

The U.S. government has also signaled concern about human rights violations in the Chinese region of Xinjiang, where Chinese authorities have reportedly orchestrated the detention, indoctrination, and forced labor of over a million Uighurs and other ethnic and religious minorities.²⁶ On October 7, 2019, the Commerce Department's Bureau of Industry and Security limited the export of sensitive items to twenty-eight Chinese-associated governmental and commercial organizations "that have been implicated in human rights violations and abuses in China's campaign targeting Uighurs. . . ."²⁷ The following day, the State Department issued visa restrictions on certain "Chinese government and Communist Party officials who are believed to be responsible for. . . the detention or abuse of Uighurs. . . ."²⁸ In December of 2019, Congress included a provision in the National Defense Authorization Act for Fiscal Year 2020 that required the intelligence agencies to prepare "a report on activity by the People's Republic of China to repress ethnic Muslim minorities in the Xinjiang region of China."²⁹ The report is due in May 2020.³⁰

INTERNATIONAL CRIMINAL LAW

Issuing Several Pardons, President Trump Intervenes in Proceedings of U.S. Troops Charged or Convicted of Acts Amounting to War Crimes

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On November 15, 2019, President Trump pardoned or otherwise removed punishments for three members of the military—Lieutenant Clint Lorange, Major Mathew Golsteyn, and Chief Petty Officer Edward Gallagher—who had been found to commit, or had allegedly committed, criminal acts abroad that amounted to war crimes. These actions follow Trump's May 2019 pardon of First Lieutenant Michael Behenna, who had been found guilty of murdering a detainee in Iraq. These intrusions into military proceedings were an unusual use of the president's pardon power and have raised concerns about the U.S. commitment to international humanitarian law.

²⁶ See Austin Ramzy & Chris Buckley, *Leaked China Files Show Internment Camps Are Ruled by Secrecy and Spying*, N.Y. TIMES (Nov. 24, 2019), at <https://www.nytimes.com/2019/11/24/world/asia/leak-chinas-internment-camps.html?searchResultPosition=4>; Eva Dou & Philip Wen, "Admit Your Mistakes, Repent": China's Shifts Campaign to Control Xinjiang's Muslims, WALL ST. J. (Feb. 6, 2020), at <https://www.wsj.com/articles/china-shifts-to-new-phase-in-campaign-to-control-xinjiangs-muslims-11580985000>.

²⁷ U.S. Dep't. of Commerce Press Release, U.S. Department of Commerce Adds 28 Chinese Organizations to Its Entity List (Oct. 7, 2019), at <https://www.commerce.gov/news/press-releases/2019/10/us-department-commerce-adds-28-chinese-organizations-its-entity-list> [<https://perma.cc/T75K-LJDE>].

²⁸ U.S. Dep't. of State Press Release, U.S. Department of State Imposes Visa Restrictions on Chinese Officials for Repression in Xinjiang (Oct. 8, 2019), at <https://www.state.gov/u-s-department-of-state-imposes-visa-restrictions-on-chinese-officials-for-repression-in-xinjiang> [<https://perma.cc/HVD7-2378>].

²⁹ National Defense Authorization Act for Fiscal Year 2020, § 5512, Pub. L. No. 116-92, 133 Stat. 1198 (2019).

³⁰ See *id.* (requiring the report with 150 days of the act's passage). In December of 2019, the House of Representatives passed, by a 407–1 vote, a bill that would authorize or require the imposition of various sanctions and export controls related to China's treatment of the Uighurs. Uyghur Human Rights Policy Act of 2019, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/senate-bill/178/all-actions?overview=closed&q=%22roll-call-vote%22:%22all%22&KWICView=false> [<https://perma.cc/2KH8-9VQ3>]. This bill is now pending in the Senate. *Id.*

The underlying crimes of the officer who received the first pardon, Behenna, occurred in Iraq in 2008. Behenna killed an Iraqi man whom he had brought to a remote culvert, ordered stripped naked, and begun interrogating at gunpoint.¹ He defended the killing as an act of self-defense, claiming that the man had reached for Behenna's gun after throwing a piece of concrete at him.² Members of a court-martial rejected Behenna's self-defense claim, however, and he was convicted of unpremeditated murder and assault.³ After serving approximately five years in prison, Behenna was released on parole in 2014.⁴

