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## The Role of the United States in International Criminal Justice

Clint Williamson

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# The Role of the United States in International Criminal Justice

Ambassador Clint Williamson

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**PROFESSOR DEL DUCA:** We are honored and delighted to have Ambassador Clint Williams, the United States Ambassador-At-Large for War Crimes, as our next speaker. He's had a very distinguished career. He has served as the Director for Stability Operations for the National Security Council, senior advisor to the Iraqi Ministry of Justice, and a part of the United Nations mission in Kosovo. Of particularly great relevance today to our topic is the fact that he has served as a prosecutor on the ICTY. Please welcome Ambassador Clint Williams.

**AMBASSADOR WILLIAMSON:** It's great to be here. It's nice to see some old colleagues and an old boss Richard Goldstone. As Louis said and some of you know from looking at the program, I spent quite a while at the ICTY. I was there for seven years as a trial attorney from 1994 to 2001. But over the last four years, I've been working on broader issues of stabilization and reconstruction, peacekeeping and post-conflict response.

My focus during the time that I was at the National Security Council was on how the U.S. government could develop its capabilities for dealing with these situations. During that time I worked closely with the UN and the EU, who were also struggling with how they as organizations could do a better job of responding to these scenarios. Likewise, I worked with a number of national governments who were

also struggling with these issues, but particularly with the UK, France, Germany and Canada, who have been leaders in this field.

#### Rule of Law Foundation

But no matter who you're talking to or perspective they're bringing to the table, one thing in which everyone agrees who knows these issues is that in any post-conflict stabilization reconstruction mission, if it is to be successful, it must be built on a foundation of rule of law. So whether we're talking about Kosovo or Bosnia, East Timor, Haiti, Afghanistan or Iraq, if you do not establish a secure environment in which rule of law prevails, everything else that you try to do in that mission is doomed to failure.

This is particularly so when you're dealing with states that are emerging from ethnic warfare or situations where they've had killing on a mass scale, where large groups were targeted for deportation or other forms of persecution. But if those states or regions are to move forward, they must come to terms with their past and there must be some sense among the people, particularly those who were victimized, that justice is being done. But as you've already heard this morning, and as I'm sure you know, this is a fairly recent phenomenon where this has come to be universally or almost universally accepted.

#### Evolution of the ICTY, ICTR, & ICC

It was only in the 1990s that the UN started including rule of law components in its peacekeeping missions. It was in the 1990s that we saw the Yugoslav and Rwanda Tribunals created, the first ones since the end of World War II. But since then, it's been an exciting time in the field of international humanitarian law. We have seen the creation of the ICTY and ICTR in 1993 and 1994 respectively. We've had the long negotiations for the establishment of the ICC and its starting work. The development of novel approaches in the form of hybrid tribunals like in Sierra Leone and now in Cambodia, and the creation of special war crimes chambers within domestic court systems, in Iraq, in Bosnia, in Serbia, and with others contemplated in places like Burundi.

#### Ambassador-At-Large for War Crimes Issues Appointed by the United States

This evolution has also manifested itself in the State Department, in my office. In 1997 Secretary Albright created a position for an Ambassador-at-Large in the department who would focus exclusively on war crimes issues. The United States was the first government to appoint a senior diplomat in such a role. It wasn't surprising coming as it did in

the mid '90s after the Rwanda genocide and after the wars in former Yugoslavia.

When the Bush Administration came to office in 2001, they retained this position and I'm now the third person to serve as Ambassador. My predecessors were David Sheffer and Pierre Prosper. But over time, the focus of the office has shifted somewhat as well. For most of the 1990s, the office was focused on the existing tribunals, on the ICTY and the ICTR and then increasingly in the negotiations leading up to the ICC. It had a small staff, five or six people, but even with this small number of issues, they were really stretched in what they were able to do. But since then, rather than see the workload diminish, it has steadily increased. This is evidenced by the fact that we're now in the midst of a significant enlargement of the office, from five people that were there when I started in July to 14 by the end of the year, including a full-time field officer in the Balkans.

