

# The analysis of sanctions applied to the International Criminal Court. Problems and solutions

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**ABSTRACT:** The application of sanctions to the International Criminal Court and to the staff of the most important international court and the first permanent tribunal, which judges the most serious international crimes – those that affect the very essence of us humanity – must be a matter of concern for legal theorists and practitioners. Attempts to influence the International Criminal Court through limitations on the right of movement, blocking the property of Court employees, criminal conviction, motivated by the conduct of criminal investigations, can be opposed by the cooperative approach and Communication with the international court, in order to carry out the act of justice, to ensure a climate of peace and national and international security. Also, the serious criminalization of the attempts to divert the course of the justice could be an effective solution.

**KEYWORDS:** sanctions against officials of the International Criminal Court; Executive Order; Blocking Property; ICC Prosecutor's Office investigation; United States military; Rome Statute; state party; Russian Federation; condemnation; criminalization.

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## **1 INTRODUCTION, SANCTIONS POLICY APPLIED TO THE INTERNATIONAL CRIMINAL COURT**

The sanctioning of a court or its members by state actors due to the judicial activity carries out is a practice at least surprising for legal specialists, for whom the independence and impartiality of justice are pillars of contemporary democracy in any part of the world. When this happens at the national level, it

naturally signifies a serious deviation of the respective state from democratic norms and the normal life of any people and creates concern in society. The application of sanctions to the International Criminal Court and the staff of the most important international court and the first permanent court that judges the most serious international crimes – those that affect the very essence of our humanity – must be a matter of concern for legal theorists and practitioners. I will try, throughout this article, to clarify the mechanism and meanings of this phenomenon, but also the implications for the achievement of international justice and the normal development of relations between states.

The research I propose does not target political aspects, does not criticize states or individuals and represents an exclusively legal analysis of a new phenomenon related to the achievement of international justice: sanctions against an international instance applied by a state. Also, it does not engage or represent in any way Romanian institutions or state organisms, or the editors, but represents a technical point of view of a specialist in public international law and international criminal justice.

The sanctions policy applied to the International Criminal Court has been implemented mainly by the executive

branch of the United States of America since 2020, through presidential orders, but also through a recent criminal conviction of the Court's magistrates, pronounced in the Russian Federation in December 2025.

## **2 SANCTIONING MEASURES OF THE INTERNATIONAL CRIMINAL COURT**

### **2.1 Preliminary measures to sanction staff of the International Criminal Court**

On September 10, 2018, John Bolton, the national security adviser to the US president, in a speech at the Federalist Society in Washington<sup>1</sup>, criticized the authority and legitimacy of the International Criminal Court (ICC), stating: "*The United States will use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court. We will not cooperate with the ICC. We will not provide any assistance to the ICC. And we certainly will not join the ICC.*" In addition, John Bolton, claiming to speak on behalf of the US president, threatened ICC judges with sanctions if they

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<sup>1</sup>The statements cited here are available at <https://www.youtube.com/watch?v=yrastGeoSuE>, accessed October 25, 2025.

tried to prosecute US citizens for alleged war crimes in Afghanistan.

A first step in sanctioning the staff of the International Criminal Court, this time materialized in concrete official measures, was represented, on April 5, 2019, by the revocation, by Secretary of State Mike Pompeo, under the Immigration and Nationality Act <sup>2</sup>, of the travel visa for the USA, which allowed the Prosecutor of the International Criminal Court, Fatou Bensouda, to enter the United States, unless she visits UN headquarters in New York.

The American official justified the measure by the possible investigation by Prosecutor Bensouda into allegations of war crimes and crimes against humanity committed by American military and civilian citizens in Afghanistan in 2002, arguing that such activities " *illegally target American personnel for prosecution and condemnation* ".

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<sup>2</sup> [https://www.congress.gov/crs\\_external\\_products/IN/PDF/IN11101/IN11101.4.pdf](https://www.congress.gov/crs_external_products/IN/PDF/IN11101/IN11101.4.pdf) , accessed November 3, 2025.

## **2.2 Executive Order 13928 of June 11, 2020, entitled "Blocking of the property of certain persons associated with the International Criminal Court"<sup>3</sup>**

The preamble to the order states: *"I find that the situation regarding the International Criminal Court (ICC) and its illegitimate claims of jurisdiction over United States personnel and certain of its allies, including the ICC Prosecutor's investigation into alleged actions by United States military, intelligence, and other personnel in or related to Afghanistan, threatens to subject current and former United States Government and allied officials to harassment, abuse, and possible arrest. These actions by the ICC, in turn, threaten to violate the sovereignty of the United States and to impede the critical national security and foreign policy work of the United States Government and allied officials, thereby threatening the national security and foreign policy of the United States. The United States is not a party to the Rome Statute, has never accepted the jurisdiction of the ICC over its personnel, and has consistently rejected the ICC's claims of jurisdiction over United States personnel. Furthermore, in 2002, The United*

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<sup>3</sup>Available at <https://www.presidency.ucsb.edu/documents/executive-order-13928-blocking-property-certain-persons-associated-with-the-international>.