Lorance was also convicted of murder, in his case for the killing of villagers in Afghanistan.⁵ Lorance had ordered his platoon to fire on unarmed villagers while in Afghanistan in July 2012, and two men died as a result.⁶ Following these deaths, Lorance falsely stated that he was not able to complete a proper Battle Damage Assessment on the men because other villagers had already taken away their bodies.⁷ A member of Lorance's platoon subsequently reported him to the military authorities.⁸ Lorance was convicted in a court-martial of second-degree murder and sentenced to a nineteen-year period of confinement.⁹

Golsteyn, although charged with premeditated murder after allegedly committing a war crime in Afghanistan, never stood trial to face these charges. An Army investigation into Golsteyn's conduct found that Golsteyn and his fellow troops had detained a bomb-maker they suspected to be responsible for a recent explosion at a military base in Afghanistan that killed two Marines.¹⁰ After the man was questioned, Golsteyn and another U.S. troop had killed him and burned his body.¹¹ The Army investigated this killing, but only disciplined Golsteyn by revoking his previously awarded Silver Star and transferring him out of the Special Forces.¹² The military reopened the investigation after Golsteyn publicly admitted to

¹ United States v. Behenna, 71 M.J. 228, 230-31 (C.A.A.F. 2012).

² *Id.* at 231.

³ *Id.* at 229; see also Uniform Code of Military Justice (UCMJ), Arts. 118, 128, 10 U.S.C. §§ 918, 928 (2012). Behenna was charged specifically with unpremeditated murder and assault, rather than for violations of the law of war through a UCMJ general court-martial or for violations of the War Crimes Act of 1996 through a federal district court prosecution. Nonetheless, the underlying allegations giving rise to these charges described behavior that amounted to a war crime. See 18 U.S.C. § 2441 (2012) (defining war crimes as including grave breaches of the Geneva Conventions and, for noninternational armed conflicts, grave breaches of common Article 3). This applies as well to the charges filed against Lorance, Golsteyn, and Gallagher.

⁴ White House Press Release, Statement From the Press Secretary Regarding Executive Clemency for Michael Behenna (May 6, 2019), at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-executive-clemency-michael-behenna> [<https://perma.cc/JE9Q-M5HC>] [hereinafter Behenna Press Release].

⁵ United States v. Lorance, No. ARMY 20130679, 2017 WL 2819756, at *1–2 (A. Ct. Crim. App. June 27, 2017). Lorance was additionally convicted of attempted murder, wrongfully communicating a threat, reckless endangerment, soliciting a false statement, and obstructing justice. *Id.*; see also UCMJ, Arts. 80, 118, 134, 10 U.S.C. §§ 880, 918, 934 (2012).

⁶ United States v. Lorance, *supra* note 5, at *2.

⁷ *Id.* at *3. In fact, Lorance told villagers to take away the bodies after two soldiers, who were not trained to complete Battle Damage Assessments, "conducted a cursory inspection of the victims." *Id.* at *2–3.

⁸ *Id.* at *3.

⁹ *Id.* at *1, 3.

¹⁰ Dan Lamothe, *See Document Excerpts in the Army's War-Crimes Case Against a Green Beret War Hero*, WASH. POST (May 19, 2015), at <https://www.washingtonpost.com/news/checkpoint/wp/2015/05/19/see-document-excerpts-in-the-armys-war-crimes-case-against-a-green-beret-war-hero>.

¹¹ *Id.*

¹² Dan Lamothe, *Trump's Focus on an Army Murder Case Highlights a Divided Nation Still at War*, WASH. POST (Dec. 22, 2018), at https://www.washingtonpost.com/world/national-security/trumps-focus-on-an-army-murder-case-highlights-a-divided-nation-still-at-war/2018/12/21/b862b724-0465-11e9-b5df-5d3874f1ac36_story.html.

the killing of the suspected bomb-maker in a 2016 Fox News interview.¹³ Golsteyn was subsequently charged with murder, and was scheduled to be tried by court-martial in February 2020.¹⁴

