conflict as well as members of militias or volunteer corps forming part of such armed forces, and (2) members of other militias or volunteer corps belonging to a state that is party to the conflict that are commanded by a responsible superior officer, have fixed distinctive insignia, carry arms openly, and conduct their operations in accordance with the laws of war, including by refraining from conducting attacks against civilians.

Mot. to Dismiss at 10–11 (citing Third Geneva Convention art. 4(A)(1)–(2)). In addition, provisional prisoner-of-war status is afforded to enemy combatants detained during an international armed conflict, when there is doubt about whether they are entitled to full prisoner-of-war status, only until their eligibility can be "determined by a competent tribunal." Third Geneva Convention art. 5. One prerogative afforded to prisoners of war under the Third Geneva Convention is that a "Mixed Medical Commission[ ] shall be appointed to examine sick and wounded prisoners of war[ ] and to make all appropriate decisions regarding them." Id. art. 112.

AR 190-8 implements these protections, including the right to an MMC. The regulation applies to, among other classifications, "enemy prisoners of war," which is "[a] detained person as defined in Articles 4 and 5 of the [Third Geneva Convention]," AR 190-8 at 33, and "other detainees," id. § 1-1(a). An "other detainee" is defined as a "[p]erson[ ] in the custody of the U.S. Armed Forces who ha[s] not been classified as" an enemy prisoner of war ("EPW"), retained personnel, or civilian internee, and who "shall be treated as [an] EPW[ ] until a legal status is ascertained by competent authority." Id. at 33 (citations omitted).

The government argues that Bin Lep is not entitled to an MMC under AR 190-8. Because al Qaeda is a non-state terrorist organization and is thus not a party to the Third Geneva Convention, Bin Lep—a member of al Qaeda—was not detained during an "international armed conflict" and accordingly cannot be an enemy prisoner of war. See Mot. to Dismiss at 22–24. The government contends that Bin Lep is also not eligible for the interim "other detainee" status because that status is provided "in accordance with Article 5" of the Third Geneva Convention, which applies solely to enemies captured during international armed conflicts. See id. at 23 (quoting AR 190-8 § 1-6(a)) (citing Third Geneva Convention arts. 4–5). Enemies captured during a non-international armed conflict, however, are afforded only the protections outlined in Article 3 of the Third Geneva Convention, not the full suite of protections guaranteed in the other portions of the treaty. The government also cites a DoD directive that states that "the provisional prisoner-of-war protection provided by Article 5 of the Convention only applies in the context of international armed conflicts." Mot. to Dismiss at 24. The directive notes that

> [d]uring international armed conflict, should any doubt arise as to whether a detainee belongs to any of the categories enumerated in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War and as such is entitled to the protections and privileges afforded EPWs, such detainees will be treated as EPWs until a tribunal convened in accordance with Article 5 of the Geneva Convention Relative to the Treatment of Prisoners of War, determines the detainee's status under the law of war.

DoD Directive 2310.01E § 3.8 (Mar. 15, 2022) (emphasis added).

The government lastly contends that, notwithstanding whether the "other detainee" classification applies to those detained during non-international armed conflicts, Bin Lep is not entitled to an MMC because his status has already been determined. See Mot. to Dismiss at 24–26. The government cites a statement by then-President George W. Bush establishing that "because al-Qaida is a terrorist organization that is not and cannot be a party to the Third Geneva Convention, al-Qaida's members are unprivileged enemy combatants to whom the full protections of the Geneva Convention do not apply." Id. at 24 (citing Statement by the Press Secretary on the Geneva Convention, The White House, Off. of the Press Sec'y (Feb 7, 2002)).[7] And Bin Lep was determined to be an enemy combatant—that is, a member of al Qaeda—by a CSRT in 2007. See Ex. A to Mot. to Dismiss [ECF No. 113-1] (designating Bin Lep an enemy combatant); Ex. B to Mot. to Dismiss [ECF No. 113-2] (finding that Bin Lep "was part of and supporting al Qaida and associated forces"); Ex. C to Mot. to Dismiss at 1 [ECF No.

113-3] (same). The government also cites a memorandum from the Secretary of the Army confirming that enemy detainees at Guantanamo are not entitled to the fuller protections of the Third Geneva Convention. See Mot. to Dismiss at 25–26 (citing Ex. D to Mot. to Dismiss [ECF No. 113-4]).

Although Bin Lep did not respond to the merits of the government's claim, another court in this District has already considered this question and rejected the government's argument. In Al-Qahtani, the court held that a Guantanamo prisoner was properly categorized as an "other detainee" and thus entitled to an MMC. See 443 F. Supp. 3d at 130. That court rejected the government's argument that the petitioner's status as an "enemy combatant" precluded him from being an "other detainee" as defined in AR 190-8. See id. The court instead adopted petitioner's argument that "as an 'enemy combatant,' a descriptor not found in Army Regulation 190-8, he remains an 'other detainee' for the purposes of the Regulation and is, by its terms, entitled to be treated as a prisoner of war." Id.

The Al-Qahtani court found support in Aamer v. Obama (Aamer II), 58 F. Supp. 3d 16 (D.D.C. 2014), and Al Warafi v. Obama, 716 F.3d 627 (D.C. Cir. 2013). The Aamer II court considered the issue, noting in dictum that the "contention that Petitioner's designation as an 'enemy combatant' by a CSRT precludes him from being treated as an 'other detainee' under Army Regulation 190–8" is "questionable." 58 F. Supp. 3d at 25. The court observed that the Al Warafi court considered the same issue and determined that despite petitioner's designation as an "enemy combatant," he still qualified as a "medic" under AR 190-8. Id. (citing Al Warafi, 716 F.3d at 627–29). Thus, the Aamer II court reasoned that

> [i]f Respondents are correct that an "enemy combatant" designation removes Guantanamo detainees from the coverage of Army Regulation 190–8, there would have been no need for the al Warafi[ ] court to conduct such an analysis. In light of these precedents, Respondents put more weight on "enemy combatant" than the term can bear.

Id. While Aamer II ultimately held that the petitioner in that case was not an "other detainee" for separate reasons, the Al-Qahtani court relied on this reasoning to conclude that "Mr. al-Qahtani meets the criteria for an 'other detainee' in Army Regulation 190-8: he is a person in the custody of the United States and he has not been otherwise classified as either an enemy prisoner of war, retained person, or civilian internee." 443 F. Supp. 3d at 130.

But as the government notes, the Al-Qahtani court's relatively brief consideration of the question did not consider a critical issue: it "never addressed the Convention's distinction between international and non-international armed conflicts or between the requirements of Convention Article 3 and prisoner-of-war privileges." Mot. to Dismiss at 15. That did not appear to be an issue argued by either party in that case, and the Al-Qahtani court thus did not have the benefit of briefing on that issue. Moreover, the Al-Qahtani court's decision logically flows from its presumption at the time that a Guantanamo prisoner must fall into one of four categories: enemy prisoner of war, retained person, civilian internee, or other detainee. See 443 F. Supp. 3d at 130 (finding the petitioner was properly classified as an "other detainee" because "he [wa]s a person in the custody of the United States and he ha[d] not been otherwise classified as either an enemy prisoner of war, retained person, or civilian internee"). But with the benefit of briefing on the issue, the Court disagrees with that presumption and comes to a different conclusion regarding the availability of MMCs to detainees captured during a non-international conflict.

Because Guantanamo detainees were not captured in the context of an international armed conflict under the Third Geneva Convention's definition of that term, but rather during a non-international one, they are not prisoners of war and cannot be "other detainees" because

those classifications are only available to those detained during international armed conflicts. As the Court sees it, that context removes Guantanamo detainees from the broad protections of the Third Geneva Convention, granting them only the narrower set of protections in Article 3. An MMC is only available to prisoners of war captured during an international armed conflict under the Third Geneva Convention, and it is not part of the baseline protections outlined in Article 3 that attach for non-prisoners of war captured during a non-international conflict. Moreover, AR 190-8 § 3-12, the implementing provision, makes clear that an MMC is only available to enemy prisoners of war and retained personnel who have applied for it. The Court accordingly concludes that Bin Lep is not entitled to an MMC under the relevant governing treaty and implementing regulation and will grant judgment in favor of the government on Claim X.

* * * *

b. *Al-Hela v. Biden*

On April 12, 2023, the en banc U.S. Court of Appeals for the D.C. Circuit published its opinion in a case concerning the application of the Due Process Clause to detention at Guantanamo Bay. *Al-Hela v. Biden*, 66 F.4th 217. A Yemeni citizen petitioned for habeas relief, challenging the President's authority to detain him and alleged violations of substantive and procedural due process. Every judge on the en banc court rejected al-Hela's procedural due process arguments and his argument that the length of his detention alone violates substantive due process. The Court's opinion is excerpted below (footnotes omitted).

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II.

"[T]he writ of habeas corpus ... [is] a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law," *Preiser v. Rodriguez*, 411 U.S. 475, 485, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973), including a claim that the petitioner "is being unlawfully detained by the Executive or the military." *Id.* at 486, 93 S.Ct. 1827. The Due Process Clause provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. Accordingly, the writ can be employed to ensure that the petitioner "was not deprived of his liberty without due process of law." *Felts v. Murphy*, 201 U.S. 123, 129, 26 S.Ct. 366, 50 L.Ed. 689 (1906). *See generally* RANDY HERTZ & JAMES S. LIEBMAN, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE § 2.3 (7th ed. 2015).

But whether the Due Process Clause applies to a habeas petition filed by a foreign national detained at the Guantanamo Bay military base as an alleged enemy combatant is a question that the Supreme Court has not yet answered. As noted above, *Boumediene* established that the Suspension Clause applies to such a petitioner. *See* 553 U.S. at 771, 128 S.Ct. 2229. The Suspension Clause and the Due Process Clause have distinct functions under the Constitution. The Suspension Clause regulates when Congress or the Executive can suspend the writ altogether, so that, "except during periods of formal suspension, the Judiciary will have a time-

tested device, the writ, to maintain the 'delicate balance of governance' that is itself the surest safeguard of liberty." *Id.* at 745, 128 S.Ct. 2229 (quoting *Hamdi*, 542 U.S. at 536, 124 S.Ct. 2633 (plurality opinion)). The Due Process Clause regulates "the procedural contours of [the] mechanism" used to exact the deprivation of liberty. *Hamdi*, 542 U.S. at 525, 124 S.Ct. 2633 (plurality opinion).

The doctrinal distinction between the two Clauses can blur upon detailed examination, at least in the Guantanamo habeas context as they do here. In *Boumediene*, the Court explained that the Suspension Clause, "except during periods of formal suspension," 553 U.S. at 745, 128 S.Ct. 2229, requires a habeas or habeas-substitute process that enables courts to undertake "a meaningful review of both the cause for detention and the Executive's power to detain," *id.* at 783, 128 S.Ct. 2229. Because the Court held that the system of review in place under the Detainee Treatment Act of 2005 did not provide an avenue of "meaningful review" of the Executive's detention decisions, the writ was deemed to have been suspended. *Id.* at 792, 128 S.Ct. 2229. But the Court also explained that the Suspension Clause has another aspect, the requirement that the habeas or habeas-substitute procedures afford the detainee "a meaningful opportunity to demonstrate that he is being held [unlawfully]." *Id.* at 779, 128 S.Ct. 2229. The Court did not determine what detention review procedures are required by the Due Process Clause, *see id.* at 783–85, 128 S.Ct. 2229, and therefore left open the question of what difference, if any, exists when courts review Executive detention decisions pursuant to the Due Process Clause rather than the "meaningful opportunity" standard under the Suspension Clause.

Since *Boumediene*, nearly all detainees have either based challenges to their detention solely upon an alleged violation of the "meaningful review" and "meaningful opportunity" required by the Suspension Clause or argued that "meaningful review" and "meaningful opportunity" are essentially equivalent to the requirements of the Due Process Clause. We have thus had little occasion to address the distinction, if any, between the two clauses. As a result, we have a robust collection of precedent applying the Suspension Clause's "meaningful review" standard to Guantanamo detainees, *see, e.g.*, *Khan v. Obama*, 655 F.3d 20, 31 (D.C. Cir. 2011); *Uthman v. Obama*, 637 F.3d 400, 403 n.3 (D.C. Cir. 2011); *Al-Bihani*, 590 F.3d at 875–76, 879, 880; *Odah v. United States*, 611 F.3d 8, 13–14 (D.C. Cir. 2010), but very little addressing the requirements of the Due Process Clause, *see Ali*, 959 F.3d at 369–73.

The government asks us to reject Mr. al-Hela's petition because, even assuming the Due Process Clause applies, he received all the process he is due. Our dissenting colleagues take issue with the government's argument, protesting that it constitutes a change in position. *See* Rao Op. 9; Randolph Op. 3. But the government's primary position has always been that this Court need not determine whether the Due Process Clause extends to Mr. al-Hela and other Guantanamo detainees. *See* Panel Resp. Br. 63 ("Because al-Hela's detention comports with both substantive and procedural due process, this Court need not decide whether the Due Process Clause extends to individuals such as al-Hela[.]"). And, as explained below, we agree that this is the correct and most prudent course of action.

"[E]ven when a constitutional question must be joined, courts must choose the narrowest constitutional path to decision." *Ass'n of Am. R.Rs. v. United States Dep't of Transp.*, 896 F.3d 539, 544 (D.C. Cir. 2018) (citing *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 217, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995)). *See generally United States v. Hayman*, 342 U.S. 205, 223, 72 S.Ct. 263, 96 L.Ed. 232 (1952); *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring); *Burton v. United States*, 196 U.S. 283, 295, 25 S.Ct. 243, 49 L.Ed. 482 (1905). As the Supreme Court admonished long ago, we should

"never ... anticipate a question of constitutional law in advance of the necessity of deciding it," nor should we "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Liverpool, N.Y. & Phila. Steam-Ship Co. v. Comm'rs of Emigration*, 113 U.S. 33, 39, 5 S.Ct. 352, 28 L.Ed. 899 (1885). We abide by that guidance here because "[t]hese rules are safe guides to sound judgment. It is the dictate of wisdom to follow them closely and carefully." *Id.*

A holding that the Due Process Clause, assuming its applicability, was satisfied by the habeas procedures employed in this case would resolve solely those claims in this case and those cases where a district court judge employed materially indistinguishable mechanisms. By contrast, a holding that the Due Process Clause does not apply to Guantanamo detainees would resolve all potential future substantive and procedural due process claims against all such detainees, regardless of the nature of the substantive due process allegation or the processes used by the district court judge to decide the merits of any such petition. The non-applicability holding would also apply beyond habeas petitions to foreclose all Due Process Clause claims by non-citizens challenging the procedures or rulings of military tribunals at Guantanamo. Because "[i]t is customary in deciding a constitutional question to treat it in its narrowest form," *Engel v. Vitale*, 370 U.S. 421, 437, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962) (Douglas, J., concurring), and because the former ground is the narrower ground for decision, we are obliged to resolve the case using that option, if possible. *See Plaut*, 514 U.S. at 217, 115 S.Ct. 1447 (after analyzing the two different constitutional challenges before it, the Court concluded that "the former is the narrower ground for adjudication of the constitutional questions in the case, and we therefore consider it first").

