

ADOPTED

AMERICAN BAR ASSOCIATION

MASSACHUSETTS BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

CENTER FOR HUMAN RIGHTS

SECTION OF INTERNATIONAL LAW

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

1 RESOLVED, That the American Bar Association urges the United States Congress and
2 the Department of State to ensure that the function of supporting criminal accountability for mass
3 atrocities resides in an office mandated to the pursuit of global criminal justice, with sufficient
4 resources and stature of leadership, such as an ambassador-at-large position, to ensure that the
5 United States' commitment to criminal accountability for mass atrocities is not diminished.
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Summary

On July 17, 2017, several news outlets reported that the State Department was planning to cut or eliminate funding and staffing for the Office of Global Criminal Justice, formerly called the Office of War Crimes Issues.¹ No alternative structure has been proposed, nor have there been any reports of an alternative allocation of resources or staff to continue to serve the important functions of promoting and supporting international criminal justice. A State Department spokesman would not confirm or deny the report, but emailed *Newsweek* the following statement: “The State Department is currently undergoing an employee-led re-design initiative and there are no predetermined outcomes. During this process, we are committed to ensuring the Department is addressing such issues in the most effective and efficient way possible. We are not going to get ahead of any potential outcomes.”²

On July 26, 2017, Congressman Lieu and thirty other members of Congress released a letter urging Secretary Tillerson not to close the war crimes office, stating, in part:

Among other achievements, GCJ obtained and helped authenticate the famed “Caesar photos” documenting atrocities committed by the Assad regime in Syria; coordinated the State Department’s financial and political support for an African Union court investigating those responsible for crimes in South Sudan; and advised foreign governments on transitional justice from Rwanda to Colombia to Sri Lanka. Closing this office would unilaterally degrade the U.S. Government’s knowledge base on criminal accountability at a time when we are witnessing some of the worst war crimes and crimes against humanity in a generation. From bringing Syria’s Assad to justice to addressing mass rape in the Central African Republic, it is the GCJ that stands ready to design a legally-sound international tribunal based on best practices.³

Ambassador Stephen J. Rapp, former U.S. Ambassador-at-Large for War Crimes Issues, issued a statement in response to the news, “[a]t a time when we need fair trials of the leaders of ISIL (Islamic State) to expose their acts of genocide, rape, and robbery, and to prosecute the egregious targeting of hospitals and health workers by the Assad Government, who will provide the leadership to overcome bureaucratic resistance and spearhead the diplomacy necessary to

¹ *Newsweek*: [Trump Administration Closing War Crimes Office](#) (July 18, 2017); *The Independent*: [Donald Trump's administration 'closes State Department office that investigates war crimes and genocide'](#) (July 18, 2017); Jurist (blog post): [A Step Backward: The Closure of the Office of Global Criminal Justice](#) (July 21, 2017); *Newsweek*: [ISIS and Syrian Regime War Crimes Could Go Unpunished Under Trump State Department Plan](#) (July 22, 2017); Just Security (blog post): [Why the U.S. needs the Office of Global Criminal Justice Led by a Senate-Confirmed Ambassador-at-Large](#) (July 26, 2017); Just Security (blog post): [State Dept. Office of Global Criminal Justice on the Chopping Block—Time to save it](#) (July 17, 2017); *Foreign Policy*: [Tillerson to Shutter State Department War Crimes Office](#) (July 17, 2017); Physicians for Human Rights (press release): [Statement of Former U.S. Ambassador-at-Large Stephen Rapp on the Proposed Elimination of the Office of Global Criminal Justice](#) (July 18, 2017); *NY Times*: [War Crimes Office May Be Closed in State Dept. Reorganization](#) (July 18, 2017); *The Hill* (op-ed): [The State Department's retreat in the fight against genocide](#) (July 19, 2017).

² <http://www.newsweek.com/trump-war-crimes-torture-tillerson-638404> (Last Accessed July 17, 2017).

³ <https://lieu.house.gov/sites/lieu.house.gov/files/documents/2017-07-26%20Letter%20to%20Tillerson%20-%20Office%20of%20Global%20Criminal%20Justice.pdf> (Last accessed July 28, 2017).

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gain the support of other governments? The promise of ‘never again’ has proven hard to keep. If this Office of Global Criminal Justice closes, it will become even more difficult.”⁴

A bedrock principle of the United States has been our devotion to the rule of law, in large part due to the many benefits it brings to peace, security, and commerce. It is for these reasons that the rule of law has been a cornerstone of American foreign policy since the founding of our republic. In keeping with this tradition, the United States has always believed that the atrocity crimes and their architects are destabilizing forces that are an affront to our principles and values and directly harm core U.S. national interests. The United States has long-held criminal justice and accountability to be of fundamental importance to combatting such forces, and has therefore acted to prevent and punish acts of genocide, crimes against humanity, and war crimes. The U.S. was at the forefront of developing international criminal justice starting with the International Military Tribunal at Nuremberg, International Military Tribunal for the Far East in Tokyo, and the numerous U.S. operated and supported courts around the world. These courts held accountable thousands of perpetrators of World War Two-era atrocity crimes. Following these successes, the U.S. has been a pioneer and steadfast supporter of modern international criminal justice, playing a pivotal role in the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), International Criminal Court (ICC), Special Court for Sierra Leone (SCSL) and the Extraordinary Chambers in the Court of Cambodia (ECCC; also known as the Khmer Rouge Tribunal).

