

7 February 2025

STATEMENT

Addressing attacks on the International Court of Justice and the International Criminal Court concerning Israel/Occupied Palestinian Territories

Introduction

Yesterday, 6 February 2025, President Trump issued sanctions against the International Criminal Court (“ICC”)¹ for its issuance of arrest warrants over alleged war crimes in Gaza. The sanctions, made by Executive Order, followed comments by President Trump regarding the removal of the Palestinian population from Gaza and that “the US will take over the Gaza Strip”. Forcible transfer of persons would be in flagrant breach of the Geneva Conventions.²

The sanctions follow proceedings and investigations by the International Court of Justice (ICJ) and ICC, regarding Israel’s conduct in the Occupied Palestinian Territories (OPTs), including its military operations since 7 October 2023, and its occupation over preceding decades.³

The Bar Human Rights Committee (“BHRC”) is seriously concerned that the lawful work of the ICJ, ICC and of judges, prosecutors and other lawyers involved in these international procedures is being undermined by attacks, threats and intimidation.⁴

The Bar Human Rights Committee has a long tradition of speaking out against attacks on judges and lawyers. This work has included reports on the independence of judges in Hong Kong, our

¹ White House memo, Executive Order, 6 February 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/#:~:text=I%2C%20DONALD%20I.,and%20our%20close%20ally%20Israel>

² Article 49 Geneva Convention IV

³ The proceedings before the International Court of Justice include: *South Africa v Israel*, *Nicaragua v Germany*, as well as the ICJ Advisory Opinion on ‘The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem’. The proceedings before the International Criminal Court fall under the ICC Investigation into the Situation of the Occupied Palestinian Territories which includes the recent arrest warrants granted against Benjamin Netanyahu, Yoav Gallant, and Mohammad Deif.

⁴ The Bar Human Rights Committee of England and Wales is the independent human rights arm of the Bar of England and Wales <https://barhumanrights.org.uk/about/>

Diminished Democracy series, rule of law in the UAE, independence of judges and lawyers in Turkey and most recently a joint statement to the UN on Zimbabwe. Such attacks grossly undermine the rule of law. They are also contrary to the UN Basic Principles on the Role of Lawyers,⁵ paragraph 16 of which provides that lawyers should be “able to perform their professional functions without intimidation, hindrance, harassment or improper interference” as well as the UN Basic Principles on the Independence of the Judiciary⁶ which amongst other provisions at paragraph 2 requires judges to decide matters without any restrictions, improper influences, inducements, pressures, threats or interferences.

Executive Order

Through Executive Order issued on 6 February 2025, President Trump finds that the ICC has ‘engaged in illegitimate and baseless actions targeting America and our close ally Israel.’ He observes that the ICC has no jurisdiction over the United States or Israel, neither of which recognise the court. The President states that its actions set a ‘dangerous precedent’ and its ‘malign conduct’ threatens to impinge upon the sovereignty of the United States and critical national security work of the US Government and allies including Israel.

The Order declares a national emergency to address the ‘threat’ posed by ICC actions and places financial restrictions on any person or entity that assists the ICC procedures (investigation, detention or prosecution) relating to American citizens or allies, or any person who materially assists any person whose property or interests are blocked by the Order. It also places visa restrictions on such individuals and their families.

This is not the first occasion that such measures have been taken. During the previous Trump administration, sanctions were placed on the former ICC Prosecutor Fatou Bensouda and other top ICC officials.⁷

Background Context

On 20 May 2024, the Chief Prosecutor of the ICC, Karim Khan KC, applied for arrest warrants before the ICC Pre-Trial Chamber against a number of Israeli and Hamas leaders on suspicion of serious breaches of international criminal law, including murder, extermination, starvation and sexual crimes.⁸ The ICC Pre-Trial Chamber granted Mr Khan’s request on 21 November 2024 and issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu, former Israeli Minister of

⁵ UN Basic Principles of the Role of Lawyers 1990 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

⁶ UN Basic Principles on the Independence of the Judiciary 1985 <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

⁷ See Julian Borger, ‘Trump targets ICC with sanctions after court opens war crimes investigations’ (*The Guardian* 11 June 2020) <https://www.theguardian.com/us-news/2020/jun/11/trump-icc-us-war-crimes-investigation-sanctions>

⁸ See ICC News, ‘ICC Prosecutor Karim Khan KC announces request for arrest warrants in case concerning alleged violations in the ICC Situation in the Case of Palestine’, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> The basis for the applications had been considered by an international panel of experts, convened at the request of the Prosecutor. The Panel considered the arrest warrant applications and underlying evidence, endorsing in its reasoned report Mr Khan’s view that warrants should be sought, Report of ICC Panel of Experts on ICC case concerning alleged violations in the ICC Situation in the Case of Palestine, <https://www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf>