*States Congress passed the U.S. Servicemembers Protection Act (22 U.S.C. 7421 et seq.), which rejected the ICC's overly broad and non-consensual claims of jurisdiction.*

The measures ordered by Section 1 of the said order are: blocking and prohibiting from trading, transferring, paying, exporting, withdrawing or otherwise dealing all property and interests in property that are in the United States, that enter the United States, or that are or come into the possession or control of any person in the United States, of any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General who:

(A) have directly engaged in any ICC effort to investigate, arrest, detain, or prosecute any United States personnel without the consent of the United States;

(B) have directly engaged in any ICC effort to investigate, arrest, detain, or prosecute any personnel of a country allied with the United States without the consent of that country's government;

(C) have materially aided, sponsored, or provided financial, material, or technological support for, or goods or services for or in support of, any activity described above or any

person whose property and interests in property are blocked under this order;

(D) be owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked under this order (...).

Section 2 of the Order prohibits donations of the types of items specified in section 203(b)(2) of the IEEPA <sup>4</sup>(50 USC 1702(b)(2)) <sup>5</sup>by, to, or for the benefit of any person whose property and interests in property are blocked under section 1 of

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<sup>4</sup>The International Emergency Economic Powers Act (IEEPA) gives the President broad authority to regulate a variety of economic transactions following a declaration of a national emergency. Section 203 governs the donation of goods, such as food, clothing, and medicine, to relieve human suffering. It is permitted unless the President determines that it would seriously impair the ability to deal with a national emergency, is a response to duress, or would endanger the U.S. armed forces. This section also provides an exception for the import or export of informational materials, regardless of format.

<sup>5</sup>The United States Code is the subject-matter codification of the general and permanent laws of the United States. It is divided into 53 general subject titles and is published by the Office of the Legislative Revision Council of the United States House of Representatives. The United States Code was first published in 1926. The next major edition was published in 1934, and subsequent major editions have been published every six years since 1934. Between editions, annual cumulative supplements are published to present the most recent information. Section 1702 governs presidential powers. The 2024 version is available at <https://www.govinfo.gov/app/collection/uscode/2024/title1>, accessed November 1, 2025.

the Order and emphasizes that making them would seriously impair the President's ability to deal with the national emergency declared in the Order.

The prohibitions in section 1 of the Order include: making any contribution or providing funds, goods or services by, to or for the benefit of any person whose property and real estate interests are blocked under section 1 of the Order and receiving any contribution or providing funds, goods or services from such a person (section 3 of the Order).

Section 4 of the Order suspends the unrestricted entry into the United States of immigrants and nonimmigrants, aliens deemed to meet one or more of the criteria in section 1, as well as immediate family members of such aliens or aliens deemed by the Secretary of State to be employed by the ICC or acting as agents thereof, because "*it would be detrimental to the interests of the United States.*"

The prohibition, however, provides for an exception—where the Secretary of State determines that the person's entry into the United States would not be contrary to the interests of the United States, including where the Secretary determines, on the recommendation of the Attorney General, that the person's entry would, on the contrary, promote important law

enforcement objectives in the United States. In exercising this responsibility, the Secretary of State shall consult with the Secretary of Homeland Security on matters of admissibility or inadmissibility that fall within the authority of the Secretary of Homeland Security.

Section 7 provides a series of definitions of the terms used in the Order. The following seem significant to us:

– “United States personnel” (subparagraph d), which means any current or former member of the United States Armed Forces, any current or former elected or appointed official of the United States Government, and any other person currently or formerly employed by or working on behalf of the United States Government;

– “personnel of a country that is an ally of the United States” – any current or former military personnel, current or former elected or appointed official, or other person currently or formerly employed by or working on behalf of a government of a member country of the North Atlantic Treaty Organization (NATO) or of a “major non-NATO ally,” as that term is defined in section 2013(7) of the U.S. Service- Members Protection Act (22 U.S.C. 7432(7)) - (letter e),

– “immediate family member” (letter f) means spouses and children.

### **2.3 Lifting of sanctions applied by the US, through Executive Order 14022 of April 1, 2021 entitled "Termination of the State of Emergency with Respect to the International Criminal Court"**

The US administration did not persist in applying sanctions to the Court's staff, and through Executive Order 14022 of April 1, 2021, entitled " Termination of the State of Emergency with Respect to the International Criminal Court" , the new administration installed in Washington ordered the termination of the national emergency declared by Executive Order 13928 of June 11, 2020 and the revocation of that order.

It is significant that the preamble to the normative act explicitly stated that "*while the United States continues to object to the International Criminal Court's assertions of jurisdiction over personnel of non-State Parties, such as the United States and its allies in the absence of their consent or referral by the United Nations Security Council, and will vigorously protect current and former United States personnel from any attempts to exercise such jurisdiction, the threat and imposition of financial*

*sanctions against the Court, its personnel, and those who assist it is not an effective or appropriate strategy for addressing United States concerns about the ICC."*

On this occasion, US Secretary of State Anthony Blinken stressed that "*Our support for the rule of law, access to justice, and accountability for mass atrocities are important US national security interests, which are protected and promoted by engaging with the rest of the world to meet the challenges of today and tomorrow. Since the Nuremberg and Tokyo Tribunals after World War II, US leadership has made history a permanent record of fair judgments issued by international tribunals against rightfully convicted defendants from the Balkans to Cambodia, Rwanda, and elsewhere. We have continued this legacy by supporting a series of international, regional, and domestic tribunals, as well as international investigative mechanisms for Iraq, Syria, and Burma, to fulfill the promise of justice for victims of atrocities. We will continue to do so through cooperative relationships.*"<sup>6</sup>

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<sup>6</sup>Press statement of April 2, 2021, available at <https://2021-2025.state.gov/ending-sanctions-and-visa-restrictions-against-personnel-of-the-international-criminal-court/> , accessed November 1, 2025.