Brushing aside these venerable jurisprudential principles, Judge Rao and Judge Randolph would hold that the Due Process Clause does not apply to noncitizens at Guantanamo. *See* Rao Op. 1, 20; Randolph Op. 1–3. In their view, *Johnson v. Eisentrager*, 339 U.S. 763, 70 S.Ct. 936, 94 L.Ed. 1255 (1950), clearly established that the Constitution does not extend to foreign citizens outside the sovereign territory of the United States, Rao Op. 1, *see* Randolph Op. 6, a clarity that seems to have eluded the Supreme Court. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, —— U.S. ——, 140 S. Ct. 2082, 2086, 207 L.Ed.2d 654 (2020) (distinguishing *Eisentrager* by noting that "the Court has ruled that, under some circumstances, foreign citizens ... in 'a territory' under the 'indefinite' and 'complete and total control' and 'within the constant jurisdiction' of the United States [ ]may possess certain constitutional rights[,]" (quoting *Boumediene*, 553 U.S. at 755–71, 128 S.Ct. 2229)); *see also Al Bahlul v. United States*, 767 F.3d 1, 63, 65 & n.3 (D.C. Cir. 2014) (en banc) (Kavanaugh, J., concurring in the judgment in part and dissenting in part) ("As the Government concedes, the *Boumediene* analysis leads inexorably to the conclusion that the ex post facto right applies at Guantanamo. It would be no more impracticable or anomalous to apply the Article I, Section 9 ex post facto right at Guantanamo than it is to apply the Article I, Section 9 habeas corpus right at Guantanamo.").

Through their efforts to find *Eisentrager* controlling, our dissenting colleagues also recharacterize Circuit precedent by isolating and relying on language from prior cases, divorcing these quotes from the limited precedential holdings. For example, Judges Rao and Randolph argue that, in *Kiyemba I*, 555 F.3d at 1026, we clearly held that the Due Process Clause does not apply to foreign citizens detained at Guantanamo, a clarity that has apparently eluded the government, *see* Resp. Br. 34 ("[T]his Court has declined to decide the independent applicability of the Due Process Clause and other constitutional provisions [to Guantanamo detainees] on

multiple occasions, including while sitting *en banc*") (emphasis added), and that has similarly eluded prior panels of this court. *See*, *e.g.*, *Qassim v. Trump*, 927 F.3d 522, 528, 530 (D.C. Cir. 2019) (collecting cases) (clarifying that "the issue on appeal in *Kiyemba [I]* was the narrow question of what remedy could be given once the government conceded that it could not lawfully hold [certain] detainees [in Guantanamo]," as "[w]e would not have repeatedly reserved such Due Process Clause questions if they had already been conclusively answered in *Kiyemba [II]*"); *Ali*, 959 F.3d at 368 (holding that "[t]he district court's decision that the Due Process Clause is categorically inapplicable to detainees at Guantanamo Bay was misplaced"). Our dissenting colleagues' reliance on additional Circuit precedent concerning Guantanamo fails for similar reasons. *See, e.g., Al-Madhwani v. Obama*, 642 F.3d 1071, 1077 (D.C. Cir. 2011) (abstaining from holding that the Due Process Clause does not apply at Guantanamo, because "[e]ven assuming" that the Clause applies, the record showed any error would be harmless); *Rasul v. Myers*, 563 F.3d 527, 529 (D.C. Cir. 2009) (per curiam) (declining to "decide whether *Boumediene* portends application of the Due Process Clause ... to Guantanamo detainees").

As much as our dissenting colleagues would like us to resolve the *Eisentrager* debate in one direction or the other, deciding the applicability of the Due Process Clause is unnecessary here, where, as explained below, we find that the habeas procedures Mr. al-Hela received actually satisfy what the Clause would require. Even when the Supreme Court has recognized that the "logic of [its] cases" likely provides the answer to whether a liberty interest protected by the Due Process Clause is implicated, it has declined to so hold where, even assuming the right applied, it was not violated in that particular instance. *See Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 279–87, 110 S.Ct. 2841, 111 L.Ed.2d 224 (1990). Indeed, the Court regularly declines to decide whether a constitutional right applies where, even assuming that it does, there is no constitutional error because the challenged actions comported with the right (or any such error was harmless). *See*, *e.g.*, *NASA v. Nelson*, 562 U.S. 134, 147 & n.10, 148–54, 131 S.Ct. 746, 178 L.Ed.2d 667 (2011) (assuming without deciding that the Constitution protects a right to informational privacy, plaintiffs' claim failed because the challenged questionnaire did not violate any such right); *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 619–20, 112 S.Ct. 2160, 119 L.Ed.2d 394 (1992) (despite noting its prior holding that States of the Union are not "persons" protected by the Due Process Clause, the Court assumed that the Clause did apply to Argentina and held the suit met the due process requisites of personal jurisdiction); *Rushen v. Spain*, 464 U.S. 114, 118 n.2, 119–20, 104 S.Ct. 453, 78 L.Ed.2d 267 (1983) (where state conceded that juror's *ex parte* communication with trial judge was constitutional error, the Court assumed without deciding that the defendant's constitutional rights were implicated but found any error harmless because of the absence of prejudice).

If that minimalist jurisprudential path is satisfactory to the Court, then it must certainly be good enough for us. Judge Rao seeks to reach conclusions about the extraterritorial application of the entire Constitution with respect to foreign citizens writ large. *See* Rao Op. 1 ("[A]liens outside the territorial United States do not possess constitutional rights[.]"). But even the government disagrees with such an approach and "urge[s] the Court to decline to address the broader issue" as doing so "would not affect the outcome here and would require resolution of sensitive and complex constitutional questions[.]" Resp. Br. 24. Out of respect for "the cardinal principle of judicial restraint," we take the narrower approach. *PDK Labs. Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment).

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Cross References

UN Third Committee on international humanitarian law, **Ch. 6.A.3**
HRC on international humanitarian law, **Ch. 6.A.4**
Children in Armed Conflict, **Ch. 6.C.1**
Iran, **Ch. 16.A.2**
Cyber activity sanctions, **Ch. 16.A.10**
Syria, **Ch. 17.B.2**
Ukraine, **Ch. 17.B.3**
Atrocities in Ukraine, **Ch. 17.C.4**
Chemical weapons in Syria, **Ch. 19.D.1**
Russian use of riot control agents as a method of warfare, **Ch. 19.D.2.e**

CHAPTER 19

Arms Control, Disarmament, and Nonproliferation

A. GENERAL

Compliance Report

In April 2023, the State Department transmitted to Congress the 2023 Report on Adherence to and Compliance with Arms Control, Nonproliferation, and Disarmament Agreements and Commitments ("the Compliance Report"). The report is submitted annually, pursuant to section 403 of the Arms Control and Disarmament Act (22 U.S.C. § 2593a). The report addresses U.S. compliance with arms control, nonproliferation, and disarmament agreements in 2022, as well as the compliance and adherence of other nations to arms control, nonproliferation, and disarmament agreements and commitments, including confidence- and security-building measures and the Missile Technology Control Regime, to which the United States is a participating state. The 2023 report primarily covers the period from January 1, 2022 through December 31, 2022. The unclassified version of the report is available at https://www.state.gov/adherence-to-and-compliance-with-arms-control-nonproliferation-and-disarmament-agreements-and-commitments/.

B. NONPROLIFERATION

1. Non-Proliferation Treaty

On July 31, 2023, the State Department released a statement reaffirming U.S. commitment to the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT"). The statement follows and is available at https://www.state.gov/the-united-states-reaffirms-commitment-to-the-treaty-on-the-non-proliferation-of-nuclear-weapons/.

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For more than fifty years, the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has endured as the foundation of a system built on nuclear restraint. For the next two weeks, the United States, led by Special Representative of the President for Nuclear Nonproliferation Adam Scheinman, will join other NPT States Parties for the 2023 Preparatory Committee Meeting (PrepCom) in Vienna to address the top challenges facing the nonproliferation regime and further strengthen the NPT.

The United States stands firm in its commitment to work with States Parties at this Preparatory Committee meeting to ensure the agenda for the 2026 NPT Review Conference takes a balanced approach in addressing the Treaty's three pillars: nonproliferation, peaceful uses of nuclear energy, and further progress on disarmament.

The challenges we face today serve as a stark reminder of why the NPT is indispensable and remains the cornerstone of the global nuclear nonproliferation regime. Russia's seizure of Ukraine's nuclear power facilities poses serious nuclear safety issues and undercuts Ukraine's right under the NPT to access the peaceful uses of nuclear energy. The People's Republic of China's rapid and opaque nuclear weapons expansion continues unabated, and questions remain on Iran's nuclear program and safeguards compliance. And 20 years after announcing its withdrawal from the NPT, the Democratic People's Republic of Korea (DPRK) continues to develop its nuclear arsenal and engage in threatening rhetoric regarding its use.

The United States and its partners around the world will work to address these challenges and set out a positive agenda for this NPT review cycle. The United States continues to work in good faith to advance all aspects of the treaty, to include the Article VI obligation to pursue good faith negotiations on effective measures relating to nuclear disarmament. We will insist on the fullest compliance with NPT nonproliferation safeguards and call on all NPT Parties to raise standards wherever possible and to condemn violations where they occur. We will also work with our partners to increase access to the benefits of peaceful uses, which are not just limited to nuclear energy, but also include the application of nuclear technologies for human and animal health, water resource management, food security, and much more.

Our top priority for the PrepCom – and for this review cycle – must be to preserve and strengthen this critical treaty, not in spite of the challenges we face but because of them.

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The 2023 Preparatory Committee Meeting ("PrepCom") for the 2026 Eleventh NPT Review Conference took place in Vienna, Austria from July 31 to August 11, 2023. The United States, led by Special Representative of the President for Nuclear Nonproliferation Adam Scheinman, participated in the PrepCom. On July 31, 2023, Ambassador Adam Scheinman delivered a statement to the General Debate of the PrepCom. The statement is available at https://www.state.gov/wp-content/uploads/2023/07/U.S.-Statement-to-the-2023-NPT-Preparatory-Committee.pdf, and excerpted below.

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We join with others in welcoming your selection to chair the first preparatory committee, and we know we are in your good hands.

Just one year ago, U.S. Secretary of State Blinken reaffirmed our nation's unshakeable support for the Non-Proliferation Treaty, and for its fullest implementation, including achieving the peace and security of a world without nuclear weapons.

The United States approaches this review cycle with equal commitment to upholding the NPT, carrying with us a crystal-clear understanding of the Treaty's irreplaceable role and its undeniable contributions.

Unfortunately, the challenges we faced last summer have only intensified over the past 12 months.

Russia's unprovoked war against Ukraine tragically continues, as does Russia's irresponsible nuclear rhetoric, its reckless actions at the Zaporizhzhya nuclear power plant, and its claim to suspend the New START Treaty, a claim that is inconsistent with international law.

Russia's actions are hardly a side show, unrelated to the Treaty and its political process; instead, they strike at the heart of the NPT's bargains, and at the system of nuclear restraint it helped make possible.

Of course, today's challenges go beyond those posed by Russia.

The DPRK continues its unlawful nuclear and ballistic missile programs, directly threatening the global nonproliferation regime.

The People's Republic of China (PRC) continues a rapid and opaque expansion of its nuclear weapons capabilities.

And Iran has not yet fully answered questions from the IAEA about indications of possible undeclared nuclear material and activities on its territory.

In short, the challenges we faced last year have only become more urgent, a point also reflected in the statement by the New Agenda Coalition.

That urgency must drive us to strengthen and preserve the NPT. Despite our differences, every one of us benefits from this treaty.

This a fundamental truth. It is what drove states parties coalesce around a draft Final Document last year. That document wasn't perfect – no negotiated text ever has been – but it *did* identify concrete ways to advance the treaty. We deeply regret the decision of one state alone to block it.

In this review cycle, the United States is ready to build on the goodwill so evident last year, and to accomplish a positive outcome in 2026.

After all, as U.S. President Kennedy said long ago, in crisis we must be aware of danger, but also recognize opportunity.

That is the spirit in which President Biden has reaffirmed the ironclad U.S. commitment to the NPT, and to lead by the power of our commitment to diplomacy.

That is why National Security Advisor Jake Sullivan recently reported our willingness to engage in bilateral arms control discussions with Russia and with China – without preconditions.

It is why the United States has convened multiple expert discussions on nuclear doctrines and risk reduction among the five nuclear-weapon States – despite the obvious difficulties to doing so.

It is why we remain committed to advancing concrete risk reduction measures, measures that are especially needed when tensions are high, in order to promote stability and to provide the confidence necessary to pursue further steps.

It is why the United States prioritizes high standards for transparency of our nuclear policies and programs. We welcome discussion of our national report, and sincerely regret that certain parties prevented the Working Group from adopting such structured dialogue a regular part of the NPT review process.

It is also why we believe the time has come for a long overdue – and urgently needed Fissile Material Cutoff Treaty. Without it, we risk a return to an era of nuclear arms racing. With it, we can set a stronger foundation for progress on Article VI. Pending such a treaty, we hope the PRC will join the other NPT nuclear- weapon States in adopting a moratorium on the production of fissile material for use in nuclear weapons.

Steps such as these – on arms control engagement, on risk reduction, and on Cutoff – will help strengthen the NPT's role as a positive force for restraint and diplomacy. So too do negative security assurances, and we call on all states to uphold the assurances they have given.