Defence Yoav Gallant, and Hamas military commander Mohammed Diab Ibrahim Al-Masri (also known as Deif) having found reasonable grounds to believe the suspected crimes.⁹

Previously, on 26 January 2024, the International Court of Justice (“ICJ”) issued an Order for Provisional Measures in the case of *South Africa v Israel*, concerning allegations that Israel breached the Genocide Convention in its attacks on Gaza since 7 October 2023.¹⁰ In its determination, the ICJ held that it had jurisdiction to consider the matter and that “there is a real and imminent risk of irreparable prejudice to the plausible rights invoked”.¹¹

The ICJ has considered further applications since its original order, and made orders dated 16 February 2024, 28 March 2024, and 24 May 2024, for additional provisional measures.¹² In each application, the purpose of the Order for Provisional Measures was to ensure breaches of the Genocide Convention were prevented. Proceedings continue and there has been no final decision.

On 19 July 2024, the ICJ issued its Advisory Opinion on ‘The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territories including East Jerusalem’.¹³ The Advisory Opinion found that Israel’s continuing occupation of the West Bank, East Jerusalem, and the Gaza Strip is illegal and in violation of international humanitarian law¹⁴ and the prohibition of racial segregation and apartheid.¹⁵ The Court ruled that Israel had an obligation to end the occupation as soon as possible, cease all settlement expansion, remove existing settlers from the OPTs and make reparations.¹⁶ In addition, all States, international organisations and the UN itself, were under an obligation not to recognise Israel’s occupation as legal or to render assistance to it as well as ceasing economic relations arising as a result of the occupation.¹⁷

⁹ See David Gritten, ‘Arrest warrants issued for Netanyahu, Gallant, and Hamas commander over alleged war crimes’ (*BBC News*, 21 Nov 2024) <https://www.bbc.co.uk/news/articles/cly2exvx944o> A number of other senior Hamas leaders were under investigation but were confirmed to have been killed in Israeli air strikes. The Prosecutor could not determine whether Deif’s reported death was accurate and the warrant was issued accordingly, ICC press release, ‘Situation in the State of Palestine: ICC Pre-trial Chamber issues warrant of arrest for Mohammed Diab Ibrahim Al-Masri (Deif)’, 21 November 2024, <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-issues-warrant-arrest-mohammed-diab-ibrahim>

¹⁰ International Court of Justice Summary Order on the Request for an Order for Provisional Measures on 26 January 2024 in *South Africa v Israel (concerning allegations of the Genocide Convention)* (“ICJ Summary Order”) (<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-sum-01-00-en.pdf>) The preconditions to making such an Order were that the ICJ had jurisdiction, and there was a risk of irreparable prejudice to the rights protected under the Convention per Article 41 Statute of the ICJ, <https://www.icj-cij.org/index.php/statute>

¹¹ See ICJ Summary Order.

¹² ICJ Order for Provisional Measures in *South Africa v Israel* of 16 February 2024 (<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240216-pre-01-00-en.pdf>); ICJ Order for Provisional Measures in *South Africa v Israel* of 28 March 2024 (<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240328-ord-01-00-en.pdf>); ICJ Order for Provisional Measures in *South Africa v Israel* of 24 May 2024 (<https://www.icj-cij.org/sites/default/files/case-related/192/192-20240524-ord-01-00-en.pdf>)

¹³ ICJ Advisory Opinion of 19 July 2024 on ‘The Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory including East Jerusalem’, pp 4-6 (<https://www.icj-cij.org/sites/default/files/case-related/186/186-20240719-adv-01-00-en.pdf>) (“ICJ Advisory Opinion”)

¹⁴ ICJ Advisory Opinion, page 72.

¹⁵ ICJ Advisory Opinion, page 65, in violation of Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination.

¹⁶ ICJ Advisory Opinion, pp 73-74.

¹⁷ ICJ Advisory Opinion, pp 74-76.

Attacks, threats and intimidation in response to international orders

Both the ICC and the ICJ, and those who have taken and supported the cases, have received severe criticism and attacks over the past year. Respect for the rule of law does not prohibit legitimate criticism but it does require respect for court processes and compliance with binding orders. In particular, the rule of law requires the protection of those involved in the administration of law: including judges and lawyers. Some of the responses to these cases have gone far beyond the boundary of legitimate criticism. They have instead amounted to direct challenges to the integrity and authority of the courts, and in some instances have amounted to threats against the courts and against individuals. Professionals involved in such cases should be able to conduct their work free of fear and threats.