## **2.4 Revocation of Executive Order 14022 of April 1, 2021**

With the installation of a new administration, the Order of January 6, 2025 revoked Executive Order 14022 of April 1, 2021.<sup>7</sup> The legal provision does not include specific motivations regarding the International Criminal Court, the preamble containing a general policy statement, but the measure reinstated the previously regulated sanctioning mechanism.

## **2.5 Sanctioning the Prosecutor of the International Criminal Court, through Executive Order 14203 of February 6, 2025<sup>8</sup>**

The next step in the evolution of sanctions applied to the Court was achieved by sanctioning the Prosecutor of the International Criminal Court. The reasons given by the US Chief of Staff are: "*The International Criminal Court (ICC), as established by the Rome Statute, has engaged in illegitimate and unfounded actions targeting America and our close ally, Israel.*

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<sup>7</sup>Available at

<https://www.whitehouse.gov/presidential-actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/>, accessed November 2, 2025.

<sup>8</sup>Available at

<https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/> and <https://www.legal-tools.org/doc/ahgsb70o/pdf>, accessed 2 November 2025.

*The ICC has exercised, without a legitimate basis, jurisdiction over personnel of the United States and some of its allies, including Israel, and has further abused its power by issuing unfounded arrest warrants targeting Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant.*

*The ICC has no jurisdiction over the United States or Israel because neither country is a party to the Rome Statute or a member of the ICC. Neither country has ever recognized the ICC's jurisdiction, and both nations are prosperous democracies with militaries that strictly adhere to the laws of war.*

*The ICC's recent actions against Israel and the United States have set a dangerous precedent, directly endangering current and former United States personnel, including active-duty members of the Armed Forces, exposing them to harassment, abuse, and possible arrest. This malign behavior, in turn, threatens to violate the sovereignty of the United States and undermines the essential national security and foreign policy work of the United States Government and our allies, including Israel.*

*Additionally, in 2002, Congress passed the U.S. Service-Members Protection Act of 2002 (22 U.S.C. 7421 et seq.) to protect United States military personnel, United States officials, and military officials and personnel of certain allied countries from prosecution by an international criminal court to which the United States is not a party, stating: "In addition to exposing members of the United States Armed Forces to the risk of international criminal prosecution , the Rome Statute creates the risk that the President and other senior elected and appointed officials of the Government of the United States may be prosecuted by the International Criminal Court (22 U.S.C. 7421(9))."*

The text provides for measures largely similar to Executive Order 13928 of June 11, 2020, namely: all property and interests in property that are in the United States, that subsequently enter the United States, or that are or subsequently come into the possession or control of any person in the United States belonging to the following categories of persons are blocked and cannot be transferred, paid, exported, withdrawn, or otherwise traded:

(i) the person mentioned in the annex to the order,  
(ii) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, who:

(A) to have directly engaged in any effort by the ICC to investigate, arrest, detain or prosecute a protected person, without the consent of that person's country of nationality;

(B) has materially aided, sponsored, or provided financial, material, or technological support, goods, or services for or in support of any activity in subsection (a)(ii)(A) of this section or any person whose property or interest in property is blocked under this order; or

(C) be owned or controlled by, or have acted or purported to act for or on behalf of, directly or indirectly, any person whose property or interest in property is blocked under this order.

Section 2 of the Order prohibits donations of the types of items specified in section 203(b)(2) of the IEEPA (50 USC 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked under section 1 of the Order and emphasizes that making them would seriously

impair the President's ability to deal with the national emergency declared in the Order.

The prohibitions in section 1 of the Order include: making any contribution or providing funds, goods or services by, to or for the benefit of any person whose property and real estate interests are blocked under section 1 of the Order and receiving any contribution or providing funds, goods or services from such a person (section 3 of the Order).

Section 4 of the Order suspends the unrestricted entry into the United States of immigrants and nonimmigrants, aliens deemed to meet one or more of the criteria in section 1, as well as immediate family members of such aliens or aliens deemed by the Secretary of State to be employed by the ICC or acting as agents thereof, because "*it would be detrimental to the interests of the United States.*"

The prohibition, however, provides for an exception — where the Secretary of State determines that the person's entry into the United States would not be contrary to the interests of the United States, including where the Secretary determines, on the recommendation of the Attorney General, that the person's entry would, on the contrary, promote important law enforcement objectives in the United States. In exercising this

responsibility, the Secretary of State shall consult with the Secretary of Homeland Security on matters of admissibility or inadmissibility that fall within the authority of the Secretary of Homeland Security.

Section 7 provides a series of definitions of the terms used in the Order, similar to those in Executive Order 13928/2020.