The promotion of justice and accountability for atrocity crimes is deeply rooted in American history. The U.S. government presided at the birth of this field of law, and helped nurture it for the promotion of American values as well as American interests, not least of which being international peace and security. To continue in this tradition mandates that the Office of Global Criminal Justice (OGCJ) and the post of Ambassador at-large for War Crimes Issues⁵ be maintained, if not bolstered in this time of increasing atrocity crimes around the world which jeopardize American interests and values, either in the current structure that has been effective and fiscally responsible for years, or in a new format, preserving the funding, staffing, and position of Ambassador-at-large for war crimes.

Further, there is a genuine need for the OGCJ or a similarly constituted office or structure, given the highly unique demands of international criminal justice. Unlike domestic jurisdictions that typically involve only law enforcement, lawyers, and judges, international criminal tribunals require a complicated sequencing of political, diplomatic, and legal efforts in order that those who participate in atrocity crimes be held accountable. Accordingly, the OGCJ’s unique fusion of legal, technical, and policy expertise provides the clarity and perspective required by the United States government in determining its best options for assisting in these global judicial endeavors.

⁴ <http://physiciansforhumanrights.org/press/press-releases/statement-of-former-us.html> (Last accessed July 20, 2017).

⁵ The title of “Ambassador at-large for War Crimes Issues” is a holdover from the founding of this post during the Bill Clinton Administration. In 2012, the State Department renamed Office of War Crimes Issues to Global Criminal Justice, a more appropriate name given its work and mandate. However, the Ambassador’s post was not similarly renamed for unknown reasons.

While there may be a legitimate need for special envoys at the U.S. State Department to be streamlined or otherwise eliminated, this consideration does not apply to the OGCI for the reasons stated. More to the point, as stated publicly, the OGCI should be commended as a governmental example to follow, given that it is a lean office with a shoestring budget that has accomplished much in various fora across the globe. To eliminate, demote, or otherwise diminish the OGCI not only sends the wrong international message about American leadership in the rule of law—including to would-be perpetrators of atrocity crimes, but it also disincentivates other governmental agencies from striving to be effective and efficient. At a minimum, the OGCI should be allocated greater budgetary and personnel resources, showing other governmental departments that doing more with less is cause for reward. Nor should the OGCI be eliminated without a clear plan for its replacement, and a plan which takes into account the successful and influential manner in which the OGCI operated, while remaining fiscally responsible.

Indeed, the imposition of criminal accountability during often complex conflict or post-conflict situations is not the easiest foreign policy consideration to develop or support. Often the short-term desire for peace and stability sidelines justice considerations without good reason, even if criminal accountability best serves U.S. national interests. It is for this reason that the U.S. government and its short- and long-term interests are best protected and promoted by a central governmental office with the capacity and mandate to represent justice considerations during the formation of relevant U.S. policy positions, and to ensure that the rule of law remains a fundamental principle of the international policy of the United States.

All these reasons and additional ones discussed below help explain why OGCI has enjoyed unwavering bipartisan support throughout its twenty-year existence, and why the ABA strongly supports its continued and enhanced operation, either in its current structure or in the creation of a new entity that will be equally funded and staffed to continue the important function of upholding the United States' commitment to international criminal law.

Existing ABA Resolutions and/or Standards

Like the United States, the American Bar Association (ABA) has long advocated for the importance of investigating and prosecuting those who participate in the atrocity crimes of genocide, crimes against humanity and war crimes. The ABA has also championed the U.S. government's leadership in collaborative efforts among nations to end impunity for such mass crimes, and secure justice for their victims.

In 1998, the ABA passed a resolution in support of the establishment of the International Criminal Court, expressing the importance of prosecuting the most serious crimes under international law and in the years that followed, the ABA continued to support international criminal justice efforts, and recognized the importance of United States cooperation and assistance in these efforts.⁶

In 2004, the ABA adopted policy on universal criminal jurisdiction, seeking to “strengthen the rule of law by providing the means for the prosecution of persons who have

⁶ See ABA Resolutions and Reports: 1998M118B, 2001M103C, 2001M105C.

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committed serious international crimes, regardless of where they are committed or by whom or against whom,” and urging “the United States Government to work with governments of other nations to take all reasonable steps to ensure that the application of universal criminal jurisdiction by all nations is uniform and consistent with the foregoing.”⁷

The ABA also strongly indicated its support of the functions of the OGCI and the important role the United States can play in international criminal justice when it adopted policy in 2008 calling upon “the United States Government to expand and broaden United States interaction with the International Criminal Court, including cooperation with the Court’s investigations and proceedings.”⁸

I. Background of the Office of Global Criminal Justice

The Office of Global Criminal Justice (hereinafter “OGCI”), until recently headed by Todd F. Buchwald, advises the Secretary of State and the Under Secretary of State for Civilian Security, Democracy, and Human Rights on issues related to war crimes, crimes against humanity, and genocide (known collectively as atrocity crimes). In particular, the Office helps formulate U.S. policy on the prevention of, responses to, and accountability for mass atrocities. To this end, the Office advises U.S. Government and foreign governments on the appropriate use of a wide range of transitional justice mechanisms, including truth and reconciliation commissions, lustrations, and reparations, in addition to criminal justice processes.