On 6 May 2024, twelve senior US Republican senators, including the Senate Minority leader, sent a letter to the Chief Prosecutor asserting: “Target Israel, and we will target you”. The letter concluded: “If you move forward with the measures indicated in the report, we will move to end all American support for the ICC, sanction your employees and associates, and bar you and your families from the United States...You have been warned.”¹⁸

These attacks have extended to lawyers representing South Africa in the ICJ proceedings, with the Israeli Minister for Foreign Affairs, Israel Katz asserting that they “serve as the legal arm of Hamas murderers and rapists”, repeating that no one would prevent Israel from acting as it chose.¹⁹

Prime Minister Netanyahu has made a number of public statements in terms that go beyond legitimate criticism. For example, in response to the application for warrants, he accused the Prosecutor of “pouring gasoline on the fires of antisemitism that are raging across the world”, with Karim Khan KC described as one of the “great antisemites in modern times”.²⁰ Foreign Minister Katz referred to the application as an “unrestrained frontal assault” on the victims of 7 October. With regard to the ICJ, President Herzog described the *South Africa v Israel* ICJ hearing as “a blood libel that undermines the very values on which this court was established”.²¹

Of significant concern if true is the allegation that Israeli intelligence agencies have interfered with the integrity of the ICC by intercepting the communications of prosecutors.²² Notably on 3 May 2024, weeks before the Chief Prosecutor publicly stated his intention to seek warrants, his office saw the need to issue a statement denouncing “threats to retaliate against the Court or

¹⁸ Jacob Magid, “Republican Senators warn ICC prosecutor: Target Israel, and we will target you” (*Times of Israel*, published 6 May 2024) <https://www.timesofisrael.com/republican-senators-warn-icc-prosecutor-target-israel-and-we-will-target-you/>

¹⁹ “After ICJ hearing, Israel says ‘no force’ will stop its self-defence against Hamas” (Tweet by Foreign Minister Israel Katz included in Live Blog of Times of Israel, published 17 May 2024) <https://www.timesofisrael.com/liveblog-may-17-2024/#:~:text=%E2%80%9CAs%20our%20representatives%20told%20the,its%20right%20to%20self%20defense>

²⁰ Jeremy Bowen, “What the ICC arrest warrants mean for Israel and Hamas” (*BBC News*, published and updated 21 May 2024) <https://www.bbc.co.uk/news/articles/cw4490z75v3o>

²¹ “President Herzog Addresses ICJ Ruling” Israel Ministry of Foreign Affairs (published 28 January 2024) (<https://www.gov.il/en/pages/president-herzog-addresses-icj-ruling-28-jan-2024>)

²² Harry Davids, Bethan McKernan, Yuval Abraham, Meron Rapoport, “Spying, hacking, and intimidation: Israel’s nine-year war on the ICC exposed” (*The Guardian*, 28 May 2024) <https://www.theguardian.com/world/article/2024/may/28/spying-hacking-intimidation-israel-war-icc-exposed>

against Court personnel” for actions taken by the Prosecutor, and reminding that such threats may themselves be an offence in contravention of Article 70 of the Rome Statute.²³

On 10 May 2024, a group of more than 40 UN Special Rapporteurs and other experts expressed their dismay at the attacks on the ICC, referring explicitly to statements made by elected politicians in the US and Israel, and denounced proposed retaliatory action which they particularised as: sanctions against individuals who work at the Court, efforts to defund the Court, and threats from the Israeli Finance Minister to withhold funds from the Palestinian Authority.²⁴

These concerns were not heeded. Whilst Former President Biden also described the application for ICC arrest warrants as “outrageous” in May 2024²⁵ he subsequently opposed a Bill passed by the US House of Representatives on 4 June 2024 to impose sanctions upon the ICC.²⁶ Under the new administration, on Thursday 9 January 2025 the US House of Representatives voted to sanction the ICC²⁷ but the US Senate blocked its passage.²⁸ President Trump’s Executive Order has now effected that retaliatory action.

BHRC condemns attacks and supports the independence of courts and respect for the rule of law

BHRC condemns these and any attempts to undermine the authority of the ICJ and ICC, which are pivotal institutions for the international rules-based order. Moreover, and in particular, BHRC condemns attacks on judges, prosecutors and lawyers involved in these cases and respectfully joins with the 93 member states of the Rome Convention, and various international institutions who in June 2024 condemned the threats and called for the protection of these courts, judges, and lawyers.²⁹ It is axiomatic that without such protection the rule of law cannot function.