Only one person is mentioned in the annex to the Order, Mr. Kharim A. Khan, the Prosecutor of the International Criminal Court.

## **2.6 Sanctioning of judges and prosecutors of the International Criminal Court on June 6, 2025, August 20, 2025 and on December 18, 2025**

In 2025 new stages in the sanctioning of the Court concerned the sanctioning of the judges of the International Criminal Court by the US Department of State, based on Executive Order 14203 of February 6, 2025, starting with June 6, 2025 and subsequently on August 20, 2025.

On June 6, 2025, the Department designated the following individuals as subject to sanctions under section 1 of Order 14203, *“for directly engaging in the ICC’s effort to*

*investigate, arrest, detain, or prosecute a protected person, without that person's consent”:*

- Solomy Balls Bossa, judge, Appeals Chamber;
- Light Del Carmen Ibanez Carranza, judge, Appeal Chamber;
- Queen Adelaide Sophie Alapini Gansou, Judge, Pre-Trial Chamber and Chamber;
- Drink Hohler, Judge, Pre-Trial Chamber and Chamber.

The decision also states that "*Bossa and Ibanez Carranza decided to authorize the Prosecutor's investigation into American personnel in Afghanistan. Alapini Gansou and Hohler decided to authorize the Court to issue arrest warrants targeting Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav "Gallant "*".

Under the provision, all property and interests of designated persons located in the United States or in the possession or control of U.S. persons are blocked and must be reported to the Treasury Department's Office of Foreign Assets Control (OFAC). In addition, all persons or entities that are owned, directly or indirectly, individually or collectively, 50 percent or more by one or more of the designated persons are also blocked. All transactions by U.S. persons in or within (or

transiting through) the United States involving any property or interests in the property of designated or otherwise blocked persons are prohibited, unless authorized by a general or specific license issued by OFAC or exempted. These prohibitions include making any contribution or provision of funds, goods, or services by, to, or for the benefit of any designated person and receiving any contribution or provision of funds, goods, or services from any such person.

On August 20, 2025, the U.S. Department of State<sup>9</sup> designated Solomy as a sanctioned person. Balls Bossi from Uganda, Luz del Carmen Ibáñez Carranza of Peru, Queen Adelaide Sophie Alapini Gansu from Benin and Beti Hohler of Slovenia, pursuant to Executive Order 14203. The reasoning stated that: *"these individuals directly engaged in the efforts of the International Criminal Court (ICC) to investigate, arrest, detain, or prosecute citizens of the United States or Israel, without the consent of the United States or Israel. Neither the United States nor Israel is a party to the Rome Statute."*

*As ICC judges, these four individuals have actively engaged in the ICC's illegitimate and baseless actions targeting*

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<sup>9</sup>Available at <https://www.legal-tools.org/doc/a4div823/pdf>, accessed 3 November 2025.

*America or our close ally, Israel. The ICC is politicized and falsely claims to have unlimited discretion to investigate, indict, and prosecute citizens of the United States and our allies. This dangerous assertion and abuse of power violates the sovereignty and national security of the United States and our allies, including Israel.*

*The United States will take whatever measures it deems necessary to protect our sovereignty, that of Israel, and that of any other U.S. ally from the ICC's illegitimate actions."*

The Department's statement concludes with an *"appeal to countries that still support the ICC, many of whose freedom was purchased at the cost of great American sacrifices to combat this shameful attack on our nation and Israel."*

On the same day, they were sanctioned by the State Department, under the same Order, *"for direct involvement in any ICC effort to investigate, arrest, detain, or prosecute a protected person without the consent of that person's country of citizenship"*: Kimberly Prost, Judge, Nicolas Yann Guillou, judge, Nazhat Shameem Khan, Deputy Public Prosecutor, Mame Mandiaye Niang, deputy prosecutor.

It was argued that *"Prost is appointed to rule to authorize the ICC investigation of US personnel in Afghanistan.*

*Guillou is appointed to rule to authorize the ICC's issuance of arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant. Deputy Prosecutors Shameem Khan and Niang are designated for their continued support of the ICC's illegitimate actions against Israel, including maintaining ICC arrest warrants targeting Prime Minister Netanyahu and former Defense Minister Gallant, since taking over the ICC Prosecutor's Office.”*<sup>10</sup>

On December 18, 2025, the US State Department applied the same sanctions to Judges Gocha Lordkipanidze of Georgia and Erdenebalsuren Damdin of Mongolia, pursuant to Executive Order 14203 of February 6, 2025, “Imposition of Sanctions on the International Criminal Court”<sup>11</sup>. The justification for the measures states that “*these individuals have directly engaged in the ICC's efforts to investigate, arrest, detain, or prosecute Israeli citizens without Israel's consent, including by voting with a majority in favor of the ICC's ruling*

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<sup>10</sup>The Court's Chief Prosecutor, Kharim Khan, is currently suspended following an internal investigation into his conduct on the job regarding his relationship with a subordinate.

<sup>11</sup>The State Department statement is available at <https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel> , accessed on 19.12.2025.