Strengthening the NPT also requires that we address nonproliferation concerns openly and thoroughly. Looking forward, our priority must be to condemn violations where they occur, insist on full compliance with NPT nonproliferation safeguards, and lift standards wherever possible, such as by making the Additional Protocol the standard for IAEA safeguards and for responsible nuclear supply.

It also means doing more to ensure that *all* Parties can access the benefits of peaceful uses of nuclear energy. We can start by recognizing the numerous ways the peaceful application of nuclear science and technology can help advance the UN Sustainable Development Goals.

This idea is what lies behind the U.S and UK initiative called the Sustained Dialogue on Peaceful Uses. We have submitted a Working Paper on this Dialogue and look forward to discussing it further in our side event.

Mr. Chairman, we live in difficult times, but we are fortunate to have this treaty to help make them less so: A treaty that prevents the spread of our world's most dangerous weapons, that enables greater access to lifesaving and life-improving technologies, and that provides a foundation for finding common ground on preventing the devastations of nuclear war.

We must not take this treaty for granted. The United States takes its responsibilities as an NPT state party seriously, and with due regard for the decisions of past Review Conferences and a determination that this regime not be allowed to slide backwards.

I can assure that we are ready to work constructively with all parties to preserve and strengthen the NPT, not only to hopefully achieve a positive outcome in 2026, but because none of us can afford to do any less.

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Additional statements by the United States at the 2023 PrepCom are available at https://www.state.gov/2023-npt-preparatory-committee/.

2. Comprehensive Nuclear Test Ban Treaty

On November 2, 2023, Secretary Blinken issued a press statement on Russia's planned withdrawal of its ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The statement is available at https://www.state.gov/russias-planned-withdrawal-of-its-ctbt-ratification/ and included below.

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We are deeply concerned by Russia's planned action to withdraw its ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). Unfortunately, it represents a significant step in the wrong direction, taking us further from, not closer to, entry into force. Russia's action will only serve to set back confidence in the international arms control regime. We appreciate the similar statements of concern expressed by many other States in recent weeks about this action.

We will continue to emphasize the irresponsibility of Russia's recent rhetoric regarding nuclear weapon explosive testing and the CTBT. This continues Moscow's disturbing and misguided effort to heighten nuclear risks and raise tensions as it pursues its illegal war against Ukraine.

Russian officials say Russia's planned move to withdraw its ratification does not mean that it will resume testing, and we urge Moscow to hold to those statements. The United States remains committed to achieving the entry into force of the CTBT, and we reiterate our commitment to our zero-yield nuclear explosive testing moratorium, which has been in place for 30 years. It is essential that we preserve the global norm against nuclear explosive testing.

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3. Nuclear Legacy

On November 3, 2023, the United States provided an explanation of vote at an October 2023 session of the UN General Assembly First Committee ("UNFC"), which deals with disarmament and international security. The explanation of vote concerned the United States' abstention on item L.52 in the UNFC's Cluster 1 – Nuclear Weapons, a resolution titled "Addressing the Legacy of Nuclear Weapons: Providing Victim Assistance and Environmental Remediation to Member States Affected by the Use or Testing of Nuclear Weapons." The resolution was subsequently adopted by the UN General Assembly on December 22, 2023, as resolution 78/240. U.N. Doc. A/RES/78/240, is available at https://digitallibrary.un.org/record/4033026?ln=en&v=pdf. The explanation of vote is available at https://geneva.usmission.gov/2023/11/03/explanation-of-vote-unfc-october-2023-cluster-1-nuclear-weapons/, and follows.

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We want to commend the outstanding approach by the penholders displayed throughout consultations, which made clear that they were listening to views and trying to bring the General Assembly together on an important topic. The United States abstained on the overall resolution, and the posted version of this explanation of vote describes this abstention with reference to specific paragraphs. We also voted no on PP 2-5 and PP16, and OP 1 and 3. However, notwithstanding disagreements with this resolution, we continue to seek ways in which we can focus on areas of common interest.

As noted in the U.S.-Pacific Islands Forum Leaders Statement on September 25, 2023, the United States acknowledges the legacy of World War II and the nuclear legacy of the Cold War. We are glad that our Pacific Islands partners also joined us in acknowledging our commitment to addressing the Republic of the Marshall Island's (RMI) ongoing environmental, public health, and other welfare concerns.

The American people remember well the history of nuclear testing in the Marshall Islands and the hardships the Marshallese have faced. The United States has long recognized the effects of its nuclear testing program there and has accepted and acted on its responsibility to the citizens of the Republic of the Marshall Islands through the longstanding, full and final settlement that the United States and the Marshall Islands reached in 1986. We appreciate this resolution's intent to bring the topic of such victim assistance to this body, and the inclusion in PP11 that acknowledges these efforts.

We also recognize from our own history that traces of radioactive and cancer-causing particles found their way into our children. That is one of the reasons why we pursued the Limited Test Ban Treaty sixty years ago and why we continue to support a Comprehensive Nuclear Test-Ban Treaty (CTBT). We are very glad to see the CTBT referenced in PP7 and support the sentiments of that paragraph, but must clarify that moratoria on nuclear explosive testing are unilateral political commitments made by individual states, and that no single, multilateral testing moratorium exists.

We voted no on PP2 and PP3 not because we disagree that the consequences outlined therein may be present in some instances, but because we disagree that they are present in all instances based on scientific data.

We voted no on PP4 because the United States has acknowledged and acted on our responsibility relating to U.S. nuclear use and testing, but the use of the word "unacceptable" does not take into account the historical realities surrounding the instances of past nuclear use and testing.

We voted no on PP5 because the United States disagrees, as a factual matter, with the generalized claim that the effects of a nuclear weapon detonation in any circumstance would necessarily be "catastrophic," in every circumstance. We further note that the United States and the RMI agreed in 1986 that they reached a "just and adequate settlement" of all claims in any way related to the U.S. nuclear testing program.

Regarding PP6, we did not feel it necessary to vote on it. However, we do want to make clear that it is the United States' view that the total elimination of nuclear weapons can only guarantee against the use or threat of use of nuclear weapons if elimination itself can be secured, enforced, and verified. Regrettably, this highly complex military, security and technical challenge would require a degree of cooperation not proximate today.

Our overall abstention on the resolution applies also to PP9 and PP15 because, while the United States acknowledges that nuclear testing often has a disproportionate impact on the

groups mentioned in this paragraph, we do not concede as a factual matter that said disproportionate impact has occurred in every instance of testing.

On PP10, we note that we object to the premise that victim's assistance and environmental remediation are meaningful steps to nuclear disarmament. The United States is particularly concerned about the assertion that environmental remediation would necessarily be a meaningful step to nuclear disarmament.

On PP13, while we recognize the body referenced therein as one of many groups of experts who could contribute to a meaningful set of knowledge on this topic, we do not take that body to be the only source of valid information and views on this topic or generally endorse all of its findings.

We voted no PP16 because we do not support the Treaty on the Prohibition of Nuclear Weapons or view it as a valid route through which the United States would provide victim assistance or environmental remediation.

While the United States joined consensus on the Human Rights Council (HRC) resolution referenced in PP17 and did not call for a vote in this resolution, we disassociated from consensus on portions of the HRC resolution. Details on our reasoning may be found in the U.S. Explanation of Position with regard to that HRC resolution.

We similarly did not call for a vote on PP18, but want to be clear that the United States has already provided technical assistance and resources to communities affected by past U.S. nuclear testing. We wish to emphasize the significant resources already contributed in this area, for instance as part of the full and final settlement of claims, and note that we do not interpret the paragraph's references to resources as a commitment to future resource allocation.

On the operative paragraphs, we voted no on OP1 because the use of the word "further" in this paragraph fails to account for the fact that harm from certain testing programs, such as the U.S. nuclear testing program in the Marshall Islands, has been fully and finally settled by international agreement.

Regarding OP2, we want to be clear that the United States has already provided a large volume of information and technical assistance to communities and people affected by past U.S. nuclear testing. We have previously declassified large volumes of information on this topic, and we note that we will interpret this resolution in line with acknowledgement and continuation of the large amount of work the United States has already done, while only requiring action in the future as appropriate and in line with U.S. government policy.

We voted no on OP3 due to concern that some might read it to imply a State's responsibility for all harm that could potentially result from the detonation of a nuclear weapon, no matter the circumstances or potential defenses. It is the United States' understanding that any determination of responsibility for harm arising from the use or testing of a nuclear weapon would be subject to rules of international law.

And finally, on OP4 and OP5, we note these paragraphs do not acknowledge that some assistance and remediation issues have already been settled or addressed, and while we do not support a UN Secretary-General report, viewing it as counterproductive, we will provide a submission to the report called for in this resolution in order to share our views.

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4. Country-Specific Issues

A selection of country-specific U.S. activity in 2023 is discussed below. Arrangements for exchange of technical information and cooperation in nuclear safety that the United States entered in 2023 are not listed herein. These arrangements are documented in https://www.state.gov/treaties-in-force/.

a. Japan

On July 5, 2023, the State Department issued a press statement welcoming the International Atomic Energy Agency's (IAEA) report noting Japan's plans to release treated water from the Fukushima Daiichi nuclear site. The statement is available at https://www.state.gov/iaea-task-force-report-on-fukushima/ and follows:

> The United States welcomes the International Atomic Energy Agency's (IAEA) report noting Japan's plans to release treated water from the Fukushima Daiichi nuclear site are safe and consistent with internationally accepted nuclear safety standards. Since the 2011 nuclear accident, Japan has proactively coordinated with the IAEA on its plans and conducted a science-based and transparent process. We look forward to Japan's continued cooperation with the IAEA as its process moves forward.

On August 15, 2023, Secretary Blinken noted at a press availability that the United States is satisfied with Japan's safe, transparent, and science-based process for release of treated water. The press availability is available at https://www.state.gov/secretary-antony-j-blinken-at-a-press-availability-37/, and includes the following:

> Second, with regard to the release of water from Fukushima, we are satisfied with Japan's plans, which are safe and in accordance with international standards, including, critically, the IAEA nuclear safety standards. Japan has coordinated closely, proactively with the IAEA on its plans, and they've conducted a science-based and transparent process, one that we're satisfied with.

On August 25, 2023, the State Department issued a press statement on Japan's release of treated water. The statement is available at https://www.state.gov/japans-release-of-treated-water/, and includes the following:

> Japan suffered a tragedy on March 11, 2011, when a 9.1 magnitude earthquake – the fourth most powerful ever recorded – and a subsequent tsunami devastated the Tohoku region. Nearly 20,000 people were killed, thousands were injured, and 2,500 went missing. We continue to grieve with the people of

Japan who suffered so greatly from this natural disaster and who have shown the world their courage and resilience in recovering.

Since the disaster, Japan has been open and transparent as it has sought to responsibly manage the Fukushima Daiichi site and the eventual release of treated water, proactively coordinating with scientists and partners from across the Indo-Pacific region as well as with the International Atomic Energy Agency (IAEA), which concluded that Japan's process is safe and consistent with internationally accepted nuclear safety standards. As Secretary Blinken noted on August 15, the United States is satisfied with Japan's safe, transparent, and science-based process.

We welcome Japan's continued transparency and engagement with the IAEA as well as with regional stakeholders.

b. Philippines

On November 16, 2023, the United States and the Philippines signed a civil nuclear cooperation agreement, also known as a "123 Agreement." Secretary Blinken's remarks at the signing ceremony are available at https://www.state.gov/secretary-antony-j-blinken-at-the-philippines-123-agreement-signing-ceremony/. The State Department media note regarding the signing of this 123 Agreement follows and is available at https://www.state.gov/united-states-signs-civil-nuclear-cooperation-agreement-with-the-philippines/.

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Today, on November 16, 2023, the United States and the Philippines signed a civil nuclear cooperation agreement, commonly known as a "123 Agreement," at the Asia-Pacific Economic Cooperation (APEC) Summit in San Francisco. Upon entry into force, the agreement will facilitate and enhance our cooperation on clean energy security and strengthen our alliance. This signing marks the successful culmination of the negotiation process launched by Vice President Kamala Harris during her historic trip to the Philippines in November 2022.

This agreement lays out a comprehensive framework for peaceful nuclear cooperation between the Philippines and United States based on a mutual commitment to nuclear nonproliferation and is required by U.S. law to allow for the transfer of nuclear equipment and material for peaceful uses. With access to U.S. material and equipment, the U.S. and the Philippines will be able to work together to deploy advanced new technologies, including small modular reactors, to support climate goals as well as critical energy security and baseload power needs within the Philippines.

This agreement also establishes nonproliferation criteria that both governments must uphold such as observing specific standards for covered items used in civil nuclear energy programs, including International Atomic Energy Agency safeguards; physical protection of covered items; and limitations on enriching, reprocessing, and transferring specific items without the other Party's consent.

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On November 30, 2023, President Biden transmitted the text of the 123 Agreement with the Philippines to Congress pursuant to subsections 123 b. and 123 d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)). The President's message to Congress on transmittal is available at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/11/30/message-to-the-congress-on-the-agreement-for-cooperation-between-the-government-of-the-united-states-of-america-and-the-government-of-the-republic-of-the-philippines-concerning-peaceful-uses-of-nuclea/.

c. Iran

On September 14, 2023, sixty-three member states issued a joint statement at the International Atomic Energy Agency ("IAEA") Board of Governors on the Nuclear Non-Proliferation (NPT) Safeguards Agreement with Iran. The joint statement is available at https://ir.usembassy.gov/iaea-board-of-governors-september-2023-joint-statement/, and follows.

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I am delivering this statement on behalf of a group of 63 member states from all regional groups including all EU member states. These 63 states are: Albania, Antigua and Barbuda, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Morocco, Netherlands, New Zealand, North Macedonia, Norway, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, and Yemen.

We express our sincere appreciation for the continued professional and impartial efforts of the Agency to implement Iran's Comprehensive Safeguards Agreement. We commend the Director General for his extensive efforts to engage Iran regarding the outstanding safeguards issues and implementation of further verification and monitoring activities by the Agency. We note that the Director General has further reiterated that the outstanding safeguards issues stem from Iran's obligations under its Comprehensive Safeguards Agreement and need to be resolved for the Agency to be in a position to provide credible assurance regarding the exclusively peaceful nature of Iran's nuclear programme. We echo the Director General's request that Iran work with the Agency in earnest and in a sustained way towards the fulfilment of the commitments contained in the March 4 Joint Statement.

