US Sanctions Against the ICC: From Stupor to Action

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For the ICC, 2025 will have been the year of US sanctions. These sanctions took shape as early as February 6 with the signing of Executive Order 14203, "Imposing Sanctions on the International Criminal Court". This order placed Prosecutor Karim Khan at the top of a list that has since been extended in June, August and December 2025.

We recall that in 2020, already, the previous Prosecutor Fatou Bensouda (Gambia) and staff members of her Office had met with the same fate. This time, the targets are the current Prosecutor, Karim Khan (United Kingdom), his two deputies, Nazhat Shameem Khan (Fiji) and Mame Mandiaye Niang (Senegal), and eight Honourable Judges of the Court, its Vice-President Reine Alapini-Gansou (Benin) and Judges Solomy Balungi Bossa (Uganda), Luz del Carmen Ibáñez Carranza (Peru), Kimberly Prost (Canada), Gocha Lordkipanidze (Georgia), Erdenebalsuren Damdin (Mongolia), Nicolas Guillou (France), and Beti Hohler (Slovenia). The reason? Having carried out the judicial mandate entrusted to them by the 125 States Parties to the Statute of the Court, namely to prosecute individuals suspected of having committed international crimes. One cannot fully grasp the irrationality of the situation without adding that none of the individuals suspected for the purpose of whose prosecution these eight Judges and three Prosecutors have merely fulfilled their mandate are, by contrast, placed under sanctions.

The sanctioned judges, the spared suspects. This reversal of roles is so counter-intuitive that the first reaction to its announcement is stupor. The human mind has resilience mechanisms that generally make it possible to move beyond this stage and start functioning again to seek explanations and solutions, with an adrenaline boost if necessary. Stupor is, however, much more difficult to overcome in the case of an organization deprived of the salutary spring of adrenaline. To the individual stupor of its members is added the administrative stupor of the institution, the incomprehension not only of how the situation could have arisen, of the exact nature of the threat, but also, and above all, of the strategies to resolve it.

In fact, the Court's official reactions deplore these sanctions – press releases of 5 June 2025, 20 August 2025 and 18 December 2025 – and denounce them for what they are, namely blatant infringements on the independence of an impartial judicial institution. But no measure or strategy aimed at bringing them to an end has been announced. The eight judges and the three Prosecutors appear quite alone in facing the sanctions imposed on them, while the Court itself seems prostrated in fear that the sanctions may not content themselves with striking individuals, but may be expanded to the institution as a whole.

The initial stupor is legitimate, inevitable. But nearly a year after the announcement of the first sanctions, it becomes a handicap. It becomes urgent to act before the Court gets sanctioned too. And what about the individuals affected in all this? The eight Judges and the three Prosecutors, what is happening to them? What is being done for them? Must their exemplary individual determination to carry out their mandate at all costs remain the only bulwark of the Court's independence?

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Preserving the Institution

What is the materiality of the risk that the Court itself might be affected as an institution, and no longer only individuals? Is this merely a fantasy? Or is the risk real? The best way to answer this is undoubtedly to read the executive order of 6 February 2025 to verify what it allows. A reading reveals that it targets only persons, individuals or entities, that assist the ICC, not the ICC itself. The ICC itself as an institution is not, at least for now, targeted by the order.

Can it be? The order provides further elements to answer this question. It states that the United States is not a Party to the Rome Statute and has not recognized the Court. In the formalism of international relations, this means that the ICC has no legal existence in the United States. How can one sanction something that does not exist? To do so, its legal existence would first have to be recognized, a step that the order does not seem, for the moment, to contemplate. This explains why in 2020 as in 2025, only individuals were placed under sanctions, not the ICC.

Careful. This does not mean that the ICC could not itself one day be targeted. The risk persists. The desire not to formally recognize the ICC as a subject of international law could in the long run prove weaker than the determination to put an end to its actions. A new order would likely be needed for this, one directly targeting the ICC and formally recognizing its existence in the process. We are not there yet. Which means there is still time to act to prevent it.

Legality of the Sanctions as Countermeasures

Sanctions are not new in international law. They are a known mechanism for reacting to violations of international norms, generally referred to as countermeasures. Their use is codified. International law sets out several procedural and substantive conditions for an act to be admissible as lawful countermeasures: notably, (i) it must be taken in response to a prior unlawful act committed by another subject of international law, a State or an organization, against the State taking the countermeasures; (ii) the State taking the countermeasures must first have asked the subject of international law responsible for the allegedly unlawful acts to put an end to them and/or to remedy them; (iii) the countermeasures must be proportionate to the harm alleged by the State taking them (see the case concerning the Agreement of 27 March 1946 relating to Air Services between the United States of America and France, 9 December 1978).

In other words, the US sanctions against the ICC constitute countermeasures taken by a State, the United States, against another subject of international law, the ICC, which

State, the United States, against another subject of international law, the ICC, which materialize through measures taken against individuals targeted for having supported its activities deemed unlawful, the judges and the prosecutors.