This more robust staffing will allow us to move beyond the traditional focus just on the tribunals and to devote more attention to domestic efforts and to potential crisis zones, as well as the well-established international courts. We will be able for the first time to assign our officers to distinct manageable regional portfolios where we will have sustained engagement in certain parts of the world, where we can help with the courts that exist there and anticipate crises as they develop.

#### *Prevention and Response Initiative*

We are also trying to better prepare ourselves as a government for the whole range of war crimes challenges we're likely to face in the future. Through a prevention and response initiative, we're setting up mechanisms to help us identify the warning signs of an impending genocide, a crisis involving large-scale crimes, and what preventative steps we can take to head it off. I will tell why this is needed. If you go back to Rwanda, you saw this with a radio broadcast coming out and some of you had seen Hotel Rwanda or read the book or just are familiar with what happened, you started having radio broadcasts saying kill the cockroaches, this kind of thing, that a lot of people might not have picked up on. If they were really paying attention, they knew what to look for, they certainly would have focused on it.

We recently did an exercise with 25 CIA agents, and these were new people coming into the CIA. It was just an exercise to see how they would deal with scenarios in the field. They were given a whole list of things that had happened. One of them is that people come into a refugee camp and several hundred of them are massacred. Out of the 25

junior officers that were going through this, only one of them would have bothered to have reported it back to Washington as something requiring attention.

So what we're trying to do is educate people. Our foreign service officers, our CIA people, our U.S. aid officers who are out in the field to look for what are the warning signs. When something like this is developing, let us know back in Washington and then try to develop measures that we can use to prevent it from developing into a full-blown crisis. But we're not going to succeed all the time. If we don't succeed, we need to be prepared to respond as the crisis unfolds or in its immediate aftermath. We need to be able to deploy the resources necessary to secure evidence, to locate witnesses, to take statements, to exhume mass graves, to do these types of things.

We were faced with this in Bosnia. We were faced with it in Darfur. We were faced with it in Iraq. Every time that we had to do this we have to reinvent the wheel. So we need to be able to have these resources available to deploy quickly. This capability should be available primarily to support multilateral efforts, particularly through the UN, through tribunals, but also with individual governments that request our assistance. Finally, we want to enhance our capabilities to assist with institution building and institutional support for international, mixed and domestic war crimes courts.

### *U.S. Approach to International Criminal Courts*

In terms of the various types of war crimes courts that exist today, this might be a good point to actually shift and talk briefly about the U.S. approach to these various models. Obviously, the International Criminal Court is now established. It is a permanent fixture. It clearly has a place in the sphere of international justice. As everyone knows, the U.S. government has had serious misgivings about the ICC and has chosen not to participate in the court. That said, the U.S. certainly recognizes the right of other nations to join the court, and we respect their decisions to do so. I think it is also possible and it's desirable to find common ground with our European partners and with other countries around the world on the ICC. As Javier Solano said, the U.S. and Europe need to move past finger pointing regarding the ICC and find a *modus vivendi* on the court.

### *The ICTY & ICTR*

We're seeking to do that and I think certain steps that have been taken by the U.S. over the past year have helped to improve the tone of the dialogue. As to the ICTY and the ICTR, the other fully international

courts, the U.S. has been and remains the single strongest supporter. The U.S. was the driving force for the creation of both courts and at the outset provided a large infusion of personnel, including myself, to help get the courts up and running.

The U.S. has also been by far the largest financial donor to both courts. Contributing around 500 million dollars over the lifetime of the institutions. We continue to pay about 25 percent of the budget of both courts. Around 35 million and 30 million dollars respectfully.

### *Sierra Leone*

The U.S. has also been very supportive of the world's first hybrid tribunal in Sierra Leone, an institution that David Crane helped so much to shape. With the Special Court for Sierra Leone, the U.S. is currently providing about one-third of the funding for its budget.

### *Iraq, Bosnia & Serbia*

In terms of domestic war crimes chambers in Iraq, in Bosnia, in Serbia, the U.S. provides extensive assistance in the form of financial support, training and technical assistance. Particularly in the Balkans, right now we are making a concerted push to enhance domestic prosecution capabilities. The ICTY obviously was never going to be able to prosecute all of those responsible for serious crimes. It was, in fact, envisaged from the beginning that local courts would eventually take on many cases once they had the capability to do so, and more importantly had the political will to do so.