Recalling this Board's resolution contained in GOV/2022/70, which was adopted on 17 November 2022, we collectively highlight the contents of the Director General's latest report contained in GOV/2023/43. This report concludes once again that the safeguards issues related to possible undeclared nuclear material and activities in Iran remain outstanding due to insufficient cooperation by Iran, and moreover that new issues related to Iran's implementation of its NPT-required safeguards agreement have arisen. In addition, despite signs in June that Iran was making limited progress towards implementation of the Joint Statement with the IAEA, we share the Director General's regret that no progress has been made since. Iran's de-designation of experienced Agency inspectors and denials of visas for Agency officials, run counter to the Joint Statement and undermine the Agency's ability to carry out its safeguards mandate.

We reiterate that the Board has adopted three resolutions on safeguards issues over four years as a result of the Agency's calls for better co-operation by Iran. We recall that the resolution adopted last November by the Board of Governors decided it was and it is essential and urgent that Iran act to fulfill its legal obligations and, with a view to clarifying all outstanding safeguards issues, take the following actions without delay:

1. Provide technically credible explanations for the presence of uranium particles of anthropogenic origin at three undeclared locations in Iran;
2. Inform the Agency of the current location(s) of the nuclear material and/or of the contaminated equipment;
3. Provide all information, documentation, and answers the Agency requires for that purpose; and
4. Provide access to locations and material the Agency requires for that purpose, as well as for the taking of samples as deemed appropriate by the Agency.

We note that over the past ten months Iran still has not provided technically credible explanations for the presence of uranium particles of anthropogenic origin found by the Agency at undeclared locations in Iran. We underline that the Director General has reported once again that "the outstanding safeguards issues […] need to be resolved for the Agency to be in a position to provide assurance that Iran's nuclear programme is exclusively peaceful."

Collectively, we underscore the urgent need for Iran to clarify and resolve these issues in a manner satisfactory to the IAEA. Iran must provide technically credible answers to the IAEA, as required by its Comprehensive Safeguards Agreement, in order to address the Agency's legitimate questions on the outstanding locations, and to resolve the nuclear material discrepancy relating to its Uranium Conversion Facility. As noted in the Board's November Resolution, when the Secretariat is in a position to report the safeguards issues as no longer outstanding as a result of Iran's provision of technically credible information, it would remove the need for the Board's consideration and action on these issues.

In addition, like all other states with a Comprehensive Safeguards Agreement, and as the Director General's report notes, Iran's implementation of modified Code 3.1 is a legal obligation for Iran under the Subsidiary Arrangements to its Safeguards Agreement. Iran therefore is obligated to provide design information as soon as the decision is made to construct, or authorize construction of, a nuclear facility. Iran must provide the required information regarding new nuclear facilities without further delay. This is essential to ensure not only the peaceful nature of Iran's nuclear programme, but also the effectiveness and efficiency of the Agency's safeguards system on which we all rely for the nonproliferation assurance that is key to international security.

We call upon Iran to act immediately to fulfil its legal obligations to address the following issues identified by the Director General:

1. The outstanding safeguards issues in relation to nuclear material detected at undeclared locations in Iran, including informing the Agency of the current location(s) of nuclear material and/or contaminated equipment;
2. The discrepancy in the amount of nuclear material verified by the Agency at the Esfahan Uranium Conversion Facility (originating from the Jabr Ibn Hayan Laboratories), compared to the amount declared by Iran; and
3. Iran's implementation of modified Code 3.1 of the Subsidiary Arrangements to its Safeguards Agreement, including the provision of the required early design information.

We would like to thank the IAEA for its impartial and professional work on this issue. We request the Director General to continue to report to the Board of Governors on this issue.

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On November 23, 2023, the United States, United Kingdom, France, and Germany issued a joint statement on Iran implementing its NPT Safeguards Agreement obligations. The statement is available at https://www.gov.uk/government/speeches/safeguards-agreement-with-iran-e3-statement-to-the-international-atomic-energy-agency-nov-2023, and follows.

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Chair, one year ago, this Board adopted a resolution in response to Iran's persistent lack of substantive cooperation with the Agency on outstanding safeguards issues. This was its third resolution on the subject since the IAEA raised questions 5 years ago regarding possible undeclared nuclear material and activities in Iran. Since then, the IAEA at varying points has raised questions about such activities at four locations. In this resolution, the Board decided that it was "essential and urgent" that Iran take action and clarify all outstanding safeguards issues in order to ensure verification of the non-diversion of nuclear material.

One year later, Iran's continuing disregard for its obligations, including to adhere to the decisions of this Board, now appears in the clearest light. The DG's report is stark: Iran is not only dragging its feet on cooperating with the Agency to resolve the remaining outstanding issues, but it is also wilfully hampering the Agency's ability to perform its verification mandate. Iran's actions are not only inconsistent with its legal obligations, but also undermine the global non-proliferation architecture in disregarding the commitments and obligations at its core.

First, Iran has still not provided the Agency with technically credible explanations for the presence of uranium particles of anthropogenic origin at outstanding locations of Varamin and Turquzabad on which the Agency is currently seeking clarifications. It has not informed the Agency of the current location of related nuclear material and contaminated equipment. Iran has not engaged even at the most superficial level, despite the fact that cooperating with the Agency is a legal obligation stemming from Iran's NPT Safeguards Agreement. This raises the question as to whether any of the nuclear material and/or contaminated equipment used at these locations remains in Iran and is not included in Iran's declaration.

Second, the nuclear material discrepancy at the Uranium Conversion Facility remains unresolved. Previous explanations by Iran were not technically credible and therefore not acceptable by the Agency. This issue touches upon the very core of the Agency's safeguards mandate: it is about Iranian undeclared activities at undeclared locations involving uranium metal, some of which is of unknown origin and might still be outside of safeguards. It is also worth recalling that this issue relates to safeguards concerns the Agency was pursuing previously over the Lavisan-Shian site – which Iran also failed to substantively address.

Third, Iran has "frozen" the implementation of the March 4 Joint Statement in spite of the Director General's extensive efforts to achieve progress. The reports are once again very clear: "the lack of progress in implementing any of the three elements of the Joint Statement, put into question the possibility of continuing with its implementation". It is now clear that Iran has not approached the Joint Statement in good faith and has not demonstrated any serious intention to fully implement its commitments. We urge Iran to promptly cooperate with the Agency on installing surveillance and monitoring equipment where requested, providing urgent access to camera data which it is currently withholding and addressing the gaps in the recordings. Without this information the Agency lacks key insight into Iran's capability to expand its uranium enrichment program – possibly even in ways not declared to the Agency – at a time when it is advancing.

Fourth, Iran has doubled down on its hostile attitude towards the Agency and is threatening the safeguards system through its decision to de-designate a number of experienced inspectors in September. In the DG's words, this "extreme and unjustified" decision directly and seriously affects the Agency's ability to effectively conduct its verification mandate in Iran. The DG makes clear this stance is "not only unprecedented but unambiguously contrary to the cooperation that is required in order to facilitate the effective implementation of its NPT Safeguards Agreement". It is unacceptable for Iran to retaliate against statements from IAEA member states by withdrawing Agency inspector designations of the same nationality. The independent technical work of the Agency cannot be subject to Iran's political interpretation of other member states' views in this way. We echo the Director General's strong condemnation of Iran's actions and urge Iran to reverse it and to promptly re-designate these inspectors.

Finally, we stress that implementation of Modified Code 3.1 of the Subsidiary Arrangements General Part to Iran's Safeguards Agreement is a legal obligation for Iran that cannot be suspended or unilaterally modified. Iran has announced the locations of new nuclear facilities and the Agency has asked Iran to provide required preliminary design information. Iran must provide its response immediately. Iran's unwillingness to work with the Agency to resolve this in accordance with its legal obligations, alongside its lack of transparency, is entirely unacceptable and deeply concerning given Iran's history of constructing covert nuclear facilities. Is Iran attempting to claim a loophole that does not exist to enable the construction of clandestine nuclear facilities? Iran is the only state with significant nuclear activities implementing a comprehensive safeguards agreement but not modified Code 3.1.

Chair, the Director General has made clear asks in his reports and requested engagement from Iran. Unless and until Iran provides technically credible explanations in response to the Agency's outstanding questions, the Agency will not be able to confirm the correctness and completeness of Iran's declarations under its NPT Safeguards Agreement or provide assurance that Iran's nuclear programme is exclusively peaceful. Such assurances are critical for the international community and the international non-proliferation regime.

Our concerns with this behaviour are widely shared, as was reflected at the September Board by the statement made by Denmark on behalf of a group of 63 member states. We have already indicated that if Iran fails to implement the essential and urgent actions contained in the November 2022 Resolution, the Board will have to be prepared to take further action in support of the Secretariat to hold Iran accountable in the near future, including the possibility of additional resolutions. Iran cannot continue its lack of cooperation Board after Board without bearing consequences. The further Iran goes down its conscious path of non-cooperation, the closer this Board will get to reaching the conclusion that the Agency is not able to verify that there has been no diversion of nuclear material.

We reiterate that, should Iran enable the IAEA Director General to conclude that these issues have been clarified and resolved and are no longer outstanding, we will not deem further reports and Board discussion necessary.

We would like to thank the IAEA for their impartial and professional work on this issue. We request the Director General to continue reporting to the Board of Governors and welcome making the report contained in GOV/2023/58 public, in line with longstanding practice.

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On December 28, 2023, the United States, France, Germany, and the United Kingdom issued a joint statement on Iranian nuclear activities reported by the International Atomic Energy Agency ("IAEA"). The joint statement is available as a State Department media note, excerpted below and available at https://www.state.gov/joint-statement-on-the-latest-iranian-nuclear-steps-reported-by-the-iaea/.

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The December 26, 2023 report by the IAEA highlights that Iran has increased its rate of production of uranium enriched up to 60% at Natanz and Fordow to levels observed between January and June 2023. These findings represent a backwards step by Iran and will result in Iran tripling its monthly production rate of uranium enriched up to 60%.

We condemn this action, which adds to the unabated escalation of Iran's nuclear program. The production of high-enriched uranium by Iran has no credible civilian justification and the reported production at the Fordow Fuel Enrichment Plant and the Pilot Fuel Enrichment Plant further carries significant proliferation-related risks. We also take note of Iran's decision to revert to the same cascade configuration as the one discovered by the IAEA in Fordow earlier this year. Iran's delay in declaring this change in January 2023 cast serious doubts on Iran's willingness to cooperate with the IAEA in full transparency.

These decisions demonstrate Iran's lack of good will towards de-escalation and represent reckless behavior in a tense regional context.

We urge Iran to immediately reverse these steps and de-escalate its nuclear program. Iran must fully cooperate with the IAEA to enable it to provide assurances that its nuclear program is exclusively peaceful, and to re-designate the inspectors suspended in September 2023.

We remain committed to a diplomatic solution and reaffirm our determination that Iran must never develop a nuclear weapon.

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C. ARMS CONTROL AND DISARMAMENT

1. New START Treaty

On January 31, 2023, the United States announced that based on the information available as of December 31, 2022, it could not certify Russia to be in compliance with the terms of the Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, also known as the New START Treaty. The United States found that Russia failed to comply with two of its New START obligations. See "Report to Congress on Implementation of the New START Treaty," submitted pursuant to paragraph (a)(10) of the Senate's Resolution of Advice and Consent to Ratification of the New START Treaty (Treaty Doc. 111-5) and covering January 1, 2022 to December 31, 2022. The unclassified report is available at https://www.state.gov/adherence-to-and-compliance-with-arms-control-nonproliferation-and-disarmament-agreements-and-commitments/, and excerpted below.

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Based on the information available as of December 31, 2022, the United States cannot certify the Russian Federation to be in compliance with the terms of the New START Treaty. In refusing to permit the United States to conduct inspection activities on Russian territory, based on an invalid invocation of the "temporary exemption" provision, Russia has failed to comply with its obligation to facilitate U.S. inspection activities, and denied the United States its right to conduct such inspection activities. The Russian Federation has also failed to comply with the obligation to convene a session of the Bilateral Consultative Commission (BCC) within the timeline set out by the Treaty.

The United States also has a concern regarding Russian compliance with the New START Treaty warhead limit. This concern stems from Russia's noncompliance with its obligation to facilitate inspection activities, coupled with its close proximity to the New START Treaty warhead limit. The continued lack of U.S. inspection activities in Russia poses a threat to the U.S. ability to adequately verify Russian compliance with the treaty limit on deployed warheads. As a result of Russia's close proximity to the warhead limit in its September 2022 data update and our inability to spot-check the accuracy of Russian warhead declarations, the United States is unable to make a determination that Russia remained in compliance throughout 2022 with its obligation to limit its warheads on deployed delivery vehicles subject to the New START Treaty to 1,550. While this is a serious concern, it is not a determination of noncompliance. Additionally, the United States assesses that Russia did not engage in significant

activity above the Treaty limits in 2022. The United States also assesses that Russia was likely under the New START warhead limit at the end of 2022.

While the United States cannot certify that the Russian Federation is in compliance with the terms of the New START Treaty, it does not determine, per Condition (a)(1) of the Senate's Resolution of Advice and Consent to Ratification of the New START Treaty, that Russia's noncompliance specified in this report threatens the national security interests of the United States.

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On February 21, 2023, Russia announced that it would suspend its participation in the New START Treaty, and on February 28, 2023, Russia notified the United States of its purported suspension. Russia predicated its purported suspension on a claim that the United States materially breached the Treaty. Subsequently, the United States concluded that Russia's purported suspension of the New START Treaty is legally invalid because the alleged U.S. material breach of the Treaty never occurred. On June 1, 2023, the State Department published a fact sheet on Russia's noncompliance with and invalid purported suspension of the New START Treaty. The fact sheet is available at https://www.state.gov/russian-noncompliance-with-and-invalid-suspension-of-the-new-start-treaty/, and excerpted below.

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Russia's noncompliance with the New START Treaty, and its claimed suspension of the treaty, are irresponsible and unlawful. Mutual compliance with the New START Treaty strengthens the security of the United States, our allies and partners, Russia, and the world. Russia's claimed suspension of the New START Treaty is legally invalid. As a result, Russia remains bound by its obligations under the treaty. The United States remains ready to work constructively with Russia to fully implement the treaty. Below are the facts about the current state of the treaty:

Fact: Russia can easily remedy its noncompliance with the New START Treaty

- Russia's noncompliance is clear:
  - Russia is refusing to allow inspections. The treaty requires each Party to accept 18 inspections per year. Inspections strengthen nuclear stability by giving both sides confidence that the treaty's limits on nuclear weapons are being respected.
  - Russia refuses to meet in the treaty's implementation body, the Bilateral Consultative Commission (BCC), despite repeated U.S. requests. The treaty requires both sides meet in the BCC. This also is an important element of nuclear stability. It provides a channel for experts to engage in constructive discussion and resolve technical questions of treaty implementation in a mutually beneficial way.
- Russia has stopped providing its treaty-mandated notifications. The treaty requires each side to provide data and notifications, including on the status and movement of its accountable nuclear forces. Mutual compliance with these obligations is an important

element of nuclear stability. It provides significant transparency and predictability regarding strategic nuclear forces.

- Russia's noncompliance threatens the viability of the treaty. While the United States has assessed that Russia did not engage in significant activity above the treaty limits in 2022, Russia's failure to allow inspections and provide notifications degrades the U.S. ability to assess Russian nuclear deployments.
- Russia can easily remedy its noncompliance by resuming activities it conducted for years under the treaty, in particular by hosting inspections, meeting in the BCC, and providing notifications and data.

Fact: The United States has taken lawful countermeasures in response to Russia's ongoing violations of the New START Treaty, which can be promptly reversed if Russia returns to compliance.

- Countermeasures that the United States has taken in response to Russia's New START Treaty violations are proportionate and reversible, and are intended to encourage Russia to return to compliance with its New START Treaty obligations.
- U.S. countermeasures include withholding New START Treaty data and notifications following Russia's repeated refusals to provide its treaty-mandated data and notifications, and refraining from facilitating Russian inspections on U.S. territory while Russia continues refusing to allow U.S. inspections on Russian territory.
- These countermeasures are fully consistent with international law, which permits such actions in order to induce a breaching state to return to compliance with its international obligations.

Fact: The United States desires and remains ready to promptly resume New START Treaty inspection activities and full implementation of the treaty

- Following the easing of COVID-related restrictions, the United States clearly conveyed to Russia that we were prepared to host Russian inspectors, and ensured that Russia had everything it needed to conduct inspections on U.S. territory.
- Russian inspectors had the necessary visas, Russian treaty-designated airplanes had viable air routes to transport inspectors to the United States, inspectors with valid visas could also use commercial air travel to reach U.S. territory, and there are no sanctions that would prevent Russia from fully exercising its inspection rights.
- The United States is ready to reverse the countermeasures and fully implement the treaty if Russia returns to compliance.

Fact: The United States remains ready to meet and discuss U.S. and Russian compliance concerns and all other issues related to implementation of the treaty.

- The United States was ready to work constructively with Russia at the BCC session that was scheduled for November 2022, which Russia abruptly canceled. Contrary to Russian claims, all topics Russia identified for discussion were on the agenda.
- We remain ready for constructive engagement today. Such engagement is an important element of nuclear stability.

Fact: U.S. conversion procedures are fully compliant with the New START Treaty

- Russia has claimed that U.S. conversion procedures for its submarine-launched ballistic missile (SLBM) launchers and B-52H heavy bombers are not consistent with U.S. obligations under the New START Treaty.
- These claims are false.

- The U.S. conversion procedures for SLBM launchers and heavy bombers render the converted items incapable of launching SLBMs and employing nuclear armaments, respectively.
- The United States has declared and demonstrated the procedures and exhibited the converted items to Russia, just as the treaty requires.
- Russia has the treaty right to inspect converted items to confirm the results of the conversions as the United States exhibited them to Russia. It is up to Russia to do so.

- As Russia has acknowledged publicly, the United States has nonetheless worked to address Russian concerns with SLBM launcher conversions. After careful and constructive work, both sides reached a mutual understanding on additional voluntary measures to address those concerns. Russia can take advantage of these measures when it chooses to resume implementation of the treaty.
- Russia's accusations of U.S. noncompliance are baseless attempts to distract from Russia's own actions, and do not provide Russia a valid legal basis to suspend the treaty.

Fact: Russia's war against Ukraine does not provide a valid basis for Russian noncompliance with the New START Treaty

- The strong U.S. and international response to Russia's unprovoked invasion of Ukraine does not absolve Russia of responsibility to fulfill its legal obligations under New START.
- Russia's noncompliance and purported suspension of the New START Treaty will not stop the United States from continuing to fully support Ukraine. That is irrelevant to the utility of the treaty and Russia's ability to continue participation in it.
- New START Treaty inspection activities do not threaten Russian security. The treaty provides both sides with the means to ensure the safety and security of inspected facilities.
- Nuclear stability is especially important in times of crisis, and the United States will continue working to maintain it.

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Also on June 1, 2023, the State Department published a fact sheet explaining the lawful countermeasures that the United States adopted in 2023 in response to Russia's breach of the New START Treaty. The fact sheet is available at https://www.state.gov/u-s-countermeasures-in-response-to-russias-violations-of-the-new-start-treaty/, and excerpted below.

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The United States is committed to full and mutual implementation of the New START Treaty. Consistent with that commitment, the United States has adopted lawful countermeasures in response to the Russian Federation's ongoing violations of the New START Treaty. The Russian Federation's purported suspension of the New START Treaty is legally invalid. As a result, Russia remains bound by its New START Treaty obligations, and is violating the treaty by failing to fulfill many of those obligations.

U.S. countermeasures are fully consistent with international law. They are proportionate, reversible, and meet all other legal requirements. International law permits such measures in order to induce a state to return to compliance with its international obligations.

The United States notified Russia of the countermeasures in advance, and conveyed the United States' desire and readiness to reverse the countermeasures and fully implement the treaty if Russia returns to compliance. The United States remains ready to work constructively with Russia on resuming implementation of the New START Treaty.

What are the U.S. countermeasures?

The United States has taken four lawful countermeasures in response to the Russian Federation's ongoing violations of the New START Treaty. The United States continues to abide by the treaty's central limits, and to fulfill all of its New START obligations that have not been included within these countermeasures.

AS OF MARCH 30, 2023

- **BIANNUAL DATA EXCHANGE**: After confirming that Russia would not fulfill its obligation to provide its biannual data update on March 30, 2023, the United States did not provide its March 30 biannual date update to Russia. The New START Treaty requires Russia and the United States to exchange comprehensive databases in March and September of each year. These databases include extensive data on New START Treaty-accountable facilities and nuclear forces, including numbers of deployed warheads and delivery vehicles.In the interest of strategic stability and to promote transparency, on May 15, 2023, the United States proceeded with public release of U.S. aggregate data corresponding to the New START Treaty central limits as of March 1, 2023. The publicly released aggregate data comprise a small portion of the data the United States withheld from Russia in March pursuant to the data-update countermeasure.

AS OF JUNE 1, 2023

- **NOTIFICATIONS:** Beginning June 1, 2023, the United States is withholding from Russia notifications required under the treaty, including updates on the status or location of treaty-accountable items such as missiles and launchers. Russia ceased fulfilling its notification obligation upon its purported suspension of the treaty on February 28, 2023. The fundamental purpose of the majority of notifications is to improve each side's ability to verify the other's compliance with the treaty, especially in combination with on-site inspections.The United States continues to provide Russia with notifications of intercontinental ballistic missile (ICBM) and submarine-launched ballistic missile (SLBM) launches in accordance with the 1988 Ballistic Missile Launch Notifications Agreement, and to provide notifications of exercises in accordance with the 1989 Agreement on Reciprocal Notification of Major Strategic Exercises.
- **INSPECTION ACTIVITIES**: The United States is refraining from facilitating New START Treaty inspection activities on U.S. territory, specifically by revoking existing visas issued to Russian New START Treaty inspectors and aircrew members, denying pending applications for such visas, and by revoking the standing diplomatic clearance numbers issued for Russian New START Treaty inspection airplanes.The United States had been prepared to facilitate Russian New START Treaty inspection activities on U.S. territory since June 2022, and repeatedly conveyed that readiness to Russia; however, Russia chose not to exercise its right to conduct inspection activities and has also denied the United States its right under the treaty to conduct inspection activities since August 2022, when it refused to accept a U.S. inspection. Russia has not notified the United

States of any intent to send a Russian inspection team to the United States since February 25, 2020.

- **TELEMETRY**: The United States will not be providing telemetric information on launches of U.S. ICBMs and SLBMs. The New START Treaty requires that both parties reach agreement within the framework of the treaty's implementation body, the Bilateral Consultative Commission (BCC), on the number of launches of ICBMs and SLBMs for which telemetric information will be exchanged each year. Russia has refused to meet in the BCC to reach such an agreement, and the United States will not provide telemetric information unilaterally. The treaty does not require the United States to take such unilateral action in any event, since it calls for an exchange of telemetric information on an agreed number of launches.

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2. Treaty on Conventional Armed Forces in Europe

On November 7, 2023, the United States notified the Kingdom of the Netherlands, in its capacity as Depositary for the multilateral Treaty on Conventional Armed Forces in Europe (CFE), that the United States had decided to suspend its obligations under the CFE effective December 7, 2023, and requested that the Netherlands so notify all CFE States Parties. November 7 was also the effective date of the Russian Federation's withdrawal from CFE. The U.S. suspension, which duly took effect on December 7, 2023, is based on the doctrine of fundamental change of circumstances under customary international law as reflected in Article 62 of the Vienna Convention on the Law of Treaties, in light of Russia's withdrawal from the CFE Treaty amid its ongoing full-scale invasion of Ukraine, a fellow CFE State Party. The U.S. diplomatic note to the Netherlands is excerpted below.

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The Embassy, on behalf of the United States of America, hereby provides notice of the decision of the United States of America to suspend the operation of all of its obligations under the CFE Treaty as well as the 1996 CFE Flank Document Agreement, as between itself and every other State Party, in light of a fundamental change of circumstances. This suspension will take effect on December 7, 2023.

Under customary international law as reflected in Article 62 of the Vienna Convention on the Law of Treaties (VCLT), a state may invoke a fundamental change of circumstances as grounds for suspending the operation of a treaty. The Russian Federation's full-scale war of aggression against another CFE Treaty State Party, combined with the Russian Federation's withdrawal from the CFE Treaty, together constitute a fundamental change in circumstances.

At the time the CFE Treaty was concluded, it was not foreseen by the signatory states that one State Party would conduct a full-scale invasion of another State Party and perpetrate a war of aggression that would result in the upending of the security landscape in Europe. The Russian Federation's full-scale invasion of Ukraine beginning in February 2022 is the largest and

most consequential armed conflict in Europe since World War II and has led numerous states, including the United States, to provide significant political, financial, and materiel support to Ukraine's defense. It is precisely the kind of large-scale conventional war that the CFE Treaty was designed to prevent and is being fought with the very conventional forces that the treaty aims to constrain.

The CFE Treaty's Preamble states that the signatory states were motivated by the "need to prevent any military conflict in Europe" and "[c]ommitted to" a secure and stable balance of conventional armed forces in Europe at lower levels than previously, with the goal of "eliminating, as a matter of high priority, the capability of launching surprise attack and for initiating large-scale offensive action in Europe." A full-scale war of aggression by one State Party against another is a dramatic departure from the context in which the Parties undertook their CFE Treaty obligations, and impacts an essential basis of the States Parties' consent to be bound.

Furthermore, an essential and fundamental assumption in concluding the CFE Treaty was the continued participation of the Russian Federation. It would have been inconceivable to the signatory states to enter into the treaty, with the constraints it places on their own forces, without similarly constraining the Russian Federation's conventional armed forces. Thus, the Russian Federation's withdrawal from the CFE Treaty, while consistent with a general right provided in its Article XIX, represents a fundamental change in the circumstances that formed an essential basis for the States Parties' consent to be bound.

Taken together, the combination of the Russian Federation's withdrawal from the CFE Treaty and its ongoing war of aggression has radically transformed the extent of the remaining CFE Treaty obligations. Russia's actions have rendered these obligations essentially different from those originally undertaken. Suspension of the United States' obligations is urgently required so that the United States may take all measures necessary for its own and its Allies' security, in light of the rapid pace of events and the fact that Russia is now entirely unconstrained by the CFE Treaty.

The United States emphasizes that it has chosen to suspend its obligations, rather than withdrawing from the CFE Treaty, in light of the potential for reversal of the changed circumstances and to preserve the possibility that performance of the CFE Treaty might resume should such a reversal occur.

The United States regrets that this fundamental change of circumstances has occurred and that suspension has become necessary. However, years of efforts by the United States and other States Parties, including the adoption of lawful countermeasures and other actions in order to induce the Russian Federation to return to compliance with the CFE Treaty and to reverse its full-scale invasion of Ukraine, have not persuaded Russia to abandon its destructive path.

The Embassy of the United States of America requests that the Depositary circulate this note expeditiously to all other States Parties to the CFE Treaty.

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The United States issued statements regarding the U.S. suspension of its CFE obligations. The November 7, 2023 statement from National Security Advisor Jake Sullivan is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/11/07/statement-from-national-security-advisor-jake-sullivan-on-united-states-suspension-of-the-cfe-treaty-alongside-nato-allies/, and excerpted below.

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Today, the Russian Federation withdrew from the Treaty on Conventional Armed Forces in Europe (CFE). The combination of Russia's withdrawal from the CFE Treaty and its continuing full-scale war of aggression against Ukraine – another CFE State Party – has fundamentally altered circumstances that were essential to the CFE States Parties' consent to be bound by the treaty, and radically transformed the obligations under the treaty. In light of this fundamental change of circumstances, the United States will suspend the operation of all CFE Treaty obligations between itself and every other State Party, effective December 7, consistent with our rights under international law.

This decision to suspend our obligations under the CFE Treaty was taken in close consultation and coordination with our NATO Allies, many of whom are also CFE Treaty States Parties. A number of our CFE partners that are not members of NATO also support suspension of CFE Treaty obligations in response to Russia's actions.