*against Israel's appeal on December 15.<sup>12</sup>The ICC has continued to engage in politicized actions targeting Israel, which has set a dangerous precedent for all nations. We will not tolerate the ICC's abuses of power that violate the sovereignty of the United States and Israel and unjustly subject American and Israeli individuals to the ICC's jurisdiction. Our message to the Court has been clear: The United States and Israel are not parties to the Rome Statute and therefore reject the ICC's jurisdiction. We will continue to respond with significant and tangible consequences to the ICC's excesses of power and violations of the law."*

The International Criminal Court reacted in a statement issued the same day, <sup>13</sup>stating that *"These sanctions represent a blatant attack on the independence of an impartial judicial institution that operates in accordance with the mandate conferred by its States Parties from different regions.*

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<sup>12</sup>The ICC Appeals Chamber's decision of 15 December 2025 rejected Israel's argument that a "new situation" after the events of 7 October 2023 required a new notification by the ICC Prosecutor for the ongoing investigation. The court found that the investigation after October 2023 was a continuation of the initial investigation in 2021, noting a "continuity in pattern". This decision removed a procedural hurdle related to the arrest warrants issued against Israeli officials in November 2024.

<sup>13</sup>Available at: <https://www.icc-cpi.int/news/icc-strongly-rejects-new-us-sanctions-designations-against-two-icc-judges> accessed on 19.12.2025.

*Such measures targeting judges and prosecutors elected by state parties undermine the rule of law. When judicial actors are threatened for enforcing the law, the international legal order itself is at risk.*

*As previously stated, the Court stands firmly with its staff and the victims of unimaginable atrocities. It will continue to carry out its mandate with independence and impartiality, in full compliance with the Rome Statute and in the interests of victims of international crimes.”*

## **2.7 Criminal conviction of some prosecutors and judges of the International Criminal Court by the Russian Federation**

In December 2025 a Moscow court ruled *in absentia* against the chief prosecutor and eight judges of the International Criminal Court for acts related to the indictment of Russian President Vladimir Putin for alleged war crimes in Ukraine. Russian authorities have opened a criminal case against ICC prosecutor Karim Khan and the court's judges – former ICC president Petr Józef Hofmański, his successor, Mrs. Tomoko Akane, as well as First Vice President Rosario Salvatore Aitala, Second Vice President, Reine Alapini-Gansou, Judges Sergio

Gerardo Ugalde Godínez, Haikel Ben Mahfoud, Carranza Light del Carmen Ibáñez and Bertram Schmitt.

The Russian authorities' legal action began after the International Criminal Court issued the arrest warrant for Vladimir Putin and his Commissioner for Children's Rights, Maria Lvova-Belova, in March 2023. The international magistrates were convicted by the Moscow City Court for the crimes provided for in Articles 299 Part 2, 301 Part 2, 30 Part 1 and Article 360 Part 2 of the Russian Criminal Code<sup>14</sup>, consisting in the fact that, from February to March 2022, ICC Prosecutor Karim Khan prosecuted Russian citizens in The Hague, and the ICC Presidium, without legal basis, instructed the judges of the chamber to issue arrest warrants in a "manifestly illegal" manner<sup>15</sup>.

Karim Khan was sentenced to 15 years in prison, the first nine years to be served in a maximum-security penal colony.

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<sup>14</sup>The Russian Criminal Code can be accessed at:

<https://base.garant.ru/>

10108000/4fc5edfb44e5edce92a7bea6342c49ee/ , accessed on 22.12.2025. We note that this is not the site of an official Russian government agency.

<sup>15</sup>All of the aforementioned crimes are provided for in Chapter 31 of the Criminal Code of the Russian Federation, entitled "Crimes against Justice", which includes Articles 294-316. Articles 30 corroborated with 360 concern an attempt to an assaults on Persons or Institutions Enjoying International Protection and it is obvious it refers to the arrest warrant on the Russian Federation President, mr. Vladimir Putin.

The Russian Prosecutor General's Office requested these sentences. The ICC prosecutor and judges were placed on the list of internationally wanted persons<sup>16</sup>.

## **2.8 Other measures connected to investigations of alleged grave breaking of human rights**

Other elements to consider in this process are:

– the adoption on January 9, 2025, by the US House of Representatives, of a law entitled "The Act to Counteract the Court's Unlawful Actions", aimed at sanctioning the International Criminal Court, in protest against the arrest warrants issued for Israeli Prime Minister Benjamin Netanyahu and his former Minister of Defense. Being an unadopted normative act, although the draft is public<sup>17</sup>, we report this development of the American legislature. The law is in the legislative process, and will be submitted to the Senate<sup>18</sup>.

– the sanctioning, on July 9, 2025, of Paola Albanese, the Special Rapporteur on the situation of human rights in the

<sup>16</sup> <https://epp.genproc.gov.ru/ru/gprf/mass-media/news/main/e8309187/> accessed on 20.12.2025.

<sup>17</sup> The text is available at <https://www.congress.gov/bill/119th-congress/house-bill/23/text> , accessed November 7, 2025.

<sup>18</sup> Available at <https://www.congress.gov/bill/119th-congress/house-bill/23>.

Palestinian Territories Occupied since 1967 of the United Nations Human Rights Council.