Now as the ICTY seeks to complete its work, it's crucial that there be robust domestic capabilities in place. To assist in this effort, we have as I mentioned a moment ago established a field officer in the region who is moving around, going from Belgrade to Zagreb to Sarajevo to Pristina to other capitals in the region identifying both operational and political problems that hamper cross border cooperation.

### **Ban on Extraditions of Citizens Across Borders**

I just came back from a conference in Montenegro last week where we had all the state war crimes prosecutors, the judges, the police, witness protection specialists for three days in Montenegro talking about this. Talking about what are the obstacles to them prosecuting people. The single biggest bar is a ban on extraditions. Most of the countries there have in their constitutions a prohibition on extraditions of their citizens across borders.

So what has happened, for example, in Bosnia where the bulk of the

crimes were committed, many were committed by Serbs who have gone back to Serbia and cannot be extradited. So you have a situation where we're either faced with them being prosecuted in Serbia or not prosecuted at all. These are the type of issues that we're dealing with. So we're trying to seek cooperation among the prosecutors, among the judges, among the police to get cases off the ground. At the same time we're also pushing to get this bar on extraditions lifted.

Often the issues that we're talking about can be resolved in the field by a liaison officer, but where that's not the case, where it requires some type of political intervention, then either our ambassador in the given country or myself, can intervene and try to address it at senior political levels.

This initiative has been warmly welcomed in the region. It shows the type of practical things that we as a government can do to get things moving and to help. The countries that are involved in this are all now independent. All of them were at one time part of one country, part of Yugoslavia, but they still have great difficulty communicating with each other. The ICTY has difficulty stepping in and playing this role, but it's something that we as a government can do as sort of an honest broker to try to help the process along.

### Diplomatic Efforts

Beyond this material support, the U.S. also continues to place a heavy emphasis of diplomatic efforts related to war crimes issues. This is evidenced by the fact that an ambassador, my job, with a rank of an Assistant Secretary of State exists for this purpose. And we remain very proactive in our approach to see that war criminals are brought to justice and that we have a coordinated approach on these issues with our Allies.

I just returned over the weekend from my third trip to the Balkans in three months, pressuring the Serbian leadership to resolve the cases with the six remaining ICTY fugitives, but particularly those of Radovan Karadžić and Ratko Mladić. Over the same three months, the Under Secretary for Political Affairs Nick Burns, the Assistant Secretary for European Affairs Dan Fried, and our ambassadors in the region have delivered a similarly strong message in separate visits to Belgrade. The Secretary of State and the National Security Advisor have delivered the same message to Serbian leaders as they visited Washington.

Also on my last trip, my final stops were in Brussels and in the Hague to coordinate first of all with our EU counterparts in Brussels and then with the ICTY Prosecutor. Over the next two months, I'll be making two trips to Africa with a heavy emphasis on the ICTR fugitive cases. All in all my predecessor traveled 290 days in his last year in

office. I'm hoping not to be on the road quite that much, but it's already shaping to about at least half of my time traveling and most of this is overseas on diplomatic efforts related to war crimes, as will all of the staff in my office.

No other country in the world engages in that sort of sustained systematic diplomacy on these issues, but it's critical that we continue to do so. The various courts have relatively little political weight that they can bring to bear on their own accord. Therefore, they are very reliant on national governments to do much of the political heavy lifting and to apply the pressure that is necessary to ensure that states comply with their obligations to cooperate with the courts.

Serbia is a prime example of this right now. If it is just the ICTY talking with the Serbian Prime Minister and the Serbian President, very little is going to happen. What is bringing pressure on the Serbian leadership is the fact they want to get into the EU, they want to get into NATO, and this is what is holding them up. They have to resolve these issues before they can move forward on the EU or NATO accession.

#### Future Role of the United States

I think it's fair to say that these issues will remain high on the U.S. policy agenda. As I mentioned at the outset, there is a much better understanding now that holding persons accountable for large-scale crimes does have an important role in stabilizing countries or regions emerging from war. So there is a national security interest in doing this, in doing what we can to strengthen fragile states. I think everyone in the government and in the country should recognize that there is a serious threat posed by fragile states.

