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**ASIL TASK FORCE: U.S. SHOULD ADOPT POLICY OF POSITIVE
ENGAGEMENT WITH INTERNATIONAL CRIMINAL COURT**

WASHINGTON, DC – The American Society of International Law’s (ASIL) independent Task Force on U.S. Policy Toward the International Criminal Court (ICC) today issued its report recommending that President Obama announce a policy of positive engagement with the Court. The report was released at a news conference held at the National Press Club, and the document can now be obtained online at www.asil.org/ICCTaskforce.

The Task Force on U.S. Policy Toward the ICC was chaired by former Legal Advisor to the State Department and Deputy Secretary of Defense **William H. Taft, IV**, and former U.S. federal appellate and International Criminal Tribunal for the Former Yugoslavia (ICTY) Judge **Patricia M. Wald**. Other members of the Task Force are former Congressman **Mickey Edwards**, Vanderbilt Law School Professor **Michael A. Newton**, former U.S. Supreme Court Justice **Sandra Day O’Connor**, former International Court of Justice President **Stephen M. Schwebel**, former Deputy Prosecutor of the ICTY **David Tolbert**, and Johns Hopkins School for Advanced International Studies Professor **Ruth Wedgwood**.

The Task Force report comes as the Obama administration undertakes a high-level review of its policy toward the Court, which recently issued a controversial arrest warrant for Sudanese President Al Bashir. The administration must decide whether and how to participate in the 2010 Review Conference of the Assembly of States Parties. Among the issues to be addressed at the Review Conference is the definition of the crime

of aggression within the Court's jurisdiction—a question that will inevitably implicate U.S. interests.

Acknowledging that questions remain about how future prosecutors will exercise their authority, how the Court will interpret relevant law in hotly disputed situations, as well as the results of discussions at the Review Conference, the Task Force does not recommend that the United States join the Court in the immediate future. But the Task Force found that a number of the concerns about the Court that were voiced under the Clinton and Bush administrations have not been borne out in practice. The Task Force urges the United States to participate in the Review Conference and otherwise engage with the Court to help shape it into an institution with which the United States can, in its interests, work constructively.

The Task Force's timely recommendations follow.

**ASIL Task Force on U.S. Policy Toward the International Criminal Court
Policy Recommendations**

The ASIL Task Force on U.S. Policy Toward the International Criminal Court takes note of the desirable evolution in the de facto policy of the United States toward the Court in the last few years. In light of the Court's record over the past seven years and its involvement in compelling situations—such as Darfur, Uganda, and the Democratic Republic of Congo—that are of great concern to the United States, there is an auspicious opportunity to put U.S. relations with the Court on an articulated course of positive engagement. The Task Force recommends that the President take prompt steps to announce a policy of continued positive engagement with the Court, including:

- *a stated policy of the U.S. Government's intention, notwithstanding its letter of May 6, 2002 to the U.N. Secretary General, to support the object and purpose of the Rome Statute of the Court;*
- *examination of methods by which the United States can support important criminal investigations of the Court, including cooperation on the arrest of fugitive defendants, the provision of diplomatic support, and the sharing of information, as well as ways in which it can cooperate with the Court in the prevention and deterrence of genocide, war crimes, and crimes against humanity;*

- *examination of U.S. policy concerning the scope, applicability, and implementation of “Article 98 agreements” concerning the protections afforded to U.S. personnel and others in the territory of States that have joined the Court;*
- *U.S. participation as an observer in the Assembly of States Parties to the Rome Statute, including discussions on the crime of aggression and the 2010 Review Conference of the Rome Statute;*
- *the issuance of any presidential waivers in the interests of the United States that address restrictions on assistance to and cooperation with the Court contained in the American Service-Members’ Protection Act of 2002 (ASPA) and advice to the Congress on the need for further amendments or repeal of ASPA;*
- *identification of a high-ranking official to serve as the focal point within the executive branch to coordinate U.S. cooperation with the Court and monitor ICC performance in order to inform the further development of U.S. policy in this area;*
- *U.S. development assistance focused on rule-of-law capacity building, including that which enables countries to exercise their complementary jurisdiction to the Court effectively;*
- *support for the continued development of contacts between the various branches of the U.S. Government and the Court;*
- *support for the legislative agenda detailed below; and*
- *an inter-agency policy review to re-examine whether, in light of the Court’s further performance and the outcome of the 2010 Review Conference, to recommend to Congress that the United States become a party to the Rome Statute with any appropriate provisos, understandings, and declarations similar to those adopted by other States Parties.*

The Task Force further recommends that Congress pursue a legislative agenda on the Court that includes:

- *amendment or repeal of the American Service-Members’ Protection Act and other applicable laws to the extent necessary to enhance flexibility in the U.S. Government’s engagement with the Court and allies that are States Parties to the Rome Statute;*

- *consideration of amendment to U.S. law to permit full domestic U.S. prosecution of crimes within the jurisdiction of the Court so as to ensure the primacy of U.S. jurisdiction over the Court's jurisdiction under the complementarity regime; and*
- *hearings to review and monitor Court performance in order to identify means by which the United States can support the Court consistent with the interests of the United States and the international community and, at the appropriate time, to re-examine whether the U.S. should become a party to the Rome Statute with any appropriate provisos, understandings, and declarations similar to those adopted by other States Parties.*

To read the Task Force's complete report, visit www.asil.org/ICCtaskforce.

Commenting on the Task Force's report and recommendations, ASIL President **Lucy Reed** said, "The Society is very pleased that this Task Force, which reflected differing viewpoints, reached general consensus on its report and recommendations. Recommendations from such a diverse and expert group will carry great weight with the administration and those on the Hill responsible for addressing our country's relationship with the Court and the Rome Statute."

ASIL is a nonprofit, nonpartisan, educational membership organization. It was founded in 1906, chartered by the U.S. Congress in 1950, and has held Category II Consultative Status to the Economic and Social Council of the United Nations since 1993. ASIL's mission is to foster the study of international law and to promote the establishment and maintenance of international relations on the basis of law and justice. The Society's 4,000 members (from nearly 100 countries) comprise attorneys, academics, corporate counsel, judges, representatives of governments and nongovernmental organizations, international civil servants, students, and others interested in international law.

ASIL does not generally take positions on substantive issues, including the ones addressed by this Task Force on U.S. Policy Toward the ICC. The findings and views expressed by the group members are their own and do not necessarily reflect the views of the Society or its members. The Society's convening of the Task Force is funded by grants from the John D. and Catherine T. MacArthur Foundation and the Planethood Foundation. For more information about ASIL, visit www.asil.org.