The State Department noted that "*Albanese has collaborated directly with the International Criminal Court in efforts to investigate, arrest, detain, or prosecute citizens of the United States or Israel without the consent of those two countries. Neither the United States nor Israel is a party to the Rome Statute, making this action a serious violation of the sovereignty of both countries. The United States has repeatedly condemned and objected to Albanese 's biased and malicious activities , which have long made her unfit for the position of Special Rapporteur. Albanese has spread fearless anti-Semitism, expressed support for terrorism, and openly despised the United States, Israel, and the West. This bias has been evident throughout her career, including in her recommendation that the ICC, without a legitimate basis, issue arrest warrants for Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant . Recently, she has intensified this effort by writing threatening letters to dozens of entities around the world, including major American companies in the financial, technology, defense, energy, and hospitality sectors, making extreme and unfounded allegations and recommending that the*

*ICC conduct criminal investigations and inquiries against these companies and their executives. We will not tolerate these campaigns of political and economic warfare, which threaten our national interests and sovereignty.”<sup>19</sup>*

The research, limited to open sources, did not reveal any direct or indirect sanctioning measures adopted by other states against the International Criminal Court, the elements of its discrediting or accusation operationalized by other states being limited to the states targeted by the research and having a discursive character.

We also note the initiative of Hungary, a member of the European Union, to withdraw from the Statute of the Court.

### **3 ANALYSIS OF THE SANCTIONING MEASURES ORDERED**

#### **3.1 Typology**

The sanctioning measures ordered are of 2 categories:

– economic – which limit the use of economic properties and resources;

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<sup>19</sup>Available at <https://www.legal-tools.org/doc/9svntfnx/pdf>, accessed 4 November 2025.

– restricting freedom of movement, namely access to the territory of the United States of America and Russia.

We can see that the American administration applied a certain graduality in the measures adopted, attempting, in the initial phase, psychological actions to influence the International Criminal Court and subsequently applying concrete, but relatively insignificant, measures, so that in the third phase it adopted more comprehensive measures with concrete effects.

Currently, except for Judge Tomoko Akane, who also serves as President of the Court, all of the Court's judges in the Appeals Chamber are subject to US sanctions.

The attitude described above is not unusual. Despite the unfortunate, from my point of view, approach to the relationship with the international court, the USA has represented and represents an important state in the field of international judicial cooperation and the investigation of international crimes. Prosecutors from the Human Rights and Special Investigations Section of the Department of Justice<sup>20</sup>, FBI agents and agents of the US Department of Homeland Security are permanent participants in the biannual meetings of the Genocide

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<sup>20</sup> <https://www.justice.gov/criminal/criminal-hrsp>, accessed November 8, 2025.

Investigation Network within Eurojust<sup>21</sup>, support the investigations of member states and process their own files on persons – generally of non-US citizenship – who have committed international crimes<sup>22</sup>. Also, crimes committed by certain members of the Armed Forces and by persons employed or accompanying the armed forces outside the United States are criminalized in the US Code<sup>23</sup>, but also in the Uniform Code of Military Justice<sup>24</sup>.

As for the measures taken by the Russian Federation, we note a clearly non-gradual approach, based directly on the criminalization of the legitimate judicial action of the International Criminal Court and the criminal liability of its magistrates. The lack of access to the original text of the sentence does not allow us to draw more detailed conclusions on how the accusation and conviction of the Court's magistrates are argued.

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<sup>21</sup><https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-prosecution-network>.

<sup>22</sup>See <https://www.justice.gov/criminal/human-rights-and-special-prosecutions-section-news?page=2>, accessed November 8, 2025.

<sup>23</sup> <https://www.law.cornell.edu/uscode/text/18/3261>, accessed November 8, 2025.

<sup>24</sup> <https://jsc.defense.gov/Portals/99/Documents/UCMJ%20-%20December2019.pdf>, accessed November 8, 2025.

We also note that some of the judges – this is the case of Judge Carranza Luz del Carmen Ibáñez – are simultaneously administratively sanctioned by the US and criminally convicted by the Russian Federation, for carrying out judicial activities in accordance with the Statute of the Court.

### **3.2 Justification**

The reasons for applying these sanctioning measures are obviously related to the judicial activity of the International Criminal Court, to the investigation of international crimes that the Prosecutor of the Criminal Court and the Court carry out.

If initially the US administrative sanction measures were justified by the Court's investigations into possible crimes committed by American citizens in Afghanistan, the justification for the sanctions was later extended to include the Israeli citizens under investigation, and the sanction measures applied in December 2025 exclusively target the investigation into crimes committed by the Israeli army in Gaza<sup>25</sup>.

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<sup>25</sup> <https://www.icc-cpi.int/palestine>.

It is worth noting that some of the reasons cited are also mentioned when the American executive decided to end the sanctions.

In detail, the arguments presented by the American executive are:

– the non-recognition of the jurisdiction of the International Criminal Court by the United States of America<sup>26</sup>, and thereby the unjustified or “illegitimate” nature of the investigations, or of the Court’s jurisdiction over its citizens. As a corollary, the issuance of arrest warrants by the Court against two Israeli citizens would represent the exercise, without a legitimate basis, of jurisdiction over personnel of US allies. It should be noted that, even under the conditions of the lifting of sanctions, the US has highlighted its objections to the jurisdiction over personnel of non-party states, such as the United States and its allies, in the absence of their consent or referral by the United Nations Security Council and the intention to firmly protect current and former US personnel from any attempts to exercise such jurisdiction.