Secretary of State Madeleine Albright created this position in 1997 to bring focus in American foreign policy to the twin imperatives of enabling the prevention of, and ensuring accountability for, atrocities around the world. In 1997, President William J. Clinton appointed David Scheffer to serve as the first advisor to the Secretary of State on U.S. policy responses to atrocity crimes. Ambassador Scheffer described the importance of this new position in his 2011 memoir:

On the one hand, this initiative marked a sad commentary on the state of the world at the close of the 20th century – 50 years or so after the Holocaust and the Nuremberg and Tokyo Tribunals and two decades after the atrocity crimes that devastated Cambodia during the rule of Pol Pot. On the other hand, my ambassadorship demonstrated that the United States recognized the gravity of the situation and rose to the challenge. No other nation had seen fit to designate anyone as an ambassador to cover atrocity crimes.

In 2001, President George W. Bush appointed Pierre-Richard Prosper to serve as Ambassador-at-Large to Secretary of State Colin Powell, and, in 2005, he appointed John Clint Williamson to succeed Prosper as Ambassador-at-Large to Secretary of State Condoleezza Rice. In 2009, Stephen Rapp was appointed to the post by President Obama.

The OGCI also coordinates U.S. Government positions relating to the international and hybrid courts currently prosecuting persons responsible for genocide, war crimes, and crimes

⁷ See ABA Resolution and Report 2004M103A.

⁸ See ABA Resolution and Report 2008A108A.

against humanity – not only for such crimes committed in the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia – but also in Kenya, Libya, Côte d'Ivoire, Guatemala, and elsewhere in the world. The OGCJ works closely with other governments, international institutions, and nongovernmental organizations to establish and assist international and domestic commissions of inquiry, fact-finding missions, and tribunals to investigate, document, and prosecute atrocities in every region of the globe. The OGCJ coordinates the deployment of a range of diplomatic, legal, economic, military, and intelligence tools to help expose the truth, judge those responsible, protect and assist victims, enable reconciliation, deter atrocities, and build the rule of law.

The OGCJ supports U.S. diplomats operating in conflict and post-conflict scenarios by providing subject matter expertise regarding atrocity crimes. It is also the point of contact for international, hybrid, and mixed tribunals exercising jurisdiction over war crimes, crimes against humanity, and genocide committed around the world. The OGCJ is also responsible for implementing the part of the U.S. Rewards for Justice program which provides rewards to people who provide information leading to the capture and conviction of indicted war criminals. Finally, the OGCJ is represented on the Atrocities Prevention Board, charged with coordinating a whole-of-government approach to strengthen the U.S. Government's ability to foresee, prevent, and respond to genocide and other mass atrocities. In order for these important programs to continue without disruption, the State Department must either preserve the OGCJ or develop a transition plan that allocates and addresses all of the important functions the OGCJ serves.

Under the War Crimes Rewards Program (WCRP), the U.S. Department of State offers rewards of up to \$5 million (USD) to individuals who provide information regarding designated defendants who have been charged with the commission of international crimes. Bipartisan legislation signed on January 15, 2013 expanded the authority of the Department of State to provide rewards for information leading to the arrest or conviction in any country, or the transfer to or conviction by any international criminal tribunal, of any foreign national accused of war crimes, crimes against humanity, or genocide. Prior to the expansion, the War Crimes Rewards Program was limited to individuals indicted by specific international criminal tribunals: the Special Court for Sierra Leone (SCSL), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR). Under this legislation, the Department of State, in consultation with relevant offices and agencies, may designate additional foreign nationals charged with the commission of genocide, war crimes or crimes against humanity by *any* international criminal tribunal (including a mixed or hybrid tribunal). The Office of Global Criminal Justice (OGCJ manages the WCRP in close coordination with partners within the U.S. government, foreign governments, international tribunals, and non-governmental organizations.

The WCRP has led to the arrest and capture of fugitives from the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The ICTY has accounted for all 161 individuals it has indicted. Meanwhile, the Rwandan tribunal has nine fugitives still at large.⁹ OGCJ's work is discussed in greater detail at

⁹ <https://www.state.gov/j/gcj/> (Last accessed July 17, 2017).

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the Samuel Dash Conference at Georgetown Law in April 2017 (the OGCI panel starts at minute 43).