As measures governed by international law, the US sanctions are likely to be subject to a review of their legality. The States Parties to the ICC Statute, in particular those whose nationals are among the targeted individuals, would be entitled to submit these measures to the legality review of the competent international jurisdiction, namely the International Court of Justice ("ICJ"). Those with a particular interest in acting, individually or collectively, would notably include: (a) the States of nationality of the targeted individuals; (b) the Netherlands, as the host State primarily affected on its territory; and/or (c) any State Party to the Rome Statute concerned with protecting the independence of the ICC. Several questions could be raised within the framework of such a legality review, in particular: (i) do the sanctions respond to a violation of international law by the ICC? (ii) did the United States attempt to bring the ICC's actions to an end before resorting to sanctions? (iii) are the sanctions proportionate? …

Could the ICJ exercise its jurisdiction if seized with the question of the legality of the sanctions against the ICC? This will likely depend on the modalities of its referral. In the context of contentious proceedings, the ICJ must be seized by a State. The ICC does not have the power to refer a case to the ICJ. Since the referral would be directed against the US sanctions, it must be based on a title granting the ICJ jurisdiction to call on the United States to respond as a Party to the dispute. The United States has withdrawn its clause accepting the ICJ's jurisdiction. It will therefore be necessary to seize the ICJ on another basis, such as compromissory clauses granting it jurisdiction. Such compromissory clauses are included in numerous treaties ratified by the United States, such as the 1973 Convention on the Prevention and Punishment of Crimes against Persons enjoying International Protection, including Diplomatic Agents, including Diplomatic Agents, or bilateral treaties on friendship, commerce, and navigation between the United States and numerous other States, including the Netherlands, France, the United Kingdom, and other States Parties such as Austria, Belgium, Denmark, Greece, Iceland, Italy, Luxembourg, Norway, Portugal, or Sweden. Any one of these States, or better yet all of them collectively, could seize the ICJ regarding the consequences of the sanctions against the ICC on the application of these treaties, without the United States being able to evade it.

Such a referral would doubtless not, by itself, put an end to the sanctions. Nevertheless, the ICJ's examination would make it possible to confirm whether or not the ICC violated international law and, in the process, to hear the details of the US accusations against it. In the event that the ICJ concluded that the ICC violated international law in its handling of prosecutions related to the Situation in Palestine, there is little doubt that Article 21 of its Statute would obligate it to rectify its actions. Conversely, if the ICJ concluded that

of its Statute would obligate it to rectify its actions. Conversely, if the ICJ concluded that the ICC committed no violation, the illegality of the US sanctions would likely deal a significant blow to their implementation. Whether the United States withdraws them or not, the personal situation of the targeted individuals, starting with the eight judges and three Prosecutors, would likely be significantly improved, and the threat of new sanctions would recede.

Sanctions are Not Everything

As noted above, one of the conditions for resorting to countermeasures is to have previously tried to resolve the dispute with the opposing party by other means, notably by asking it to cease the action considered unlawful. What is striking about the present sanctions is that only 17 days separate the inauguration of the 47th President of the United States, on 20 January 2025, from his signing of the executive order of 6 February 2025. What did the United States do in the meantime to have the ICC put an end to its activities deemed unlawful against the United States and/or its allies? Nothing. What could they have done?

Alone and without formally recognizing the ICC, probably not much. But the United States' permanent seat on the United Nations Security Council gives them a powerful means, not to put an end, but at least to curb the Court's ambitions regarding their interests and those of their allies.

Under Article 16 of the ICC Statute – Deferral of investigations or prosecutions, "no investigation or prosecution may be commenced or carried out under this Statute for a period of twelve months after the date on which the Security Council has made a request to that effect to the Court in a resolution adopted under Chapter VII of the United Nations Charter; the request may be renewed by the Council under the same conditions." The United States, as well as any permanent or non-permanent member State of the Security Council, therefore have the possibility of activating Article 16 of the ICC Statute to request that the ICC suspend for a renewable period of 12 months its activities related to a Situation falling under Chapter VII. And the ICC would then have no other choice, under Article 16 of its Statute, than to comply with this request, deferring its investigations and prosecutions to a later time. This interruption does not prevent the continued collection of information on the commission of crimes and the identification of suspects within the framework of preliminary examinations (Y.M. Brunger, CLICC – Article 16), which may be used once the deferral has ended.

Let us recall that Article 16 has already been used twice by the Security Council in its Resolutions 1422 (2002) and 1487 (2003). Both of these resolutions were adopted at the initiative of the United States, without obliging them to officially recognize the ICC since they were acting within the multilateral framework of the Security Council. The legality

they were acting within the multilateral framework of the Security Council. The legality of Resolutions 1422 and 1487 had raised questions at the time, as they were adopted outside the framework of the application of Chapter VII of the Charter, that is, in the absence of a threat or violation of the peace or an act of aggression. But the Situation in Palestine, at least since the adoption of Security Council Resolution 2803 on 17 November 2025, has clearly been recognized as falling within the scope of Chapter VII. The conditions for activating Article 16 of the ICC Statute with regard to this Situation are therefore met.

What would be the effects of a Security Council resolution requesting the ICC to suspend its investigations and prosecutions in the Situation in Palestine? The effects would be numerous. For a renewable period of 12 months, until, for example, the revocation of the executive order of 6 February 2025 by the 47th President of the United States or by one of his successors, the ICC would suspend investigations and prosecutions. This suspension would put an end to the allegedly unlawful activity – subject to a legality review by the ICJ concluding that the ICC's actions are lawful – and therefore to the basis for the sanctions. Without any further reason, the sanctions should end, thus relieving the targeted individuals and allowing them to continue their judicial mandate without having to bear further consequences in their private lives. This would in no way constitute a renunciation by the ICC of exercising its mandate independently, but a suspension of its action provided for by its Statute in order to allow a return to peace and to conditions more conducive to the administration of justice in the Situation.

Solutions exist. The ICC alone cannot act, unless it renounces exercising its mandate. This must be avoided at all costs to safeguard the ambition of an independent international criminal justice. But the States Parties, first and foremost those of nationality of the sanctioned individuals and/or members of the Security Council, have the means to act, individually or collectively, before the ICJ and/or the Security Council, to put an end to the US sanctions and restore to the Court, and first and foremost to the targeted individuals, full and complete autonomy to carry out their mission of justice independently, including in Palestine.

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