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<sup>26</sup>Although the U.S.A. signed The Rome Statute expired on December 31, 2000 , but did not ratify the treaty. In 2002, the administration of President George W. Bush notified the UN that the United States was withdrawing its signature and did not intend to become a party to the Statute.

– the danger that current and former officials of the United States Government and allies will be harassed, abused, and possibly arrested. As a corollary, the direct endangerment of current and former personnel of United States institutions, including active-duty members of the Armed Forces, was mentioned.

– possible violations of United States sovereignty and obstruction of critical national security and foreign policy work of the United States Government and allied officials, thereby threatening the national security and foreign policy of the United States;

– The USA and Israel are prosperous democracies, with armies that strictly respect the laws of war, the only argument that can address the factual situation.

The Russian Federation reproaches the Criminal Court for the legal judicial measures carried out by the Prosecutor of the Court regarding the crimes committed by the Russian Federation in Ukraine, considering them crimes against justice and crimes against internationally protected persons.

### 3.3 Significance, perspectives and solutions

Under these circumstances, the application of sanctions against the Court, in order to avoid holding American citizens and foreigners accountable, can be interpreted from several perspectives:

– the constant tendency of the American executive to ensure a form of immunity for its citizens from other forms of jurisdiction, including international. It was also manifested during the period of drafting the Statute of the International Criminal Court, which the USA initially supported and signed, but also in other forms of international arrangements, for example those concluded with the states where the USA has troops stationed. It is worth noting that other great powers also manifest similar tendencies: Russia followed the same trajectory – a signatory state that did not ratify the Statute and withdrew its signature in 2016, China is not a signatory state;

– making the idea of international justice vulnerable by encouraging the behavior of states whose citizens commit international crimes, as well as their individual actions violating the laws and customs of war;

- hindering or slowing down ongoing international investigations and those being opened, by limiting the operational capacity of the International Criminal Court, limiting access to funds, and personnel travel to the US in case of need;

- discouraging states that are faced with the need to hold individuals accountable for the most serious international crimes;

- disrupting the climate of peace and international cooperation, creating the conditions for the perpetrators of the most serious international crimes to feel safe or at least to have a psychological background that encourages them to commit the acts, believing that they can escape unpunished;

- the reaction of the international community to the sanctioning of the Court, creating a negative image of the state applying the sanctions. In addition, the Assembly of States Parties to the Statute of the International Criminal Court, the European Union, the International Court of Justice, various international human rights organizations expressed deep concern and condemned the US Executive Order of June 11, 2020, which authorized sanctions against the International Criminal Court and its officials. Supporters of the ICC emphasized that

these actions represented an attack on victims, the rule of law and international justice, underlining the importance of the Court's independence in prosecuting atrocity crimes. These statements confirmed unwavering support for the ICC and its role in combating impunity.

– the emergence of a legal war (lawfare) between the states involved in the conflict in Ukraine,

– the need to implement additional protection measures for the Court and its magistrates , which would guarantee the proper administration of justice.

Instead of an analysis of the jurisdiction of the the International Criminal Court, we reproduce articles 12-13 of its Statute, which provide:

"Art. 12:

1. A State which becomes a party to the Statute hereby recognizes the jurisdiction of the Court with respect to the crimes set forth in article 5.

2. In the cases provided for in article 13 (a) or (c), the Court may exercise its jurisdiction if one or both of the States referred to in (a) or (b) of this paragraph are Parties to this Statute or have recognized the jurisdiction of the Court in accordance with paragraph 3:

a) the State on whose territory the conduct in question occurred or, if the crime was committed on board a ship or aircraft, the flag State or the State of registration;

b) the state of which the person accused of crimes is a national.

3. If the recognition of the jurisdiction of the Court by a State not party to this Statute is required under paragraph 2, that State may, by declaration filed with the Registrar, consent to the Court exercising its jurisdiction in respect of the crime in question. The State which has recognized the jurisdiction of the Court shall cooperate with it without delay and without exception, in accordance with Chapter IX.

Article 13 Exercise of jurisdiction. The Court may exercise its jurisdiction over the crimes set forth in article 5, in accordance with the provisions of this Statute:

(a) if an act in which one or more of these crimes appear to have been committed is referred to the Prosecutor by a State Party, as provided for in article 14;

(b) if an act in which one or more of these crimes appear to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

c) whether the prosecutor has opened an investigation into the crime in question, based on art. 15.”

I will also emphasize that Afghanistan deposited its instruments of ratification of the Statute on 10 February 2003. The investigation into the situation in Afghanistan was initiated by the Prosecutor of the International Criminal Court *ex officio* ( *proprio motu* ), not upon referral by a state or the UN Security Council. The investigative activity focuses mainly on the Taliban and ISIS-K. Investigations into US forces have not been officially closed, but are on an secondary position, although the ICC continues to collect evidence of alleged acts of torture, illegal detention and inhuman treatment related to post-2001 US operations.

The Palestinian Authority officially became a member of the International Criminal Court on 1 April 2015, after acceding to the Rome Statute in January 2015.