The ADVANCE Democracy Act of 2007 (22 U.S.C. 8213) directs the Ambassador-at-Large for War Crimes Issues to assist the President and other senior officials in collecting information regarding incidents that may constitute crimes against humanity, genocide, slavery, or other violations of international humanitarian law.¹⁰ The Department of State Rewards Program Update and Technical Corrections Act of 2012 (S. 2318, in 22 U.S.C. 2708) expanded the Department of State's authority to issue rewards for information leading to the arrest or conviction of foreign nationals indicted by an international, hybrid, or mixed tribunal for genocide, war crimes, or crimes against humanity.

The OGCI plays a number of prominent roles, including regular briefs to Congress on international justice issues, research and investigations, logistical and training support for nations, and coordinated efforts to prevent and prosecute war crimes and other atrocities. Atrocity prevention is also a part of the mission of the OGCI, a goal that is central to the national security interests of the United States. Presidential Study Directive-10 states that, “[p]reventing mass atrocities is a core national security interest and a core moral responsibility of the United States of America.” The 2015 National Security Strategy noted that “[w]e will work with the international community to prevent and call to account those responsible for the worst human rights abuses.”

The U.S. Government, primarily through the work of the OGCI, provides financial support for justice initiatives, capacity building, and funding for civil society organizations to conduct activities to hold their governments accountable for abuses. Various agencies and departments within the U.S. Government also provide technical support and advice to foreign governments, inter-governmental organizations, and civil society organizations. Finally, the U.S. Government, through diplomacy, laws, resolutions, and other actions, helps countries redress histories of abuse to pave the way for a more peaceful and just future.

II. Engagement and Support of International Criminal Tribunals and National Jurisdictions

¹⁰ **§8213. Investigations of violations of international humanitarian law provides:**

(a) In general

The President, with the assistance of the Secretary, the Under Secretary of State for Democracy and Global Affairs, and the Ambassador-at-Large for War Crimes Issues, shall collect information regarding incidents that may constitute crimes against humanity, genocide, slavery, or other violations of international humanitarian law.

(b) Accountability

The President shall consider what actions can be taken to ensure that any government of a country or the leaders or senior officials of such government who are responsible for crimes against humanity, genocide, slavery, or other violations of international humanitarian law identified under subsection (a) are brought to account for such crimes in an appropriately constituted tribunal.

(Pub. L. 110-53, title XXI, §2113, Aug. 3, 2007, 121 Stat. 531.)

As mentioned above, OGCI is the U.S. governmental hub for relations with the various international criminal tribunals investigating and prosecuting atrocity crimes (all of which are tribunals that the U.S. worked to establish and support). By way of background, the sovereignty of nations over their territories and residents precludes international tribunals from having independent enforcement power. Accordingly, investigations and prosecutions at these international courts depend on the cooperation and assistance of individual states to facilitate investigative activity and enforce judicial orders in their territories or over their nationals when and where such is deemed relevant. As it relates to US governmental cooperation and assistance with international courts, this relationship is managed by OGCI. For example, the sharing of intelligence, interviewing of witnesses, or collecting of documentary evidence in support of international criminal proceedings at such tribunals would be overseen by OGCI in cooperation with relevant affiliated U.S. governmental agencies, such as the Department of Justice or Department of Defense.

To the extent that national jurisdictions undertake atrocity crime investigations and prosecutions and seek the assistance of the U.S. government, OGCI likewise manages such provisions, including any capacity building support desired.

Having OGCI manage such relations ensures the quality and expediency of US cooperation and assistance with international or foreign investigations and prosecutions of atrocity crimes, and inversely, the robust protection of American interests at stake. The alternative, in which multiple U.S. agencies attempt to work together in a coordinated and coherent fashion with international tribunals with which they lack familiarity, results in an inefficiency of cooperation and an insecurity of American interests being pursued and protected. All involved lose out in this alternative formulation: the world sees barbaric dictators or terrorist leaders maintain their impunity; victims are stripped of the opportunity for justice and accountability; and relevant Americans interests are forsaken and jeopardized.

The recent Just Security article on the proposed closure of the OGCI provides a detailed list of the important recent activities of the office in this regard:

- OGCI coordinated a long-standing campaign to discourage governments from extending diplomatic invitations to senior Sudanese officials subject to International Criminal Court (ICC) arrest warrants for genocide and other crimes in the Darfur investigation, including President Omar Al-Bashir.
- OGCI engaged in high-level diplomacy with the African Union, Senegal, and Chad resulting in the establishment of a hybrid AU-Senegalese court in 2012. OGCI also worked to secure a \$1 million U.S. contribution to the court, which convicted Habré in 2016.
- Following the peace agreement in Colombia, OGCI has provided technical expertise to key players in the transitional justice process to ensure that agreement is implemented in a way that will meet Colombia's international and domestic legal obligations and promote durable peace.
- OGCI successfully obtained and shared with the Department of Justice and others the "Caesar photos," a cache of over 50,000 photos smuggled out of the Syria by an Assad regime defector. OGCI then worked with the FBI to authenticate the photos, which have

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been shared with likeminded foreign governments also focused on accountability for atrocities committed in Syria. This led to the filing of a ground-breaking lawsuit in Spain on behalf of the sister of one of the victims.