Gallagher was charged with first-degree murder of an ISIS captive, for posing for a picture with the dead body of the captive, and with attempted murder for shooting at several unarmed civilians in Iraq.¹⁵ In July 2019, the members of the court-martial acquitted him of the first-degree murder and attempted murder charges while convicting him for taking a “trophy photo” with the dead captive’s body.¹⁶ Due to the time that Gallagher spent in confinement prior to his trial, he did not receive any further incarceration; however, the Navy followed the members’ recommendation and demoted Gallagher by one rank.¹⁷

Trump’s first pardon with respect to these four men went to Behenna, who received it on May 6, 2019.¹⁸ That day, the White House released a statement explaining that “Mr. Behenna [was] entirely deserving of this Grant of Executive Clemency” because he was “a model prisoner” and his case “attracted broad support from the military, Oklahoma elected officials, and the public.”¹⁹ Just over half a year later, on November 15, 2019, Trump signed pardons for both Lorange and Golsteyn and ordered the reversal of Gallagher’s demotion in rank.²⁰ The related press announcement asserted the following justification:

The President, as Commander-in-Chief, is ultimately responsible for ensuring that the law is enforced and when appropriate, that mercy is granted. For more than two hundred

¹³ Dan Lamothe, *Matt Golsteyn Planned to Join the CIA and Go to Iraq. Now He Faces a Murder Charge*, WASH. POST (Feb. 9, 2019), at https://www.washingtonpost.com/world/national-security/they-do-not-obey-their-own-rules-soldier-facing-murder-case-says-he-must-defend-himself-against-the-army/2019/02/09/a4cdb5b2-2baf-11e9-97b3-ae59fbae7960_story.html; *How We Fight: Part 3*, FOX NEWS, at 1:57–3:11 (Nov. 4, 2016), at <https://video.foxnews.com/v/5197270526001#sp=show-clips>.

¹⁴ See USASOC Public Affairs Press Release, Article 32 Hearing to be Held for Accused Soldier (Jan. 16, 2019), at https://www.army.mil/article/216229/article_32_hearing_to_be_held_for_accused_soldier [<https://perma.cc/QRP5-2DX2>] (announcing that “the Special Court-Martial Convening Authority decided that Maj. Mathew Golsteyn will proceed to an Article 32 Preliminary Hearing, . . . an initial step towards determining whether Major Mathew Golsteyn violated Article 118 of the [UCMJ], Premeditated Murder”); USASOC Public Affairs Press Release, Maj. Mathew Golsteyn Trial Date Delayed Until February 19th (Nov. 14, 2019), at https://www.army.mil/article/229836/maj_mathew_golsteyn_trial_date_delayed_until_february_19th [<https://perma.cc/4DXY-753U>] (noting that Golsteyn’s trial was rescheduled to February 19, 2020).

¹⁵ Fellow Navy SEALs testified that Gallagher stabbed the ISIS captive “repeatedly in the neck” with a hunting knife. Dave Philipps, *Navy SEAL Chief Accused of War Crimes Is Found Not Guilty of Murder*, N.Y. TIMES (July 2, 2019), at <https://www.nytimes.com/2019/07/02/us/navy-seal-trial-verdict.html>. Gallagher then sent a photo of him posing with the dead ISIS fighter to his friends in the United States, stating: “Good story behind this, got him with my hunting knife.” *Id.* Gallagher was also charged, but acquitted, with obstruction of justice because of an allegation that he had threatened to kill the SEALs in his platoon if they reported his conduct. *Id.*

¹⁶ *Id.* The acquittal was likely due to a fellow SEAL’s testimony taking responsibility for the killing of the ISIS fighter. *Id.* Because this testimony contradicted earlier statements the SEAL—Special Operator First Class Corey Scott—had made to the Navy, the Navy may charge Scott with perjury. *Id.*

¹⁷ Dave Philipps, *Navy Reduces Punishment for SEAL in War Crimes Case*, N.Y. TIMES (Oct. 29, 2019), at <https://www.nytimes.com/2019/10/29/us/navy-seal-gallagher-clemency.html?searchResultPosition=6>.

¹⁸ Behenna Press Release, *supra* note 4.