As reflected in the statement issued at NATO Headquarters today, our Allies unanimously share our view that a situation where the United States and our NATO Allies continue to be militarily constrained by the CFE Treaty, while Russia – whose armed forces are the largest in Europe, and who continues to actively wage a war of aggression against Ukraine using the very forces the treaty aims to constrain – is not, would be unacceptable. Suspension of CFE obligations will strengthen the Alliance's deterrence and defense capacity by removing restrictions that impact planning, deployments, and exercises – restrictions that no longer bind Russia after Moscow's withdrawal.

While Russia's withdrawal from the CFE Treaty further demonstrates Moscow's continued disregard for arms control, the United States, our NATO Allies, and our responsible partners remain committed to effective conventional arms control as a critical element of Euro-Atlantic security. We will continue to pursue measures that aim to bolster stability and security in Europe by reducing risk, preventing misperceptions, avoiding conflicts, and building trust.

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The State Department's November 7, 2023 statement is available at https://www.state.gov/united-states-will-suspend-the-operation-of-its-obligations-under-the-treaty-on-conventional-armed-forces-in-europe/ , and included below.

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Earlier today, the North Atlantic Council issued a statement announcing the decision of NATO Allied States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) to suspend all of their obligations under the Treaty. The United States fully joins in and supports this decision. Our suspension of CFE obligations is consistent with our rights under international law, in response to a fundamental change of circumstances caused by the combination of Russia's

withdrawal from the CFE Treaty and its continuing full-scale war of aggression against Ukraine, another CFE State Party, using the very forces the Treaty aims to constrain. The U.S. suspension will take effect on December 7. A number of our CFE partners that are not NATO Allies also support and intend to join us in suspending CFE Treaty obligations in response to Russia's actions. Russia's continued destabilizing behavior undermines the key arms control principles of reciprocity, transparency, compliance, and verification, which have for decades been the bedrock of the Euro-Atlantic security architecture.

Russia's withdrawal is not expected to have any practical impact on its force posture, given Moscow's failure to abide by its CFE Treaty obligations since 2007. However, its withdrawal signals a further effort by Moscow to undermine decades of progress made towards building transparency and cooperative approaches to security in Europe. Over the months since Russia announced its intent to withdraw from CFE, the United States and our NATO Allies have consulted closely to take into account the prevailing security environment and the security of all Allies. Russia made clear it had no intention of changing course. As such, we concluded that we should not continue to be bound by a treaty to which Russia is not bound. Suspension of CFE obligations will strengthen the Alliance's deterrence and defense capacity by removing restrictions that impact planning, deployments, and exercises.

The United States and our NATO Allies remain committed to effective conventional arms control as a critical element of Euro-Atlantic security. We will continue to pursue measures with responsible partners that aim to bolster stability and security in Europe by reducing risk, preventing misperceptions, avoiding conflicts, and building trust.

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The U.S. decision to suspend its obligations under the CFE Treaty was taken alongside all other NATO Allied States Parties to the treaty, as announced in a North Atlantic Council statement on November 7, 2023, which is available at https://www.nato.int/cps/en/natohq/official_texts_219811.htm, and excerpted below.

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Allies condemn Russia's decision to withdraw from the Treaty on Conventional Armed Forces in Europe (CFE), and its war of aggression against Ukraine which is contrary to the Treaty's objectives. Russia's withdrawal is the latest in a series of actions that systematically undermines Euro-Atlantic security. Russia continues to demonstrate disregard for arms control, including key principles of reciprocity, transparency, compliance, verification, and host nation consent, and undermines the rules based international order. While recognizing the role of the CFE as a cornerstone of the Euro-Atlantic security architecture, a situation whereby Allied States Parties abide by the Treaty, while Russia does not, would be unsustainable.

Therefore, as a consequence, Allied States Parties intend to suspend the operation of the CFE Treaty for as long as necessary, in accordance with their rights under international law. This is a decision fully supported by all NATO Allies.

Allies reiterate their continued commitment to reduce military risk, and prevent misperceptions and conflicts. Allies strive to build trust and confidence, based on key principles

of transparency, compliance, verification, reciprocity and host nation consent, thereby contributing to peace and security. Allies invite those states that share this commitment and these principles, to join our efforts to also contribute to increasing predictability and stability in the Euro-Atlantic area.

Allies remain united in their commitment to effective conventional arms control as a key element of Euro-Atlantic security, taking into account the prevailing security environment and the security of all Allies. This complements the Alliance's deterrence and defence posture that Allies have decided to further strengthen. Allies will continue to consult on and assess the implications of the current security environment and its impact on the security of the Alliance, and on our approach. Allies will make use of NATO as a platform for in-depth discussion and close consultation on arms control efforts.

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D. CHEMICAL AND BIOLOGICAL WEAPONS

1. Chemical Weapons in Syria

a. OPCW Report on Chemical Weapons Attack in Syria

b. Anniversary of Attack in Ghouta

On August 21, 2023, the State Department issued a press statement marking the tenth anniversary of the Ghouta, Syria chemical weapons attack. The statement follows and is available at https://www.state.gov/tenth-anniversary-of-the-ghouta-syria-chemical-weapons-attack/.

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Ten years ago the Assad regime launched rockets carrying the deadly nerve agent sarin into the Ghouta district of Damascus, killing more than 1,400 people.

The United States remembers and honors the victims and survivors of the Ghouta attack and of the other chemical attacks launched by the Assad regime. Ten years on, we continue to seek justice and accountability for those responsible for these horrific acts.

Despite its international obligations under the Chemical Weapons Convention and UN Security Council Resolution 2118, Syria has yet to fully declare and verifiably eliminate its chemical weapons program. Syria refuses to take any responsibility for its vile campaign of chemical weapons use, as is evident from Syria's nine subsequent chemical weapons attacks confirmed by the Organization for the Prohibition of Chemical Weapons (OPCW) Investigation and Identification Team and the OPCW-UN Joint Investigative Mechanism.

We will continue to support the calls by the Syrian people and civil society for justice and accountability for atrocities committed in Syria, and to stand with Syrians in working for a future in which their human rights are respected.

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2. Chemical Weapons Convention

a. Compliance Report

On April 18, 2023, the State Department submitted the 2023 Condition (10)(C) Annual Report on Compliance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) to the Senate in accordance with the Resolution of Advice and Consent to Ratification of the CWC. The report covers the period of January 1, 2022 to December 31, 2022 and is available at https://www.state.gov/2023-condition-10c-annual-report-on-compliance-with-the-chemical-weapons-convention-cwc/.

b. Fifth Review Conference of the Chemical Weapons Convention

The Fifth Special Session of the Conference of the States Parties to Review the Operation of the Chemical Weapons Convention was held in The Hague from May 15-19, 2023. Bonnie Jenkins, Under Secretary for Arms Control and International Security, delivered the U.S. national statement, which is excerpted below and available at https://www.opcw.org/sites/default/files/documents/2023/05/U.S.%20National%20Statement_RC5_%20FINAL.pdf.

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The United States also understands the reality that a few countries here would prefer to ignore the past five years of work because it does not align with their political narratives. While the United States will make a good-faith effort to reach consensus on an outcome document, we cannot undermine or ignore the actions taken by this organization over the past five years, and we will not be deterred from continuing work at the OPCW to hold those who use CW accountable.

The OPCW is a cornerstone of international security, and we must continue to ensure it remains agile and fit for purpose. To that end, over the next five years, the United States plans to spend more than 80 million USD working with international partners to enhance chemical security and prevent, detect, and counter chemical threats worldwide. The United States looks forward to working collaboratively for ways, consistent with the mandate provided by the Convention, to give this Organization the tools it needs to deter and respond to chemical weapons use into the future.

As we are all aware, the Russian Federation continues to wage a premeditated, unprovoked, and unjustified war against Ukraine, with direct implications for this Organization. The response to Ukraine's request for assistance and protection against the use of chemical weapons as provided for under the Convention has been admirable, and we thank the Technical Secretariat and States Parties for their generous contributions. The threat to Ukraine from the Russian Federation, however, remains and we must continue to provide assistance, as required.

The United States will continue to provide support to Ukraine, including assistance to protect and respond to any chemical weapons use or chemical incidents. As always, we call on the Russian Federation to end its war of aggression in Ukraine and to fully declare and dismantle its chemical weapons program, which allows for Russia's continued use of substances banned by the CWC. We are all well aware of Russia's use of Novichok nerve agents in 2018 and 2020 to poison Sergei and Yulia Skripal and Aleksey Navalny.

In addition to the material threat the Russian Federation poses to Ukraine, the Kremlin remains the greatest proliferator of disinformation related to chemical weapons. The United States will always stand up for the truth. We will commit 320,000 USD to continue to work with States Parties, non-governmental organizations, and other stakeholders to hold public events highlighting independent, fact-based information. We will also continue to promote the work of the OPCW and the accomplishments that States Parties to this Convention have achieved. By countering disinformation about past uses of chemical agents, we not only honor those people who have been victims of chemical weapons use, but also strengthen the global norm against the use of chemical weapons by ensuring our record of success is not undermined by those who seek to promulgate lies.

Unfortunately, despite the best efforts of this Organization, the Syria case file on chemical weapons remains open. Since its establishment in 2018, States Parties have consistently ensured that the Investigation and Identification Team (IIT) has sufficient resources to conduct its work. As a result, the IIT has produced three outstanding, highly detailed, and professional reports identifying the Syrian regime as responsible for chemical weapons use in Syria. Along with the Declaration Assessment Team (DAT) and the Fact-Finding Mission, the IIT is an essential entity to deter Syria from continuing its chemical weapons program and further chemical weapons use. To ensure that Syria-related investigative work can continue, the United States will work with the OPCW to designate funds for the OPCW's Trust Fund for Syria Missions. We continue to call on Syria to comply with its obligation to fully cooperate with the Technical Secretariat, including by providing immediate and unfettered access to sites in Syria, to enable the Technical Secretariat to conduct its important work, and to completely and verifiably end its chemical weapons program.

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I would be remiss if I did not highlight the fact that we are on the cusp of a major milestone for the Convention: the complete destruction of the world's declared chemical weapons stockpiles. Despite the pandemic, the United States took extraordinary measures to continue operations at its destruction facilities, including close coordination with the Technical Secretariat to allow on-site verification to continue in an uninterrupted manner. Currently, the United States has completed the destruction of over 99.5 percent of its chemical weapons stockpile, and we remain on track to complete destruction by our planned completion date of September 30, 2023.

We have shown through our actions over the past five years that there is a collective will to keep this Convention and the Organization, deservedly, at the forefront of the arms control discussion. As we look to the future, I hope that other States Parties will join the United States in continuing to champion this Convention and this Organization as vital pillars for international peace and security.

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c. Completion of the Destruction of the US Chemical Weapons Stockpile

On July 7, 2023, the United States completed destruction of its chemical weapons stockpile, in accordance with its obligations under the Chemical Weapons Convention. President Biden issued a statement, which is available at https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/07/statement-from-president-joe-biden-on-completing-the-destruction-of-the-united-states-chemical-weapons-stockpile/ and included below.

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For more than 30 years, the United States has worked tirelessly to eliminate our chemical weapons stockpile. Today, I am proud to announce that the United States has safely destroyed the final munition in that stockpile—bringing us one step closer to a world free from the horrors of chemical weapons.

Successive administrations have determined that these weapons should never again be developed or deployed, and this accomplishment not only makes good on our long-standing commitment under the Chemical Weapons Convention, it marks the first time an international body has verified destruction of an entire category of declared weapons of mass destruction. I am grateful to the thousands of Americans who gave their time and talents to this noble and challenging mission for more than three decades.

Today—as we mark this significant milestone—we must also renew our commitment to forging a future free from chemical weapons. I continue to encourage the remaining nations to join the Chemical Weapons Convention so that the global ban on chemical weapons can reach its fullest potential. Russia and Syria should return to compliance with the Chemical Weapons Convention and admit their undeclared programs, which have been used to commit brazen atrocities and attacks. We will continue to stand with the Organization for the Prohibition of Chemical Weapons to prevent the stockpiling, production, and use of chemical weapons around the world. And together with our partners, we will not stop until we can finally and forever rid the world of this scourge.

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Secretary of State Blinken also issued a statement on July 7, 2023, which is available at https://www.state.gov/statement-on-the-united-states-completing-the-destruction-of-its-chemical-weapons-stockpile/.

d. Thirty Years of the Chemical Weapons Convention

On October 5, 2023, Bonnie Jenkins, Under Secretary for Arms Control and International Security, delivered virtual remarks at the "30 Years of the Chemical Weapons

Convention: Histories, Achievements, Challenges" Conference in Berlin. The remarks are excerpted below and available at https://www.state.gov/opening-address-at-the-thirty-years-of-the-chemical-weapons-convention-conference/.

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It is without a doubt that the United States strongly supports the Convention. Nowhere has a Convention seen more success than in eliminating a whole category of declared weapons of mass destruction.

Most recent success is obviously the United States' completed destruction of its declared stockpiles, completing a three decades-long effort that spanned eight U.S. states and involved intimate cooperation and coordination with local communities to free the country of chemical weapons. This is a remarkable achievement that required a monumental effort from countless Americans who all believed that a world without chemical weapons is a better one. The completion of the U.S. destruction effort shows our commitment to achieving the objective and purpose of the Chemical Weapons Convention: working towards a world free of chemical weapons.

Our efforts join a list of successes for the CWC.

This includes the historic achievement that earned the OPCW – the Organization for the Prohibition of Chemical Weapons and the technical body entrusted with the responsibility of implementing the Convention – a Nobel Peace Prize in 2013 with its efforts to eliminate chemical weapons in Syria.

Before 2013, the Organization was focused mainly on the task of destroying historical chemical weapons of U.S. and Russian stockpiles. With Syria's horrific attack on its civilians at Ghouta and then the regime joining the CWC, addressing chemical weapons in Syria became a major task for the Organization. The OPCW has addressed this herculean task admirably, with persistence, thoughtfulness, and flexibility. And, States Parties have also responded to the regime's actions through the establishment and funding of the Investigation and Identification Team showing that the international community is united in support of the norm against the use of chemical weapons.

Additional examples of the success of the Convention include the responses of States Parties to Russia's attempted assassination of the Skripals with a chemical agent in 2018. Following Russia's actions, States Parties approved the addition of two families of Novichoks to the CWC Annex on Chemicals in November of 2019. States Parties also took action to address the threat of aerosolized central nervous system-acting chemicals in December of 2021 affirming that these are understood to be inconsistent with law enforcement purposes as a "purpose not prohibited" under the Convention.

These were unprecedented successes under the CWC. However, there are still challenges to the Convention that we must face with an unflinching resolve. Chief among these challenges is the continued presence of chemical weapons programs and stockpiles.

Foremost, the Russian Federation must declare and destroy its chemical weapons program and stockpile. Following the Skripal, the Russian Federation again used chemical weapons in its attempt to assassinate Aleksey Navalny. We must continue to demand clear answers from Russia on its undeclared chemical weapons program.

Only by holding accountable the perpetrators of CW use can we deter future use. Open-source reports of the use of riot control agents as a method of warfare by the Russian Federation in Ukraine should concern everyone and act as a reminder that the stakes remain high. States Parties must continue to speak up and take steps to hold violators of the CWC to account.

In addition, we must continue to press the Syrian regime to cooperate with the OPCW and return to compliance with the Convention. As Secretary Blinken noted in his August 21st statement remembering and honoring the victims and survivors of the Ghouta chemical attack, Syria has yet to fully declare and verifiably eliminate its chemical weapons program despite its international obligations under the CWC and UN Security Council Resolution 2118. The Secretary also noted Syria's refusal to take any responsibility for its vile campaign of chemical weapons use, as is evident from Syria's nine subsequent chemical weapons attacks confirmed by the OPCW's Investigation and Identification Team, also known as the IIT, and the OPCW-UN Joint Investigative Mechanism. We must continue to seek justice and accountability for those responsible for these horrific acts.

While the United States has been among the strongest supporters of accountability and destruction efforts, we also continue to urge the four remaining non-States Parties to join the CWC. The Organization is preparing for that scenario by planning and gathering technical expertise that includes retaining CW destruction experience.

The United States is pleased to support this effort. With the complete destruction of the declared chemical weapons stockpile and the release of the final reports of the IIT, an even greater importance is placed on ensuring the knowledge and expertise of chemical weapon destruction and investigation is maintained at the OPCW.

This year, as you well know, the OPCW also held its fifth Review Conference. As part of the Review Conference, States Parties focused, in part, on ensuring that the OPCW has the tools it needs to accomplish its mission, including improvements in knowledge management, as I just mentioned.

Given the continued threat of CW use, it is also essential that States Parties to the Convention, including through the OPCW, support capacity building related to deterring, responding to, and investigating CW use. The OPCW's new ChemTech Center, which opened as a kick-off event for the Review Conference, is a facility that will allow the OPCW to do just that. I have no doubt that in time, the ChemTech Center will prove to be a great resource in support of the Convention.

During the Review Conference, I also recommended that the OPCW improve organizational governance by supporting gender and geographic diversity and inclusion, and expanding education and outreach. The United States, along with Canada, Colombia, Finland, Ireland Sweden, the UK, and Northern Ireland, hosted the first-ever Women, Peace, and Security event at the Conference of States Parties in 2022.

For many years the OPCW has run an initiative focused on increasing gender diversity and equity called the Women in Chemistry Initiative. As part of our efforts to prioritize promoting the Women, Peace and Security agenda, the United States remains committed to advancing the role of women in all their diversity at all levels and in all areas of the Organization. The contributions of women are key to the future vitality of the Organization.

As we look toward the future, the CWC and the OPCW must remain agile and continue to adapt to 21st century challenges. To this end, we must deepen our engagement with stakeholders, including academics, industry, and non-governmental organizations. The OPCW

should work to increase the visibility of the Convention, and the involvement of the broader international community, by supporting broader NGO participation in OPCW annual meetings.

We are grateful to have such diverse interests in chemical weapons disarmament. Conferences like this one should continue to be organized and supported to ensure every voice is heard and every perspective is considered as we think of the way forward.

I would like to conclude my remarks by thanking everyone here today for their commitment to making sure chemicals are not used as weapons. The United States is confident in the ability of the OPCW's leadership and professional staff members to carry out the significant mandates the global community have entrusted to them, and we look forward to working with States Parties to uphold the norms established under the Convention.

Whether you are an advocate, an academic, from government or an NGO, your work to uphold the international norm against the use of chemical weapons is important to global security.

We have achieved much in the past 30 years. We eliminated chemical weapons stockpiles that no longer exist and made the world a much safer place in the process. But our work here is not yet done. As you reflect on how far we have come, and where we go from here, I wish you fruitful discussions at this conference and beyond. Thank you.

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e. Questions to Russia under Article IX, paragraph 2 of the Chemical Weapons Convention

On October 6, 2023, the United States joined Canada, France, Germany, Italy, Japan, and the United Kingdom in submitting questions to the Russian Federation pursuant to Article IX, paragraph 2 of the Chemical Weapons Convention to seek clarification on reports related to Russian use of riot control agents as a method of warfare in Ukraine. The Note Verbale communicating the questions, submitted by Germany on behalf of the relevant States Parties, is excerpted below and available at https://www.opcw.org/sites/default/files/documents/2023/10/ec104nat06%28e%29.pdf.

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We recall that under Article I, paragraph 5, the Convention states that "Each State Party undertakes not to use riot control agents as a method of warfare."

We express our grave concern about reports that indicate riot control agents may have been used repeatedly by Russian armed forces in combat operations against Ukrainian forces in Ukraine.

Referring to the Note Verbales No. 61219/35-196/50-61363 of 28 May 2023 and No. 61219/35-196/50-107892 of 11 September 2023 from the Embassy of Ukraine in the Netherlands, and a report televised by the Russian First Channel's news journal "Vremya" in its 9 pm edition on 2 May 2023 on the use of tear gas by Russian armed forces in combat action in the Donetsk region, we request answers to the following questions:

1. Have Russian armed forces used riot control agents in combat operations in the conflict in Ukraine?

2. How does the Russian Federation explain the First Channel TV report, and has there been any investigation of the reported case in order to ensure that obligations under the Convention are being strictly observed?

We note that Article IX, paragraph 2 of the Convention provides that a response shall be provided as soon as possible, but in any case not later than 10 days.

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f. Twenty-Eighth Session of the Conference of the State Parties

The Twenty-Eighth session of the Conference of the States Parties was held in The Hague from November 27 to December 1, 2023. Mallory Stewart, Assistant Secretary for the Bureau of Arms Control, Deterrence, and Stability delivered the U.S. national statement, which is available at https://www.opcw.org/sites/default/files/documents/2023/11/CSP-28%20U.S.%20National%20Statement%20%28Final%29.pdf and excerpted below.

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2023 was a momentous year for the Organization. It marked the 30th anniversary of the opening for signature of the Convention and the complete destruction of all the chemical weapons declared by States Parties worldwide. The OPCW inaugurated the Center for Chemistry and Technology (CCT) which will help the Organization stay abreast of rapid progress in science and technology and enhance international cooperation and assistance (ICA) programs. During the Fifth Review Conference, we reflected on past achievements and we set a course for the future of the Convention. On universality, we saw South Sudan reiterate its commitment to joining the CWC.

Yet, as we celebrate these achievements, we cannot ignore the challenges that lie ahead. During the past ten years we saw repeated use of chemical weapons by the Assad Regime, the Russian Federation, and ISIS. In response, we must take concrete actions.

All of us have said before that to deter future CW use, we must hold those responsible for past use to account. If we do not do so, other states and non-state actors may turn to using these terrible weapons themselves. Unfortunately, we have seen this play out with respect to the Assad regime's repeated, confirmed uses of CW. In 2021, the Conference suspended some of Syria's rights and privileges under the Convention in response to its refusal to take corrective action called for by the Executive Council in light of the findings of the first Investigation and Identification Team (IIT) report. Two years later, the situation remains unchanged and, as the Director-General reminds us, ten years after acceding to the CWC, Syria's declaration still cannot be considered accurate or complete.

Now, in January, the IIT found the Syrian Air Force responsible for the deadly April 7, 2018, chlorine attack in Douma; the ninth independently verified instance of CW use by Syria since it joined the Convention.

We have not managed to effectively hold Syria accountable for these repeated confirmed uses, and as we know, non-state actors and even other states are watching. Since the Asad regime's first use of CW, ISIS has used chemical weapons in Iraq and Syria, the DPRK has used CW in an assassination in Malaysia, and Russia has used CW in two separate attempted assassinations in the United Kingdom and in Russia itself.

To uphold the integrity of the Convention, the United States and other concerned States Parties have put forward a draft decision entitled *"Addressing the Threat from Chemical Weapons Use and the Threat of Future Use."* It calls for capacity building for States Parties to address the growing threat from non-state actors; proposes greater transparency regarding the transfer of scheduled chemicals to Syria; and recommends collective measures to address the continuing Syrian chemical weapons threat. We urge Delegations to support it.

Challenges to the Convention also stem directly from Russia's repeated use of Novichok nerve agents: in 2018 against the Skripals, and in 2020 against Aleksey Navalny. Two years after being asked for clarification on the poisoning of Mr. Navalny - which only Russia had the motive, means, and track record to attempt - Russia has yet to provide any substantive response. We call on Russia to fully declare and dismantle its chemical weapons program as mandated by the Convention.

Russia must also explain its troubling supporting role in Syria. Indeed, in its report on the Douma CW attack, the IIT notes that *"Russian forces were co-located at Dumayr airbase alongside the Tiger Forces,"* the Syrian unit responsible for the attack and with whom Russia maintains a relationship "*of special proximity and close coordination at the operational and tactical level.*"

Russia's problematic behavior has now expanded to Ukraine. Article I of the CWC prohibits use of riot control agents (RCAs) as a method of warfare. Yet reports shared by our Ukrainian colleagues and aired on Russia's own State media, suggest Russian armed forces are using RCAs against Ukrainian forces. Asked for clarification on those troubling reports, Russia, unsurprisingly, responded with unsubstantiated counteraccusations. We call on Russia, once again, to immediately and unconditionally withdraw from Ukraine and to comply with its CWC obligations, including refraining from using RCAs as a method of warfare.

Mr. Chairman, understandably, an overwhelming majority of our colleagues in the Eastern European Group (EEG) do not want the Russian Federation to hold a seat in the Executive Council when it has failed to meet its obligations under the Convention and has continued its illegal invasion of another group member. The United States encourages delegations to respect the will of the EEG and support the candidacies of Lithuania, Poland, and Ukraine for the Executive Council. The United States agrees with the opinion of the majority of the EEG countries that Moscow's appalling track record of violating the UN Charter and supporting chemical weapons use makes it unfit for a leadership position in an organization dedicated to the eradication of such weapons.

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3. Biological and Toxin Weapons Convention

a. Working Group of Strengthening of the Biological Weapon Convention

The Working Group on the strengthening of the Biological Weapons Convention, which was established by the Ninth Review Conference of the Biological Weapons Convention, began its work in 2023. The United States participated in the sessions of the Working Group and submitted a number of working papers, including a paper submitted for the third session of the Working Group in December 2023 describing the U.S. approach to the working group. The paper is available at https://documents.un.org/api/symbol/access?s=BWC/WG/3/WP.9/REV.1&l=en and included below.

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1. At the Ninth BWC Review Conference, U.S. Under Secretary of State Bonnie Jenkins posed the fundamental question - "How do we strengthen implementation of the Convention and enhance mutual assurance of compliance?" The Biological and Toxin Weapons Convention (BWC) was signed and entered-into-force five decades ago. We must now address the challenges posed by the biological landscape of the 21st century. We need to examine how technology has changed and what the bioweapons threats of today and tomorrow look like.

2. At the Ninth Review Conference, the United States strongly supported the establishment of an intersessional, expert Working Group with a view to examining and recommending a set of measures for meaningfully strengthening the implementation of the Convention. Reaching consensus on a framework of such measures would provide a substantive basis for consideration by States Parties of any further action, including the possible negotiation of a supplementary agreement.

3. The success of this Working Group is important to the future of the BWC. Success, however, requires the Working Group to identify effective measures, including possibly legally-binding measures, to strengthen and institutionalize the Convention in all its aspects. To develop such effective measures, we all must recognize that the verification challenge for biological weapons is unique in comparison to other classes of weapons of mass destruction (WMD) and warrants a different approach to addressing verification.

4. In this regard, the United States considers it essential that the Working Group distinguish between verification measures and transparency measures. This is not an issue of semantics, rather it is necessary to establish a shared understanding of the specific purposes of these two types of measures. The purpose of any verification measures would be to provide specific information to support a determination, with a significant level of confidence, of whether activities of a State Party are compliant with the Convention. As noted by the Second BWC Review Conference, the purpose of transparency measures is to prevent or reduce the occurrence of ambiguities, doubts and suspicions and to improve international cooperation in the field of peaceful biological activities. For example, the current BWC confidence-building measures (CBMs) do not constitute verification; instead, they promote transparency.

5. In addition to the threat posed by State-based BW programs, the United States considers it critical that the Working Group also consider and address the bioterrorism threat posed by non-state actors. Promoting and assisting effective national implementation of the Convention is essential to countering bioterrorism and other misuses of biology.

I. Promoting Transparency of National Activities

6. Transparency measures should be one of the key recommendations identified in the report of the Working Group for strengthening implementation of the Convention. The national information provided under such measures can help to prevent or reduce the occurrence of ambiguities, doubts and suspicions and to improve international cooperation in the field of peaceful biological activities.

7. The Working Group should consider recommending measures to achieve consistent implementation of the CBMs and whether, and how, to transform some or all of the current CBM topics into annual, legally-binding declaration requirements. Since many countries currently do not submit annual CBMs or do so only intermittently, transparency measures would be much more effective and beneficial if they were legally mandatory for all States Parties. The current CBM topics are as follows:

- Exchange of information on Biosafety Level 4 (BSL-4) laboratories or highest level of containment;
- Exchange of information on specific national biological defense research and development programs;
- Exchange of information on unusual outbreaks of disease and similar occurrences caused by toxins;
- Encouragement of publications of results and promotion of use of knowledge;
- Declaration of legislation, regulations, and other measures;
- Declaration of past activities in offensive and/or defensive biological research and development programs;
- Licensed vaccine production (for the protection of humans) facilities.

8. Since the current CBMs were conceived over three decades ago, the Working Group should consider what measures do, or would, prevent or reduce the occurrence of ambiguities, doubts and suspicions and thereby build confidence that State Parties are in compliance with the Convention. Such measures should not entail any requirement to disclose national security information or confidential commercial/business information and not impose any undue national implementation burden on States Parties.

II. Developing a Verification Toolbox

9. Biological weapons pose unique challenges for arms control verification and compliance, warranting a different, more tailored approach. These unique challenges derive from the very nature of such weapons and the worldwide spread of biotechnology.

10. Unlike nuclear and chemical weapons, the potential threat posed by biological organisms and toxins has its origin in nature, not human invention. The use of pathogens and toxins as weapons dates back many hundreds of years before the discovery of bacteria or viruses. In the 20th century, early military biological weapons programs harvested pathogens and toxins directly from nature and turned them into weapons. The advent and advance of modern biology carried with it the potential to develop increasingly sophisticated biological weapons and effective delivery mechanisms. Today, dual-use equipment -- widely available and small in scale - could produce the quantity of agent required for a localized attack or, if a contagious agent was employed, causing a regional epidemic or global pandemic.

11. Further, unlike nuclear and chemical weapons, humanity has responded globally to the natural threat of disease with peaceful public health facilities, research institutes, pharmaceutical facilities, laboratories, and biotechnology centers - all directed at protecting humanity through research, development and production of prophylactic treatments, vaccines, medicines, and other therapies. To combat natural disease threats, these types of facilities often work with dangerous pathogens/toxins and with dual-use technology and equipment intended for peaceful purposes but capable of being exploited for purposes prohibited by the Biological Weapons Convention.

12. In sum, the broad geographic scope, vast scale, complexity, and dual-use character of the global biological landscape impose serious limitations on the ability of any multilateral regime to verify on a routine basis the very wide range of relevant biological facilities and activities. The central challenge for the Working Group is to develop a realistic approach to verification and compliance which fully takes into account the obligations of the Convention and the inherent limitations of the unique dual-use landscape. The obligations of Article I of the Convention prohibit activities based on their purpose. Thus, whether an activity is prohibited depends in large part on the actor's intent. Because biological organisms and toxins, research and development, equipment, and technology can be used for good as well as harm, BW programs and related activities are difficult to detect - posing serious verification challenges.

13. This central reality has direct implications for the utility of routine facility inspections -a common aspect of other WMD arms control regimes. In the context of on-site verification, the United States has concluded that any regime that would periodically inspect biological facilities -- either identified in annual CBM submissions or selected through some other criteria -- would not provide the information needed to verify a State Party's compliance with the Convention. Specifically:

- The number of relevant facilities is vast and growing. There are tens of thousands of facilities worldwide containing dual-use equipment, microbiological production capabilities, dangerous pathogens or toxins, and/or other relevant biological capabilities - which will only continue to increase as biological science and technology advance worldwide;
- Any future BWC implementing organization would only be able to conduct a very limited number of such routine inspections each year;
- For those few facilities inspected, the inherent, dual-use nature of biological activities would pose serious challenges to accurately assessing compliance;
- The verification effectiveness of a routine inspection regime could be easily negated if a State Party simply did not declare facilities engaged in offensive biological weapons activities. Such illicit activities could be conducted in a relatively small and non-descript space, not readily susceptible to external detection.

14. For all these reasons, the United States recommends that the Working Group conduct a process for considering what effective verification measures could be identified in the event a State Party has specific compliance concerns and credible supporting evidence with respect to the activities of another State Party. These additional measures for addressing compliance concerns could constitute a "toolbox" approach to verification specifically intended to address alleged BW programs and other activities prohibited by the Convention, including the use of biological weapons. Approaches that could be considered as part of this toolbox are as follows.

Investigation of Alleged Use of Biological Weapons

15. The Working Group should support consideration by States Parties of measures, to include possible legally-binding measures, to facilitate rapid, credible investigations of alleged use of biological weapons. In this regard, as part of its consideration of how and whether to establish a future BWC implementing organization, the Working Group should explore what technical and logistical capabilities would be needed to conduct such investigations. Further, by facilitating such an investigation, it would also strengthen implementation of Article VII by enhancing the ability to obtain evidence that a State Party has "been exposed to a danger as a result of violation of the Convention" -- the threshold requirement for Article VII. In this regard, given the critical importance of addressing BW use, the Working Group should consider how to authorize and structure support to any such UN investigation when requested by the UN Secretary-General.

Concerns about Biological Activities at Facilities

16. The Working Group should recommend consideration of additional measures for addressing compliance concerns regarding activities at facilities. The BWC prohibits the development, production, stockpiling, or otherwise acquiring or retaining biological weapons - illicit activities which could be pursued at such facilities. However, the biological weapons context faces significant and unique challenges. Such measures must carefully balance appropriate investigatory access with the need for States Parties to protect sensitive national security and confidential commercial/business information. Moreover, it is important to effectively deter and address unfounded, abusive investigation requests.

17. Other arms control agreements contain provisions for addressing concerns about noncompliant activities at facilities. These include detailed procedures for when treaty implementing organizations can conduct an on-site inspection at a facility in response to a specific concern lodged by a State Party. Some agreements also provide for clarification procedures for States Parties, under the auspices of the implementing organization, to address concerns about the noncompliance of another State Party. For purposes of the Working Group, the United States would support a recommendation for further consideration of procedures for addressing compliance concerns regarding activities at facilities. However, given the technical complexities, difficulties in determining intent, and political sensitivities, the type, modalities, and other details of any such procedure would need to be subsequently considered by States Parties.

18. Finally, the Working Group should recommend consideration of the capability to provide upon request on-site technical assistance and technical evaluation to States Parties in implementing the provisions of the Convention. The experience of the Organization for the Prohibition of Chemical Weapons (OPCW) underscores the importance of such technical assistance in implementing the provisions of the Convention.

III. Countering Bioterrorism through Effective National Implementation

19. Preventing the misuse of biology, most critically bioterrorism, should be of central concern to all States Parties. Article IV of the Convention obligates States Parties to take necessary measures to "prohibit and prevent" development and acquisition of biological weapons. To counter any such threats, the Working Group should recommend consideration, with respect to dangerous microorganisms, viruses, and toxins, of national measures to: (1) prevent unauthorized access and misuse, (2) ensure the physical security of laboratories, (3) regulate and control possession and transfer of materials, and (4) ensure oversight and responsible conduct of research.

20. Consistent with UN Security Council Resolution 1540 and Article III of the Convention, the Working Group should also recommend that States Parties enhance national efforts to regulate, through export controls and other measures, transfers to other countries related to dual-use equipment and dangerous pathogens and toxins as well as other biological materials.

21. The recommendations of the Working Group should note the important connection and synergy between international cooperation and assistance and achieving effective national implementation of UN Security Council Resolution 1540 and Articles III and IV of the Convention.

22. Finally, the United States also recognizes the potential value of voluntary on-site visits offered by a State Party to promote expert exchange partnerships, conduct peer-review of its national implementation measures, and enhance confidence in effective implementation of Articles III and IV.

IV. Enhancing International Cooperation and Assistance

23. With respect to any future implementing organization, the Working Group should consider how best to structure a mechanism for international cooperation and assistance (ICA) with the following objectives:

- Assisting States Parties in fulfilling their national implementation obligations;
- Enhancing international cooperation and assistance;
- Promoting assistance, response, and preparedness, including under Article VII;
- Promoting the peaceful uses of biology consistent with Article X.

24. With reference to paragraph 18, Part II, of the Report of the Ninth BWC Review Conference, any ICA mechanism established by States Parties could be incorporated into the ICA activities of any future implementation body, if one is established. The United States has actively supported the establishment of an ICA mechanism and, in this regard, co-sponsored an official working paper to the second meeting of the Working Group (BWC/WG/2/WP.3/Rev.1).

V. Institutionalizing Implementation

25. The OPCW and the International Atomic Energy Agency (IAEA) underscore the fundamental role of an international organization for effective treaty implementation and provide models for the Working Group to consider for institutionalizing implementation of the BWC. To perform the functions outlined above, the Working Group should explore options for institutional structures for promoting the object and purpose of the Convention.

26. Consideration should also be given to the possible establishment of a certified network of national laboratories. Given the overlap between the BWC and the Chemical Weapons Convention regarding toxins, such a network could potentially be formed in partnership with the OPCW.

27. Finally, the United States fully supports the near-term establishment of a scientific and technology review mechanism in accordance with paragraph 19, Part II, of the Final Report of the Ninth Review Conference. Such an S&T mechanism could be incorporated into any future implementing organization.

VI. Achieving the Promise of the Ninth Review Conference

28. The United States fully supports the mandate and efforts of the intersessional Working Group on the Strengthening of the Convention. The Review Conference directed the Working Group "to complete its work as soon as possible, preferably before the end of 2025."

29. The year 2025 will be the 100th anniversary of the signing of the 1925 Geneva Protocol and the 50th anniversary of the entry-into-force of the Biological Weapons Convention.

These impending anniversaries are a reminder of our solemn responsibility as States Parties to work towards a world free of biological weapons.

30. As tasked by the Ninth Review Conference, we are committed to working with interested States Parties to successfully establish a mechanism for enhancing cooperation and assistance as well as a mechanism for scientific and technology review by 2025.

31. The United States is further committed to finalizing a report of the Working Group by the end of 2025 which sets out recommendations on measures to support a way forward to strengthen the Biological Weapons Convention and the international norm against the possession and use of biological weapons.

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b. Biological Weapons Convention Meeting of States Parties

On December 14, 2023, the State Department released the U.S. national statement at the BWC Meeting of States Parties on December 13, 2023. The statement is available at https://www.state.gov/u-s-national-statement-at-the-bwc-meeting-of-states-parties-december-13-2023/, and excerpted below.

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It has been a year since the Ninth Review Conference turned the page on the past by establishing a Working Group for Strengthening Implementation of the Convention. This Working Group is a new beginning and an important opportunity to strengthen and institutionalize the Convention. In his message to the Review Conference, UN Secretary-General Guterres laid out the challenge before us in stark and compelling terms. He cautioned:

"Biological weapons are not the product of science fiction. They are a clear and present danger. That's why strengthening the Biological Weapons Convention is more important than ever."

We must heed the call of the Secretary-General. Together States Parties must seize this moment and work to deliver on the promise of the Ninth Review Conference.

Under the highly capable and dedicated leadership of the Chair, Ambassador Flavio Damico, the Working Group is off to a solid start in its first year. Six of the seven subject areas tasked by the Review Conference have already been considered and extensive discussions are continuing regarding the development of respective mechanisms for international cooperation and assistance as well as scientific and technological review.

At the Review Conference, the United States strongly supported the establishment of the intersessional Working Group and its mandate to identify and recommend measures to strengthen and institutionalize the Convention. Reaching consensus within the Working Group on a framework of such measures would provide a substantive basis for consideration by States Parties of any further action, including the possible negotiation of a supplementary agreement.

As evidence of our continuing commitment, last week the United States submitted a national working paper to the Working Group outlining our overall approach to strengthening the Convention, including verification and compliance.

We are committed, as a matter of urgency, to achieving the promise of the Ninth Review Conference. The Review Conference directed the Working Group "to complete its work as soon as possible, preferably before the end of 2025."

The year 2025 will be the 100th anniversary of the signing of the 1925 Geneva Protocol and the 50th anniversary of the entry-into-force of the Biological Weapons Convention. These impending anniversaries are a reminder of our solemn responsibility as States Parties to work towards a world free of biological weapons.

The United States is committed to finalizing a report of the Working Group by the end of 2025 which sets out recommendations on measures to support a way forward to strengthen the Biological Weapons Convention and the international norm against the possession and use of biological weapons.

We are further committed to working with interested States Parties to establish a mechanism by 2025 for enhancing cooperation and assistance as well as a mechanism for scientific and technological review.

Our efforts in the coming year will be critical to the success of the Working Group. To maintain the necessary momentum, we must build a bridge of informal consultations between now and the next Working Group meeting in August. Ultimately, success will require that States Parties set their politics aside and embrace our shared interests and common humanity in addressing the threat of state and non-state development, possession, and use of biological weapons – a threat which respects no borders.

Mr. Chair,

The United States would like to raise one other issue. We note the documents submitted by the Russian Federation.

During the Article V Formal Consultative Meeting, the United States, jointly with Ukraine, fully addressed the unfounded concerns raised by the Russian Federation. However, it was clear from the outset of the Article V process that Russia never intended to engage constructively with Ukraine and the United States. It came to our attention on the very first day of the meeting that the Russian delegation had already made up its mind and circulated a draft of a proposed "joint statement" to select delegations regarding the outcome of this Article V Consultation. In this draft joint statement, the Russian Federation explicitly concluded that Ukraine and the United States had failed to answer questions regarding the activities of biological laboratories in Ukraine – a conclusion it reached before the United States and Ukraine even began our joint presentation.

Clearly, Moscow was not interested in hearing our responses, not interested in working in good faith with us. This was the most striking example, but it was only one of several actions through which the Russian Federation clearly signaled its lack of sincerity.

Russia then unsuccessfully escalated its false claims to the UN Security Council, requesting an investigation pursuant to Article VI of the BWC. Russia garnered only two of the nine votes required for adoption of its draft resolution – one of which was its own vote.

We consider this consultation process with Russia to be completed and closed, and we do not intend to engage any further on this matter.

In this regard, the Russian Federation has submitted working papers and other documents related to these false allegations as official documents. In no way should the participation of the

United States in this Meeting of States Parties or our consent to the MSP final report be construed or understood to be an acknowledgement or approval of such documents or the falsehoods they contain.

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Cross References

Norms of responsible behavior in outer space, **Ch. 12.B**
Iran-related sanctions, **Ch. 16.A.2**
UN Security Council Resolution 2231, **Ch. 16.A.2**
Nonproliferation sanctions, **Ch. 16.A.8**
North Korea sanctions, including nonproliferation sanctions, **Ch. 16.A.14.g**
Actions in Response to Iran and Iran-Backed Militia Groups, **Ch. 18.A.2**