- OGCI has coordinated the State Department's financial and political support for the establishment of an African Union hybrid court to investigate and prosecute those responsible for crimes committed in South Sudan.
- OGCI has actively supported the International Criminal Tribunal for the former Yugoslavia (ICTY) and has helped several Balkan countries set up and develop their domestic war crimes tribunals. It also seconded one of its staff to the European Union's Special Investigative Task Force (SITF), which conducted criminal investigations into the war crimes and organized crime allegations in Kosovo and laid the groundwork for the establishment of a hybrid court in the Netherlands to prosecute offenders.
- OGCI participated in the Atrocity Prevention Board's first-ever large-scale mission to a focus country, Burundi, which helped to build international attention to a burgeoning crisis.

On an ongoing basis, OGCI works closely with officials from a wide range of tribunals and national law enforcement institutions to locate and apprehend fugitives. OGCI also provides technical expertise to the Department, interagency partners, partner governments, international institutions, civil society organizations, and victims groups on how to document atrocities, promote justice and accountability, and deploy the whole range of transitional justice mechanisms post-conflict.”¹¹

The OGCI has been at the forefront of United States relations with the ICC, and American interests are best advanced with an experienced and specialized office at State coordinating relations with the world's only permanent international court with a mandate to investigate and prosecute atrocity crimes. Despite United States concerns with the ICC as an institution and some of its casework, there is a fundamental acknowledgement across partisan lines that the world is better off with the ICC and that the U.S. national interests are more often than not served by the ICC. To date, the United States has supported every full situation country before the ICC, and both Democratic and Republican administrations have provided valuable cooperation and assistance to active ICC cases, including the arrest of ICC fugitives. Both the Bush and Obama administrations also supported (through a positive vote or abstention) of the two UN Security Council referrals of situations to the ICC. All the above was successfully coordinated while also protecting and advancing US interest because of the existence and productivity of the OGCI.

Looking forward, the ICC casework will only expand into more places around the world as atrocities spread, making the OGCI as the regular ICC liaison needed more so than ever. Potential cases in Afghanistan and Palestine at the ICC are perfect illustrations of this need. These cases have raised concerns with certain elements of the United States government. The U.S. is best represented by a seasoned office with existing and ongoing relations with the ICC which will know both the proverbial terrain and how best to promote and safeguard American interests in these and like cases. The U.S. is at a unique disadvantage otherwise — becoming

¹¹ <https://www.justsecurity.org/43213/u-s-office-global-criminal-justice-chopping-block/> (Last Accessed July 17, 2017).

unable to prepare for judicial events coming out of The Hague, and becoming more prone to being caught off-guard and vulnerable.

III. Counterterrorism, National Security, and Economic Stability

Often the violence perpetrated by militant terrorist groups amount to atrocity crimes. For example, the 9/11 attacks by al-Qaeda amounted to crimes against humanity, and groups like Islamic State, Boko Haram, and al-Shabab regularly organize atrocity crimes such as mass murder, enslavement, systematic rape, and even genocide. While military means are useful counterterrorism measures that should always be available, the use of force should not be the only option. Further, military means is not always advisable given the many unintended consequences that can come from it, not to mention the human and financial cost. In fact, military action often turns terrorists into “martyrs” — a result that inversely helps the opposition enlist outraged new recruits and thus perpetuate the cycle of violence. In many instances, it is better to use criminal trials to unmask terrorists as anything but pious; to demonstrate that these individuals are murderers, rapists, recruiters of child soldiers, and genocidaires to whom the religious should not listen, let alone follow.

Accordingly, accountability for atrocity crimes is important as a tool in the fight against terrorism and as a safeguard of national security concerns often targeted by terrorism, such as attacks on expatriate or vacationing Americans, military service members stationed abroad, or American commercial interests and trade overseas. It is, therefore, more important than ever for the U.S. government to have a dedicated office with the tools, resources, and relationships to help prevent terrorist attacks through international legal means and to ensure that perpetrators of terrorism-related atrocities are brought to justice. The OGCJ is that office, and it has provided such resources, and it can continue to do so, either in its current structure or via the creation of a new office or coalition within the federal government with the same mandate and resources.

The OGCJ plays a vital counterterrorism and national security role through its prevention work, assistance to international and foreign criminal investigations, and related capacity building. The rule of law development programs that OGCJ helps develop and implement assist in the strengthening of criminal justice systems overseas, thus encouraging domestic enforcement of atrocity crimes as well as protection against human rights abuses generally. These efforts are at the forefront of stopping terrorism before it even reaches our borders, and of making sure those who target our citizens or military forces operating abroad are punished.

This work by the OGCJ also helps in the proper evaluation of those national jurisdictions with a low capacity to investigate and prosecute atrocity criminals like terrorists, or where the government itself is corrupt or engaging in abuses. This knowledge enables the United States to focus its efforts more prudently and protect itself in more vulnerable areas.