²³ International Criminal Court X Account, “Statement of the ICC Prosecutor” (X formerly Twitter, published 3 May 2024)

https://x.com/IntlCrimCourt/status/1786316229688414518?ref_src=twsrc%5Etfw%7Ctwcamp%5Etw%5Eembed%7Ctwterm%5E1786316229688414518%7Ctwgr%5E8b7015e0e7366634a7804d915f54daa795c8d41e%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.aljazeera.com%2Fnews%2F2024%2F5%2F3%2Ficc-calls-for-an-end-to-threats-against-the-court-as-war-in-gaza-rages-on

²⁴ United Nations Human Rights Office of the High Commissioner, “Israel/Gaza: Threats against the ICC promote a culture of impunity, says UN experts” (UNHR, published 10 May 2024)

<https://www.ohchr.org/en/press-releases/2024/05/israelgaza-threats-against-icc-promote-culture-impunity-say-un-experts>

²⁵ “Statement from President Joe Biden on the Warrant Applications by the International Criminal Court” White House Statement (published 20 May 2024) <https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/20/statement-from-president-joe-biden-on-the-warrant-applications-by-the-international-criminal-court/>

²⁶ Sam Cabral and Rachel Looker, “US signals support for possible ICC sanctions over arrest warrants” (BBC News, Updated 22 May 2024) <https://www.bbc.co.uk/news/articles/cp66e6ppzd0o>; Rachel Looker, “US House passes legislation to sanction ICC over Gaza warrant bid” (BBC News, published 4 June 2024) <https://www.bbc.co.uk/news/articles/cm5512l7yero>

²⁷ Patricia Zengerle, “US House votes to sanction International Criminal Court over Israel” (Reuters News, 10 January 2025) <https://www.reuters.com/world/us-house-votes-sanction-international-criminal-court-over-israel-2025-01-09/>

²⁸ Ted Barrett, “Senate Democrats block International Criminal Court sanctions bill in response to Netanyahu warrant” (CNN, 28 January 2025) <https://edition.cnn.com/2025/01/28/politics/senate-vote-icc-sanctions/index.html>; Harry Davies, “ICC braces for swift Trump sanctions over Israeli arrest warrants” (The Guardian, 20 January 2025) <https://www.theguardian.com/law/2025/jan/20/international-criminal-court-icc-braces-swift-trump-sanctions-over-israeli-arrest-warrants>

²⁹ Permanent Mission of Belgium to the UN X Account, “93 State Parties have joined the following statement in support of the International Criminal Court, initiated by a cross-regional core group of 5 countries” (X formerly Twitter, published 14 June 2024) <https://x.com/BelgiumUN/status/1801740915658428920>

BHRC notes that measures taken by the ICJ in *South Africa v Israel* are provisional – intended to prevent the risk of breaches of the Genocide Convention during ongoing proceedings. The ICC warrants are precursors to criminal proceedings. In neither case has a final determination been made for or against Israel, or Israeli or Hamas leaders.

BHRC recalls that Israel is not a State Party to the Rome Statute, and Israel has refused access to UN and ICC investigators, and international media organisations, to Gaza, as well as relevant leading figures including the Chief Prosecutor, and the UN Special Rapporteur on Human Rights in Israel and the OPTs. However, since the OPTs acceded to the Rome Statute, the ICC has exercised jurisdiction to conduct its investigations.³⁰

BHRC calls on all countries to condemn unequivocally attacks on courts, their judicial members and staff, and lawyers involved in the cases. The BHRC calls on the UK Government in particular to use its influence to ensure compliance with orders made by both international courts. BHRC further calls on all countries to respect and support the duties incumbent on all member states under the Genocide Convention, and State Parties to the Rome Convention, and to take full account of the ICJ Advisory Opinion and ICC warrants to ensure they are not complicit.

Michael Ivers KC, Chair of BHRC and barrister at Garden Court Chambers said: “As a State Party to both the Genocide Convention and Rome Statute, the UK should call for respect and maximum cooperation with both the ICC and ICJ. The UK should use its influence and seek to ensure that international investigators be given unrestricted access to Israel and the OPTs, in order to facilitate the work of both courts in ascertaining the facts, and performing the legal function that has been mandated.”

ENDS.

³⁰ ICC Pre-Trial Chamber I, *Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’*, (Situation in the State of Palestine, 5 February 2021)[ICC-01/18-143] https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF