

January 14, 2021

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

**The Biden Administration Should Rescind the Executive Order Imposing Sanctions on  
Officials of the International Criminal Court**

By Executive Order no. 13928,<sup>1</sup> President Trump created a sanctions regime concerning the International Criminal Court (“ICC”), including asset freezes and travel bans. Two individuals were subsequently designated for sanctions—ICC Prosecutor Fatou Bensouda and ICC official Phakiso Mochochoko. The Executive Order also more broadly covered rendering “services” and “material assistance,” which could include non-governmental organizations that cooperate with the ICC and even U.S. academics who work with the ICC. For many reasons, including those articulated in the Committee’s past Statement,<sup>2</sup> the U.S. should not be imposing sanctions on personnel of a judicial institution, particularly one supported by almost all major U.S. allies and whose work largely aligns with U.S. interests (e.g., prosecuting crimes in Darfur, committed in Uganda by the so-called “Lord’s Resistance Army,” and against the Rohingya). While the U.S. is not a party to the ICC’s Rome Statute—and therefore owes no formal obligation to cooperate with the ICC, which is examining the conduct of U.S. nationals in connection with the conflict in Afghanistan as well as crimes by the Taliban and Afghan Armed Forces—it is highly inappropriate to impose sanctions against international civil servants of a judicial institution for simply doing their jobs. The sanctions have been widely denounced by the American Bar Association,<sup>3</sup> the New York City Bar Association,<sup>4</sup>

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<sup>1</sup> Executive Order on Blocking Property of Certain Persons Associated with the International Criminal Court, June 11, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-certain-persons-associated-international-criminal-court/>.

<sup>2</sup> See Statement by the American Branch of the International Law Association International Criminal Court Committee: The Use of U.S. Sanctions to Undermine the Work of the ICC, Oct. 2, 2020, at [Statement by the American Branch of the International Criminal Court Committee Oct. 2020.pdf \(ila-americanbranch.org\)](#); Statement by the American Branch of the International Law Association International Criminal Court Committee: The United States and the ICC, March 25, 2019, at [Microsoft Word - ABILA ICC Statement.docx \(ila-americanbranch.org\)](#).

<sup>3</sup> ABA President Judy Perry Martinez statement Re: U.S. sanctions of International Criminal Court personnel, June 12, 2020, <https://www.americanbar.org/news/abanews/aba-news-archives/2020/06/aba-president-judy-perrymartinez-statement-re--u-s--sanctions-o/>.

<sup>4</sup> Statement by the New York City Bar Association Against U.S. Sanctions on Persons Working with or for the International Criminal Court, July 2020, at [2020750-OppositiontoEOonICC.pdf](#).

the Philadelphia Bar Association,<sup>5</sup> and over seventy UN Member States,<sup>6</sup> as well as 188 U.S. lawyers and academics<sup>7</sup> including past U.S. War Crimes Ambassadors from both Republican and Democratic administrations. Enforcement of the Executive Order has also now been preliminarily enjoined by a judge in the U.S. District Court for the Southern District of New York against a group of plaintiffs, including four U.S. law professors, who brought suit alleging, *inter alia*, the illegality of the Executive Order as infringing their right to free speech.<sup>8</sup>

For these reasons, as well as additional reasons expressed in the ICC Committee's prior Statements, the Biden Administration should rescind Executive Order no. 13928 at the earliest possible opportunity.

**--ABILA ICC COMMITTEE  
Professors Jennifer Trahan & Megan S.  
Fairlie, Co-Chairs**

**Professor Leila N. Sadat, President of  
ABILA (in her capacity as past Committee  
Chair)**

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<sup>5</sup> Philadelphia Bar Association Resolution Supporting Independence of the International Criminal Court and Freedom from Sanctions and Freedom to travel of its Members, June 24, 2020, [http://www.philadelphiabar.org/page/ResJune20\\_2?appNum=1](http://www.philadelphiabar.org/page/ResJune20_2?appNum=1).

<sup>6</sup> [Over 70 ICC nations support court and oppose US sanctions - ABC News \(go.com\)](https://www.abcnews.com/news/2020/06/30/icc-nations-support-court-and-oppose-us-sanctions/)

<sup>7</sup> Opinio Juris, "Statement against US Sanctions on ICC Investigations (Updated)," <https://opiniojuris.org/2020/06/30/statement-against-us-sanctions-on-icc-investigations/>.

<sup>8</sup> Press Release, Open Society Justice Initiative, Jan. 4, 2021, [Federal Judge Sides with Human Rights Lawyers over Trump Administration's ICC Ban - Open Society Justice Initiative](https://www.opensocietyfoundations.org/press-releases/2021/01/04/federal-judge-sides-with-human-rights-lawyers-over-trump-administrations-icc-ban).