The protection of United States Armed Forces is also a key component of this endeavor. Our military operates worldwide, and has been a target for attacks, even when performing peaceful operations. If another nation’s military engages in behavior that violates the laws of war or international humanitarian law, this directly threatens the safety and security of the men and women who so bravely defend the United States and seek to defend the safety and security of

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vulnerable populations and American interests around the world. It is thus important to have an office, separate from the military branches, to engage in investigations and assist in any subsequent prosecution. An independent office can also engage in investigations of allegations of misconduct committed by our own forces, and ensure that any conclusions are given greater credibility and legitimacy (as opposed, for example, to the situation in Kunduz, when U.S. military forces bombed a Doctors Without Borders hospital and the international human rights community rejected some of the findings of the Department of Defense).¹² Whereas, in the Kunduz situation, the Department of Defense admitted error and disciplined personnel, many in the IHR community felt that the investigation was biased and that DOD had a conflict of interest.

The commercial interests of Americans and U.S. based entities abroad – such as trade, foreign direct investment, securities, and market exploration – are also jeopardized by the activities of both terrorists and more traditional types of atrocity criminals such as rebel groups or dictators. International conflict and internal strife can interfere with overseas operations, commercial transactions, market stability, trade routes, and supply chains. Wide-spread government corruption can also underpin human trafficking or similar activities – that could be classified as crimes against humanity – all of which likewise interfere with a corporation’s ability to conduct business in a fair setting and in full compliance with U.S. laws. As a result, United States economic interests include that of global stability and the prevention of mass atrocities. The rule of law, which the activities of OGCI help promote and ensure, are therefore integral to the furtherance and maintenance of American economic interests.

Moreover, having an office like OGCI in a separate government agency protects against claims of favoritism to any party or President, something essential in any aspect of criminal justice. Housing this office within the State Department also provides for key coordination on a number of levels (criminal justice, trade, diplomacy), as international actors attempt to strike the always delicate balance between peace and justice. The decision-making and resolution of matters involving atrocity crimes and other mass violations of human rights are far more complex decisions than those most frequently encountered by prosecutors and law enforcement personnel within the Department of Justice.

IV. Immigration “No Safe Haven”

Particularly over the past 25 years, individuals who have participated in atrocity crimes abroad have slipped into the United States through fraud or other means. U.S. governmental officials stated that from 2011 to 2015, there were more than 67,000 lookouts for individuals from more than 111 countries, and 161 human rights violators or war crime suspects were stopped from entering the United States. This fact shows how serious this problem is and can become in the age of Islamic State and Boko Haram.

To be sure, the overwhelming majority of people escaping oppression, strife, or war abroad are law-abiding individuals simply trying to find peace, stability, and a better life. Only the tiniest fraction of such emigrating individuals perpetrated or oversaw atrocity crimes.

¹² Pentagon Details Chain of Errors in Strike Against Afghan Hospital, <https://www.nytimes.com/2016/04/30/world/asia/afghanistan-doctors-without-borders-hospital-strike.html> (Last accessed July 20, 2017).

Nevertheless, these atrocity criminals pose significant security risks in terms of organizing similar violence within U.S. borders or exercising their potential to get involved with or facilitate religiously-motivated terrorism at home or abroad. It is vital that these people are properly disposed of either through criminal or extradition processes.

As a matter of principle, it is objectionable to American values and to our belief in the rule of law for the United States to continue being a safe haven for foreign atrocity criminals. These individuals must be prosecuted here or extradited to competent jurisdiction that will prosecute them.

To keep citizens safe within our borders, the U.S. government must have the tools and resources to conduct investigations and apprehend dangerous individuals found in the United States. Again, the OGCJ provides these tools and resources. One important crosscutting function of the OGCJ is the coordination between domestic U.S. authorities, intragovernmental agencies, and international courts to identify, locate, apprehend, and either extradite these persons to another jurisdiction willing to prosecute or do so domestically in the United States. The specialized knowledge and networks available to the OGCJ greatly assist in these endeavors, both domestically and internationally.

The 2014-2016 Report from the Department of Justice further highlights the importance of the OGCJ:

As part of a recent global effort to end impunity for human rights violators who commit mass atrocities and genocide In FY 2014, the Department of Justice continued to actively engage internationally and domestically in atrocity prevention and response. The Department conducted 727 programs and trainings with criminal justice system counterparts from 93 countries, and 510 training events with security and law enforcement counterparts in 32 countries. Results vary country by country, but legal and law enforcement advisors have observed the continued development of prosecutorial and investigative capacity as well as increased cooperation with numerous jurisdictions in combating serious criminal offenses. In FY2014, the Department obtained a 22-year prison sentence in an immigration fraud case against a defendant living in Colorado who tortured political prisoners in Ethiopia, and secured a sentence of ten years in prison for a California defendant convicted of immigration fraud who participated in the massacre of 250 villagers in Guatemala. In October 2013, the Department indicted a defendant for immigration fraud in the Eastern District of Michigan who participated in terrorist bombings in Israel that caused two deaths and multiple injuries. In January 2014, the Department indicted a defendant living in Pennsylvania for immigration fraud who presided as a rebel “Minister of Defense” in Liberia over a brutal military campaign during which perceived adversaries were tortured, civilians executed, girls and women raped and forced into sexual slavery, and humanitarian workers murdered. Finally, in April 2014, the Department obtained an immigration fraud indictment in Vermont against defendant

who allegedly participated in murder, kidnapping, robbery, and assault in the Bosnian conflict of the 1990s.