The single largest attack ever launched on the United States, the attacks of 9/11, originated not in one of our traditional adversaries, a state with strong armies, but it came from what was undoubtedly a failed state. The second poorest state on the face of the earth, in Afghanistan. So we have a national security interest in addressing instability wherever it exists in the world. Beyond this though, there is also a compelling moral obligation to engage in these issues and to support efforts in achieving international justice.

The United States has traditionally played a leading role in this field. From one of the first attempts to codify conduct in warfare by Francis Lieber during the American Civil War to the creation of the Nuremberg and Tokyo Tribunals, the adoption of the Geneva Conventions, and most recently with the establishment of the ICTY and the ICTR, the U.S. has been at the forefront of these efforts.

Admittedly over the last few years as our country has grappled with

how to deal with the threat posed by terrorism, our representation and our credibility in these areas have suffered. The U.S. approach to the ICC, the detentions at Guantanamo, the abuses at Abu Ghraib have led many around the world to question our intentions and our commitment. People do have legitimate concerns about these issues, both outside and inside the government. And they are obviously the subject of an ongoing active debate. It's unlikely that all of these issues are going to be resolved in the near future. The debate will continue, but I do not think that this means that the United States should withdraw from the field of international justice in the meantime.

On the contrary, we have a valuable part to play and it is critically important that we reconnect with our traditional role as a leader in this field. It is important to the ICTY, it is important to the ICTR, to the Special Court for Sierra Leone, and to the many domestic courts that rely on us that we keep doing what we are doing. And it is important for the global community and for us as a nation that we bridge the divides that have grown up between us and our partners around the world. Thank you.

(Applause.)

PROFESSOR DEL DUCA: Thank you, Clint, for that very positive statement and we now will engage in about 15 minutes of commentary and questions. Does anybody on the panel want to initiate? Yes, go ahead.

PROFESSOR GROOME: I applaud your statement. It is important for us to reconnect. I know for many of us Americans in this field it is kind of discouraging to not feel that our country is the leader in this area. I am just wondering what types of practical steps do you see as ways to reconnect?

AMBASSADOR WILLIAMSON: Well, I think there's a couple of things. Number one, the ICC has been an issue which has been particularly divisive between the United States and our traditional partners on these issues. Over the last year, you have seen the U.S. position on the ICC soften somewhat. First of all the United States agreed to the referral of the Sudan case to the ICC. The United States played an important role in having the Charles Taylor trial take place on the ICC premises. No objection was raised there. You have seen the United States sort of move away from its emphasis on these Article 98 agreements that have been signed. And you had statements both from the Secretary of Defense and the Secretary of State saying that we need to reconsider this and the effect that it has on our foreign policy.

So I think this has helped a lot with the dialogue. I would like to think that my appointment has helped. I certainly have a background in these issues. There were other people that were considered for this job

that I think had a more ideological approach to it. But I think that we have tried to reach out and have a meaningful dialogue with other governments. Certainly in my talks with people in the EU, with other governments they want to have a dialogue, and I think that the ICC is very interested in a dialogue.

But you have to recognize too that a lot of the opposition on the ICC comes in Congress and, in fact, because of the American Servicemen's Protection Act, there are certain prohibitions on what we can and we cannot do. So there are limitations on how far we can go at the moment, but I think this is something where we need to have a dialogue. As Javier Solano said, it's in both of our interests to find common ground on these issues. It doesn't do any good to say well, you did this or you didn't do that or this is going to do this or this is going to cause this to happen. Let's see where we have common interest here. Sudan is one of the cases where we did, I mean where we agreed that this would be the appropriate forum for that case to be heard. So I think this is one thing.

Another thing is the work that we continue to do with the tribunals. For example, no other country in the world comes close to the amount of money that we are putting into these courts. No other country has the same record of intelligence sharing that we do with these various courts. No other country as I said engages in diplomatic efforts on behalf of these courts in the same way that we do.

I just left the Hague, spent a full day with the ICTY Prosecutor who was saying very few diplomats come calling anymore and saying what can we do to help. We are making a concerted effort to do that. So again, a lot of it is are these practical steps, but I think more of it is just in the tone of the dialogue that is coming out and how we are discussing these issues and again just expressing an interest to find common ground.