¹⁹ *Id.*

²⁰ U.S. Dep’t of Justice, Pardons Granted by President Donald Trump, Executive Grant of Clemency of Mathew Golsteyn (Nov. 15, 2019), at <https://www.justice.gov/pardon/pardons-granted-president-donald-trump>; U.S. Dep’t of Justice, Pardons Granted by President Donald Trump, Executive Grant of Clemency of Clint A. Lorange (Nov. 15, 2019), at <https://www.justice.gov/pardon/pardons-granted-president-donald-trump>; see also White House Press Release, Statement from the Press Secretary (Nov. 15, 2019), at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-97> [<https://perma.cc/FF9D-KM96>] [hereinafter Golsteyn, Lorange, and Gallagher Press Release].

years, presidents have used their authority to offer second chances to deserving individuals, including those in uniform who have served our country. These actions are in keeping with this long history. As the President has stated, “when our soldiers have to fight for our country, I want to give them the confidence to fight.”²¹

Trump did not give any explanation for why he was pardoning Golsteyn before Golsteyn had even been convicted of a crime.²² Following the November 15, 2019 announcement, the Navy sought to discipline Gallagher by removing his trident pin—a badge of honor worn by Navy SEALs.²³ Trump overruled this decision as well, tweeting: “The Navy will NOT be taking away Warfighter and Navy Seal Eddie Gallagher’s Trident Pin. This case was handled very badly from the beginning. Get back to business!”²⁴

Trump’s power to pardon resides in Article II, Section 2 of the U.S. Constitution: “The President . . . shall have power to grant reprieves and pardons for Offenses against the United States, except in Cases of Impeachment.”²⁵ This provision for pardons of “Offenses against the United States” is understood to reach all crimes prosecuted by the United States, even those occurring against noncitizens on foreign soil.²⁶ Trump is not the first president to intervene in a case in which the underlying conduct amounts to war crimes. President Nixon allowed Lieutenant William Calley to stay under house arrest rather than in military confinement during his appeal of his conviction for killing civilians in My Lai village during the Vietnam War.²⁷ But in giving full pardons to military personnel convicted of acts amounting to war crimes, Trump’s use of his pardon power was highly unusual.²⁸ Even more extraordinary was Trump’s pardon of Golsteyn, who was still in the midst of his judicial proceedings.²⁹

²¹ Golsteyn, Lorange, and Gallagher Press Release, *supra* note 20.

²² See generally *id.*

²³ Dave Philipps, *Trump Reverses Navy Decision to Oust Edward Gallagher From SEALs*, N.Y. TIMES (Nov. 21, 2019), at <https://www.nytimes.com/2019/11/21/us/trump-seals-eddie-gallagher.html?action=click&module=RelatedLinks&pgtype=Article>.

²⁴ Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 21, 2019, 8:30 AM), at <https://twitter.com/realdonaldtrump/status/1197507542726909952> [<https://perma.cc/5MX5-7UHV>].

²⁵ U.S. CONST., Art. II, § 2.

²⁶ See Dan Maurer, *Should There Be a War Crime Pardon Exception*, LAWFARE (Dec. 3, 2019), at <https://www.lawfareblog.com/should-there-be-war-crime-pardon-exception> (“Ultimately, the difficulty of pardoning war crimes lies in that most people do not consider it a difficult question at all—the president clearly has plenary, unilateral discretion to grant a pardon.”); Chris Jenks, *Sticking It to Yourself: Preemptive Pardons for Battlefield Crimes Undercut Military Justice and Military Effectiveness*, JUST SECURITY (May. 20, 2019), at <https://www.justsecurity.org/64185/sticking-it-to-yourself-preemptive-pardons-for-battlefield-crimes-undercut-military-justice-and-military-effectiveness> (commenting that “the President possesses the authority to pardon” individuals who had allegedly committed war crimes, including Gallagher and Golsteyn).

²⁷ 7 WEEKLY COMP. PRES. DOCS. 577, 592 (Apr. 5, 1971) (also announcing the “President’s decision that before any final sentence is carried out in the case of Lieutenant Calley, the President will personally review the case and finally decide it”).

²⁸ Donald J. Guter, John D. Hutson & Rachel VanLandingham, *The American Way of War Includes Fidelity to Law: Preemptive Pardons Break that Code*, JUST SECURITY (May. 24, 2019), at <https://www.justsecurity.org/64260/the-american-way-of-war-includes-fidelity-to-law-preemptive-pardons-break-that-code>; see also Maurer, *supra* note 26 (“Though Trump’s acts of judicial mercy on service members may not be wholly original, they have made him the first president to pardon soldiers—in this case, officers—already convicted of having committed offenses that violate the international law of war.”).