DOJ also engaged internationally and domestically in atrocity prevention and response, including through the FBI Genocide War Crimes Unit partnership with State Department's Office of Global Criminal Justice to support fugitive investigations of war criminals overseas charged and wanted by International Tribunals. Mass atrocities occur overseas in chaotic settings, making prevention extraordinarily difficult. Achieving this strategic objective presents immense hurdles and requires "whole of government" approach. The Department will continue outreach strategy to expand human rights-related investigations and cases, as well as cooperation with foreign law enforcement authorities handling human rights cases abroad. DOJ will also continue its participation on the Atrocities Prevention Board and advance other efforts at interagency communication and cooperation.

Regarding human rights violators seeking safe haven in the United States, the Department will continue to defend removal orders and respond to extradition requests whenever appropriate. In addition, DOJ will continue to focus training on countries where the conditions are right for sustainable security sector progress and align programs with U.S. national security priorities. Measure Name: Number of training sessions or presentations given with the goal of building the capacity of foreign law enforcement, prosecutors, and judicial systems regarding the investigation and prosecution of serious criminal offenses, including genocide and mass atrocities.¹³

A current bill before the Senate contains directives to the OGCJ as to the situation in Syria, highlighting the important function this office performs and attempting to protect against its elimination. Selected provisions of the Act specifically delegating tasks to the OGCJ are as follows:

SEC. 5. REPORT ON ACCOUNTABILITY FOR WAR CRIMES, CRIMES AGAINST HUMANITY, AND GENOCIDE IN SYRIA.

(a) IN GENERAL.—The Secretary of State shall submit a report on war crimes, crimes against humanity, and genocide in Syria to the appropriate congressional committees not later than 90 days after the date of the enactment of this Act and another such report not later than 180 days after the Secretary of State determines that the violence in Syria has ceased.

...

(2) a description and assessment by the Department of State Office of Global Criminal Justice, the United States Agency for International

¹³https://www.justice.gov/sites/default/files/doj/pages/attachments/2015/02/06/fy2014aprfy_2016app2.pdf (Last accessed July 17, 2017).

Development, the Department of Justice, and other appropriate agencies of programs that the United States Government has undertaken to ensure accountability for war crimes, crimes against humanity, and genocide perpetrated against the people of Syria by the regime of President Bashar al-Assad, violent extremist groups, and other combatants involved in the conflict, including programs—

(A) to train investigators within and outside of Syria on how to document, investigate, develop findings of, and identify and locate alleged perpetrators of war crimes, crimes against humanity, or genocide, including—

- (i) the number of United States Government or contract personnel currently designated to work full-time on these issues; and
- (ii) the identification of the authorities and appropriations being used to support such training efforts;

(B) to promote and prepare for a transitional justice process or processes for the perpetrators of war crimes, crimes against humanity, and genocide in Syria beginning in March 2011;

(C) to document, collect, preserve, and protect evidence of war crimes, crimes against humanity, and genocide in Syria, including support for Syrian, foreign, and international nongovernmental organizations, and other entities, including the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 and the Independent International Commission of Inquiry on the Syrian Arab Republic; and

(D) to assess the influence of accountability measures on efforts to reach a negotiated settlement to the Syrian conflict during the reporting period.

...

SEC. 6. TRANSITIONAL JUSTICE STUDY.

Not later than 180 days after the date of the enactment of this Act, the Secretary of State (acting through appropriate officials and offices, which may include the Office of Global Criminal Justice), after consultation with the Department of Justice, the United States Agency for International Development, and other appropriate Federal agencies, shall—

- (1) complete a study of the feasibility and desirability of potential transitional justice mechanisms for Syria, including a hybrid tribunal, to address war crimes, crimes against humanity, and genocide perpetrated in Syria beginning in March 2011; ...

SEC. 7. TECHNICAL ASSISTANCE AUTHORIZED.

(a) **IN GENERAL.**—The Secretary of State (acting through appropriate officials and offices, which may include the Office of Global Criminal Justice),

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after consultation with the Department of Justice and other appropriate Federal agencies, is authorized to provide appropriate assistance to support entities that, with respect to war crimes, crimes against humanity, and genocide perpetrated by the regime of President Bashar al-Assad, all forces fighting on its behalf, and *all non-state armed groups fighting in the country, including* violent extremist groups in Syria beginning in March 2011—

- (1) identify suspected perpetrators of war crimes, crimes against humanity, and genocide;
- (2) collect, document, and protect evidence of crimes and preserve the chain of custody for such evidence;
- (3) conduct criminal investigations;
- (4) build Syria's investigative and judicial capacities and support prosecutions in the domestic courts of Syria, provided that President Bashar al-Assad is no longer in power;
- (5) support investigations by third-party states, as appropriate; or
- (6) protect witnesses that may be helpful to prosecutions or other transitional justice mechanisms.