PROFESSOR DEL DUCA: Richard.

JUDGE GOLDSTONE: If I could follow up just briefly because before you came this morning I spoke in more detail than you did about the crucial assistance that the United States gave for the ICTY and ICTR and, in fact, I put it very strongly that without that there would not have been either established and they would not have got off their feet. This is obviously relevant to the absence of that assistance for the ICC.

In a situation like Darfur where as stated and I think it is fairly clear the United States interest is in favor of a successful investigation and prosecution. My understanding is that notwithstanding the Prohibition Act, the president can authorize assistance or exemption. Is there any prospect of assistance, active assistance? When I talk about active assistance, I am talking about more what happens behind closed doors than what happens in public and pressurizing Sudan and its neighbors into the conflicts there, but I think the United States can be most helpful.

I mean the ICC is not short of financial sources.

AMBASSADOR WILLIAMSON: It's a good question. What you point out is correct. In the American Servicemen's Protection Act, the ASPA, the final provision says that nothing in this act shall constrain the United States government from seeing that people responsible for crimes against humanity are brought to justice. For example, I think it names Osama bin Laden, Slobodan Milošević, Saddam Hussein. I don't know who else it names as examples.

So there is a clause there that allows cooperation. We have said that we would be open to finding ways to work with the court on this. I was asked this question specifically during my confirmation hearing in the Senate and said if the United States were to receive a request for assistance from the court, would we be prepared to honor it, and we have said yes, we would. But I think this is something that the ICC wants to be very careful about doing. They certainly do not want to ask us for something and have us say no. But I think we would be open to it and I think there are ways that this can be worked out.

A lot of the people who were opposed to the ICC are also people who have been very strong on calling for justice in Sudan. People who might have an ideological opposition to the court would be willing to see this as a place where maybe the ICC is the appropriate forum.

PROFESSOR DEL DUCA: Yes.

STUDENT: I would like to ask, have you ever received any pressure so as to discourage you from prosecuting certain individuals or not to do some investigation because as far as I see, beyond the personal network of people that every criminal have, there are also people maybe living on the opposite side of the world who have interest in for instance civil wars or selling weapons and so on? So maybe I guess that in a certain way they can also reach prosecutor.

AMBASSADOR WILLIAMSON: In my current role, I'm a diplomat. I am not dealing with the actual prosecution of cases. This is taking place in the tribunals and we certainly try to support them. At times we get requests asking us to intervene with the tribunals a lot of times from interest groups and saying oh, the tribunal, ICTY is doing this or the ICTR hasn't done this, you know, can you force them to do it. Our response is always these are independent courts. We are going to support their efforts, but we are not going to get involved in individual cases and say you have to do this or you have to do that. I think that most governments try to observe that rule. I don't think that there is that kind of blatant pressure that goes on.

We talked about this a little bit earlier this morning as Richard mentioned about a situation when the Karadžić and Mladić indictments occurred. I was at the ICTY when we were doing the Milošević

indictment in 1999 during the Kosovo war and was one of two lead attorneys on that case. And certainly, if anything, the pressure was not to indict Milošević, not the other way around. When the indictment came out, there was a lot of speculation in the press that this was being done at the request of the U.S. government or the British government or NATO as one of their tools in the war against Serbia. In fact, as we said, those governments I think would have much preferred that there not be an indictment because they saw this as interfering with the negotiation process.

I have never seen situations in my time working in the tribunals, working in the UN or in my current role where governments come in and just blatantly try to influence the process. I think it is a lot more subtle than that. You know, they may make known they would prefer something or another, but the last thing they want to do is be seen as having too heavy a hand in the process and then have this all over the press and being shown as trying to manipulate something which should be an independent judicial process.

PROFESSOR DEL DUCA: Yes.

STUDENT: I would like to know of what economic importance is the role of United States in Baghdad in the case of Saddam Hussein? What is the United States to gain?

AMBASSADOR WILLIAMSON: I'm sorry, I don't understand.

STUDENT: Of what economic importance is the role of United States to the case of prosecuting Saddam Hussein?