The Palestinian Authority referred the case to the Court, and the Court opened an investigation into the “Situation in the State of Palestine”. In 2021, the ICC Prosecutor announced the opening of an investigation into alleged crimes committed in the Palestinian territories since 13 June 2014. The investigation is ongoing and covers alleged crimes committed by all parties. The

Court's Statute allows it to investigate potential war crimes committed in the Palestinian territories since 13 June 2014, and its jurisdiction includes Gaza, the West Bank and East Jerusalem. I also noted that the focus of the US and Israel is on potential war crimes committed by Israeli forces and the Israeli political factor, but no reference is made in this process to crimes committed by Palestinian militants.

Under these circumstances, and considering the legal provisions above, the Court's jurisdiction but also the validity of the US arguments regarding the issue of arrest warrants and the facts under investigation are clear.

Concerning the sanctions and condemnations, it is also important to mention that:

a) according to article 48 of the Court's Statute<sup>27</sup>, The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes. Also, The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions

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<sup>27</sup> <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>, accessed on 06.01.2026.

and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

b) the jurisprudence of and statutes of The Nuremberg International Military Tribunal (1945), the International Military Tribunal for the Far East (1946) The International Criminal Tribunal for the Former Yugoslavia (1993) provides basically that the official position of any accused person as Head of State shall not relieve such person of criminal responsibility nor mitigate punishment for international crimes – genocide, war crime, crimes against humanity<sup>28</sup>.

c) under article 40 and 42 of the Court's Statute the judges shall be independent in the performance of their functions and The Office of the Prosecutor shall act independently as a separate organ of the Court. A member of the Office shall not seek or act on instructions from any external source.

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<sup>28</sup> Max Planck Encyclopedias of International Law, Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Professor Anne Peters and Professor Rüdiger Wolfrum. *Heads of State*- Sir Arthur Watts, Joanne Foakes, available at: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1418> accessed on 06.01.2026.

It is also clear that diplomatic immunities and privileges cannot assure a normal statute and a real protection of the magistrates against the pressure of a state that can try to stop in this manner the normal path of the justice. Nor the ICC and International Residual Mechanism for Criminal Tribunals have provisions that can effectively protect the judges and prosecutor's independence against such unprecedented threatens or influences abovementioned, which makes clear that no one could imagine in the international meetings that magistrates of the international criminal tribunals can be threatened because they are making justice.

In the particular case of the International Criminal Court, article 70 of the Rome Statute<sup>29</sup> –entitled “ offences against the administration of justice” stipulates that The Court shall have jurisdiction over the offences against its administration of justice when committed intentionally as:

– impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties,

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<sup>29</sup> <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> accessed on 04.01.2026.

– retaliating against an official of the Court on account of duties performed by that or another official<sup>30</sup>.

In the event of conviction, the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both. Such solution, in my opinion, is not able to achieve an effective discouragement for threatens, unjustified sanctions or false condemnations.

One of the solution is propose is to criminalize the attempt of influence or the influence over the legal course of justice in the International Criminal Court and to punish it with the same penalty as the for the crimes that the threatening agent tries to protect through his action. This could be realized amending The Rome Statute or through a special international convention on protection of international justice courts officials.

Concerning the procedure, the judge has reason to believe that a person may be in contempt of the Court, it shall

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<sup>30</sup> Some other international statues criminalized those who knowingly and wilfully interfere with the administration of justice. As an example, article 90 of the Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals sanctions with prison not exceeding seven years or a fine or both those who knowingly and wilfully interfere with the administration of justice.

refer the matter to the President who shall designate a single Judge who must direct the Prosecutor to investigate the matter with a view to the preparation and submission of an indictment for contempt. The prosecutor shouldn't be the same who indicted the defendant in the case<sup>31</sup>.

#### 4 CONCLUSIONS

The achievement of justice in the situation of war crimes, genocide, is an essential step for the social health of national communities and the international community. No step is sufficient to hold the perpetrators of such crimes that call into question the existence of civilization to criminal liability. The application of sanctions on the judicial bodies that carry out this step is of the utmost gravity and cannot be accepted by a democratic society, just as influencing a national court cannot be

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<sup>31</sup> Article 90 from The Rules of Procedure and Evidence of the International Residual Mechanism for Criminal Tribunals stipulates that the judge may direct the case to the prosecutor, or to *amicus curiae* to indict or to realize the indictment himself in the case. We do not agree with such a solution, and this is not only due to the separation of the judicial functions or gravity if the punishment, which are good arguments: in situations of the sanctions applied by a head of the state, or through a false condemnation, or in other such situations, an effective and professional investigation, therefore a well build prosecution, is needed.

tolerated. Even if to a certain extent the protection of one's own citizens can be understood, they cannot be protected in any way from the application of the Law, especially when they are suspected of core international crimes – genocide, war crimes, crimes against humanity. On the contrary, in the context of promoting judicial steps to criminally sanction international magistrates, we believe that additional measures are necessary to protect them – beyond the granting of diplomatic immunities – including but not limited by supplementing the Statute of the International Criminal Court with new criminal mechanisms aiming to an effective discouragement to any influence of threaten of magistrates. The prevention and repression of atrocities is convergent with the protection of the national interests of each state, and cooperation and communication between states, but also between states and competent international bodies, are essential in harmonizing all interests.

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