(b) **ADDITIONAL ASSISTANCE.**—The Secretary of State, after consultation with appropriate Federal agencies and the appropriate congressional committees, and taking into account the findings of the transitional justice study required under section 6, is authorized to provide assistance to support the creation and operation of transitional justice mechanisms, including a potential hybrid tribunal, to prosecute individuals suspected of committing war crimes, crimes against humanity, or genocide in Syria beginning in March 2011.¹⁴

This proposed legislation, along with the letters submitted in the House and Senate, clearly indicate the prominent role the OGCI plays, and the recognition by Congress of the importance of this office and the role of the Ambassador. These functions must be preserved, whether in the current structure or in a newly constituted office or coalition. To avoid disruption, this structure needs to be in place prior to any closure of the OGCI, with the opportunity for key stakeholders to evaluate and assist in any transitions or changes.

Conclusion

For twenty years, the OGCI has served a wide variety of American interests, from preserving vital national security concerns to ensuring justice and accountability for the world's worst mass crimes; from fighting terrorism and protecting commercial interests to promoting responsible immigration and durable peace. Of special note is that the Ambassador at-large for War Crimes Issues/Global Criminal Justice and the few staff at OGCI have accomplished all this and more on a very small budget and without access to very much else in terms of resources. To compensate, the OGCI has achieved its mandate through a unique mixture of specialized legal expertise, policy insight, and diplomatic know-how that does not exist in one other centralized place in the U.S. government. This exceptional confluence of skills and knowledge has been best

¹⁴ <https://www.congress.gov/bill/115th-congress/senate-bill/905/text?q=%7B%22search%22%3A%5B%22Syria%22%5D%7D&r=13>

exemplified by the Ambassadors at-large who have led the OGCJ. These individuals have promoted American interests in the rule of law and human rights, and ensured justice and accountability for numerous instances of atrocity crimes (as well as helped achieve all attendant benefits that these goals bring with them as discussed above) with little more than a plane ticket, a few staff members, and a large network of partners.

Respectfully submitted,

Jeffrey N. Catalano, Massachusetts Bar Association
Matthew Redle, Chair, Criminal Justice Section

August, 2017

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GENERAL INFORMATION FORM

Submitting Entities: ABA Criminal Justice Section and ABA Center on Human Rights, Massachusetts Bar Association

Submitted By: Jeffrey N. Catalano (MA Bar), Matthew Redle, Chair (ABA Criminal Justice Section), Michael Pates, ABA Center for Human Rights

1. Summary of Resolution(s).

This Resolution advocates for the preservation of the Office of Global Criminal Justice and the role of the War Crimes Ambassador, or the creation of a new structure or entity that will continue to serve in this vital role, including funding and staffing to continue the work of the office and the United States' commitment to international criminal justice and the prevention and prosecution of atrocity crimes.

2. Approval by Submitting Entity. This resolution was passed by the Massachusetts Bar, the ABA Criminal Justice Council and the ABA Center for Human Rights in August 2017.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The ABA has long addressed the importance of international criminal justice, the international criminal court, and the important role of lawyers in preventing and prosecuting atrocity crimes. This resolution is consistent with existing ABA policy on international criminal law and human rights.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

This resolution is the result of recent news reports and information that a reorganization of the State Department is imminent (likely sometime in fall 2017). Decisions are being made at the present moment, and appropriations bills are being considered by Congress. In order for the ABA and its members to advocate on behalf of this issue, we cannot wait until Midyear 2018 for the House of Delegates to meet again.

6. Status of Legislation. (If applicable)

None.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals. Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

Commission on Veteran's Legal Services
Standing Committee on Legal Aid & Indigent Defense
Commission on Disability Rights
Special Committee on Hispanic Legal Rights & Responsibilities
Commission on Homelessness and Poverty
Commission on Immigration
Racial & Ethnic Diversity
Racial & Ethnic Justice
Youth at Risk
Young Lawyer's Division
Civil Rights and Social Justice
Government and Public Sector Lawyers
Section of International Law
Judicial Division
Science & Technology
Health Law
Litigation

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11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Sara Elizabeth Dill
1050 Connecticut Avenue NW, Suite 400
Washington, D.C. 20036
T: (202) 662-1511
E: sara.dill@americanbar.org

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Alice Richmond
39 Brimmer Street
Boston, MA.02108
T: (617) 523-8187
E: arichmond@rpalaw.com

EXECUTIVE SUMMARY1. Summary of the Resolution

This Resolution advocates for the preservation of the Office of Global Criminal Justice and the role of the War Crimes Ambassador in its existing form, or in the creation of a new entity or structure that will have the same mandates including funding and staffing to continue the work of the office and the United States' commitment to international criminal justice and the prevention and prosecution of atrocity crimes.

2. Summary of the Issue that the Resolution Addresses

This Resolution seeks to preserve the important function of the Office of Global Criminal Justice, the preservation of the rule of law, the prevention of mass atrocities, and the role of the Ambassador at Large for War Crimes.

3. Please Explain How the Proposed Policy Position Will Address the Issue

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.

N/A