AMBASSADOR WILLIAMSON: Okay. The United States has provided a lot of support to the Iraq court, a substantial amount. I don't know exactly what it was last year. I think it was somewhere around 50 to 60 million in its first year to get the tribunal up and running. It is a mixture of U.S., support from a few other countries, and support from the Iraqi budget, I do not know exactly what the breakdown is.

STUDENT: So my question is what do they stand to gain? The United States spend much more money than any other country. What do they stand to gain in the long run?

AMBASSADOR WILLIAMSON: Well, I don't think that any of these things should be judged in the context of economic gain. I mean what do we gain economically from supporting the court in Sierra Leone? Very little. I think the policy gains of seeing Iraq stabilized are much more important to the United States than the Balkans or Sierra Leone or Cambodia where we have troops or we have a small number of troops.

I mean where you have this huge U.S. commitment in Iraq, there is a lot to be gained by seeing something that will help stabilize the situation. Now, whether the Saddam trial will do that or not is

questionable, but certainly there needs to be a coming to terms with the past. And I think it goes back to what I was saying is that there's a moral interest in seeing justice be done, in seeing cases brought to trial. There is a national security interest, but I do not think that's necessarily an economic interest. I do not think that's what drives this process.

PROFESSOR DEL DUCA: Yes.

STUDENT: I was going to ask Ambassador Williamson how much does your office work with our current armed forces in terms of making sure they are following and being observant with the Rules of War and the Geneva Conventions? How much does your office work with the uniformed JAG officers in each of the branches?

AMBASSADOR WILLIAMSON: We do not have any role at all in U.S. compliance with the Rules of War. I mean this is something that's internal with the Department of Defense. If you have a situation where an American soldier has committed a crime then leaves service, it is an issue for the Department of Justice. Those are considered domestic law enforcement matters. So we do not really have any role there.

We work with the JAGs a lot. We have right now two JAGs that are assigned to my office that are detailed from the Department of Defense that are working on these issues. So I mean we work with the Department of Defense a lot on sort of general policy on this with JAGs primarily. They help in training people in other countries. We try to use them as a valuable resource, but again it's more of a collaborative effort. It's not something in terms of enforcement of laws of war.

JUDGE GOLDSTONE: My observation is as a non-American, I was very pleasantly surprised at what I found on two unusual visits. I was asked to come and talk about the ICC first at the National Defense University in Washington, which is I think a premier war college for more senior officers in the United States Armed Forces. And more recently at the U.S. Air Academy in Colorado Springs. The first time I went, I assumed I was going to go into a fairly conservative doctrinaire atmosphere, and I couldn't have been more wrong in that. My experiences on both occasions were the same as going on to any good university campus—freedom on the part of students and faculty to support the ICC, to oppose the ICC. There was a very good, very good debate. Now, I say that was a very heartening experience for me and I'm not sure that many people appreciate how the way it should be taught and how well it is being taught.

AMBASSADOR WILLIAMSON: And I think as you've seen with Guantanamo, you've had JAG officers who have been defense counsel for many of the detainees there, and some of them have been the most outspoken critics of the detention policies at Guantanamo. Within this room, there is an incredible diversity of opinions on issues of the day.

The same diversity exists in the United States government. Ninety-five percent of the people in the U.S. government or probably more than that are civil servants. These are career people that are there from one administration to the other. Even among political appointees there is not a sort of a monolithic point of view that everybody sticks to one policy. The debates that go on within the U.S. government I think are very lively. Sometimes views prevail that I would not prefer. Sometimes you know, things that I do want to see do get through.

I will give an example of the diversity of opinion in my time at the NSC. I was originally brought to the NSC by a man named Rand Beers who subsequently resigned over the Iraq War and became John Kerry's principal foreign policy advisor. He was working in the Bush Administration at the time I was brought there. My second boss was Frank Miller who was the Special Assistant to the President for Defense Policy. He is featured very prominently in Bob Woodward's latest book, *The State of Denial* for the role that he played in the opposition to other figures within the government. So again, this idea that the U.S. government exists as one solid point of view is not accurate. What you deal with on a daily basis and you don't encounter that in law school. You don't encounter it even within your families. So to think that the U.S. government, as big and unwieldy as it is, that there's one point of view that always prevails and always shoves through policy just isn't accurate.