²⁹ Dave Philipps, *Trump Clears Three Service Members in War Crimes Cases*, N.Y. TIMES (Nov. 15, 2019), at <https://www.nytimes.com/2019/11/15/us/trump-pardons.html> (quoting a retired military judge commenting on Golsteyn’s pardon: “I’m not sure it’s ever been done”); see also Guter, Hutson & VanLandingham, *supra* note 28

There was some domestic political support for Trump's actions,³⁰ but there were also many politicians as well as military members who disagreed with the actions—apparently including some officials inside the Pentagon.³¹ News reports indicate that Navy Secretary Richard Spencer personally contacted Trump requesting that he not interfere publicly with Gallagher's discipline,³² and Army Secretary Ryan McCarthy, Defense Secretary Mark T. Esper, and the Chairman of the Joint Chiefs of Staff Mark A. Milley all opposed the November pardons.³³ Nonetheless, as noted above, Trump tweeted that the Navy would not remove Gallagher's Trident; further, Spencer was fired three days later by Esper for having contacted Trump without going through the chain of command.³⁴ Spencer responded to Trump's decision in a letter of resignation dated the same date that he was fired:

The Constitution, and the Uniform Code of Military Justice, are the shields that set us apart, and the beacons that protect us all. Through my Title Ten Authority, I have strived to ensure our proceedings are fair, transparent and consistent, from the newest recruit to the Flag and General Officer level.

Unfortunately it has become apparent that in this respect, I no longer share the same understanding with the Commander in Chief who appointed me, in regards to the key principle of good order and discipline.³⁵

("[W]e know of no modern (since the Civil War) precedent for a President's cutting short ongoing military criminal prosecutions of service members formally accused of violent crimes").

³⁰ See e.g., Behenna Press Release, *supra* note 4 (asserting that there was "broad support from the military, Oklahoma elected officials, and the public"); Golsteyn, Lorange, and Gallagher Press Release, *supra* note 20 (listing congressional and public supporters for Trump's pardon of Golsteyn and Lorange); see also Lindsay L. Rodman, *Post-9/11 Veterans Have Mixed Feelings About Trump's War Crimes Pardons*, JUST SECURITY (May 24, 2019), at <https://www.justsecurity.org/64256/post-9-11-veterans-have-mixed-feelings-about-trumps-war-crimes-pardons> (displaying polling data concerning public support for Trump's pardons).

³¹ See e.g., Philipps, *supra* note 29 ("Top military leaders have pushed back hard against clearing the three men. Defense Secretary Mark Esper and Army Secretary Ryan McCarthy have argued that such a move would undermine the military code of justice, and would serve as a bad example to other troops in the field, administration officials said."); Martin E. Dempsey (@Martin_Dempsey), TWITTER (May 21, 2019, 5:15 AM), at https://twitter.com/Martin_Dempsey/status/1130809276191035392 [<https://perma.cc/Z4J4-Z88X>] (responding to Trump's actions, as a retired U.S. Army general and the eighteenth chairman of the Joint Chiefs of Staff: "Absent evidence of innocence or injustice the wholesale pardon of US servicemembers accused of war crimes signals our troops and allies that we don't take the Law of Armed Conflict seriously. Bad message. Bad precedent. Abdication of moral responsibility. Risk to us."); Alexander Bolton & Rebecca Kheel, *Republicans Raise Concerns Over Trump Pardoning Service Members*, THE HILL (Dec. 3, 2019), at <https://thehill.com/policy/defense/472910-republicans-raise-concerns-over-trump-pardoning-service-members> (quoting Senate Republicans who disagreed with Trump's actions, including Senator Lindsey Graham who was "concerned" about Trump's interventions "hav[ing] a chilling effect").

³² Dan Lamothe & Josh Dawsey, *Pentagon Chief Says He Was "Flabbergasted" by Navy Secretary's Attempt to Make a Private Deal with Trump*, WASH. POST (Nov. 25, 2019), at <https://www.washingtonpost.com/national-security/2019/11/25/pentagon-chief-says-he-was-flabbergasted-by-navy-secretarys-attempt-make-private-deal-with-trump>.

³³ *Id.*

³⁴ *Id.* (noting that Spencer had proposed to Trump that Gallagher could retire with his pin if Trump did not publicly intervene).

³⁵ Letter from Richard V. Spencer, U.S. Navy Secretary, to President Donald J. Trump (Nov. 24, 2019), *available* at <https://www.washingtonpost.com/context/read-navy-secretary-richard-spencer-s-letter-to-president-trump/2bf70c2a-f811-43be-9e21-b02f1fe54a26>.

Rupert Colville, the spokesperson for the United Nations High Commissioner for Human Rights, expressed dismay over the pardons.³⁶ Colville stated that the three most recent acts of leniency by Trump “involve serious violations of international humanitarian law” and, thus, the pardons “run against the letter and the spirit of international law which requires accountability for such violations.”³⁷ Colville specifically mentioned Golsteyn’s case as being “particularly troubling,” considering Trump’s failure to allow the judicial process to conclude before intervening.³⁸ Colville concluded: “These pardons send a disturbing signal to military forces all around the world.”³⁹

These pardons occurred while the International Criminal Court (ICC) was considering an investigation into international crimes allegedly committed in Afghanistan, including by U.S. personnel. In April 2019, the Trump administration revoked the U.S. visa of the ICC prosecutor as she sought, following a preliminary investigation, to persuade the ICC’s Pre-Trial Chamber (PTC) to authorize a full investigation into the situation in Afghanistan.⁴⁰ Soon after, the PTC denied her request, reasoning that the investigation would likely not be successful due in part to the challenge of obtaining international cooperation.⁴¹ The PTC’s decision was appealed.⁴² Although the United States did not participate in this appeal, Trump’s personal lawyer—Jay Sekulow—entered an appearance as *amicus curiae* on behalf of the European Centre for Law and Justice seeking affirmance of the PTC decision.⁴³ As part of his oral argument on December 4, 2019, Sekulow submitted that “the United States is demonstrably both willing and able to investigate and prosecute its own cases.”⁴⁴ His brief remarks did not discuss Trump’s recent pardons or their implications for the willingness and ability of the United States to bring accountability to the perpetrators of war crimes.⁴⁵ On March 5, 2020, the Appeals Chamber of the ICC reversed the PTC decision and authorized an investigation into the situation in Afghanistan.⁴⁶

³⁶ United Nations High Commissioner for Human Rights Press Release, Press Brief on the United States (Nov. 19, 2019), at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25314&LangID=E> [hereinafter UNHCHR Press Release].

³⁷ *Id.* As stated by the International Committee for the Red Cross, “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects.” International Committee for the Red Cross, *Rule 158: Prosecution of War Crimes*, CUSTOMARY IHL DATABASE, at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158.

³⁸ UNHCHR Press Release, *supra* note 36.

³⁹ *Id.*

⁴⁰ Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 625, 625–28 (2019).

⁴¹ *Id.* at 629.

⁴² See International Criminal Court Press Release, Afghanistan: ICC Pre-Trial Chamber II Authorises Prosecutor to Appeal Decision Refusing Investigation (Sept. 17, 2019), at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1479> [<https://perma.cc/6SJS-LG5G>].

⁴³ See Situation in the Islamic Republic of Afghanistan, ICC-02/17-98 OA OA2 OA3 OA4, Confirmation that Mr Jay Alan Sekulow Will Make Oral Submissions at the Oral Hearing to Be Held Between 4 and 6 December 2019, at 3 (Oct. 24, 2019), available at https://www.icc-cpi.int/CourtRecords/CR2019_06261.PDF.

⁴⁴ Situation in the Islamic Republic of Afghanistan, ICC-02/17-T-001-ENG OA OA2 OA3 OA4, Appeals Hearing Transcript, at 87 (Dec. 4, 2019), available at https://www.icc-cpi.int/Transcripts/CR2019_07359.PDF.

⁴⁵ See generally *id.* at 84–87.

⁴⁶ Situation in the Islamic Republic of Afghanistan, ICC-02/17-138, Judgment on the Appeal Against the Decision on the Authorisation of an Investigation into the Situation into the Islamic Republic of Afghanistan (Mar. 5, 2020), at <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-02/17-138>.