

Explainer

WASHINGTON VS. THE HAGUE

Examining US-ICC Tensions

Dr Kyle Reed

Soon after reentering office, President Donald Trump announced a renewed policy of sanctioning International Criminal Court (ICC) officials. Employing the considerable extraterritorial powers of the United States (US), Washington initially targeted individual Court officials and supporters before further escalating by sanctioning the ICC as an institution. This is part of an explicit policy to “dismantle” the ICC, the world’s first permanent court for prosecuting severe international crimes. This policy includes sanctions as well as immense diplomatic pressure leveraging US economic and security relations. Why has the US taken such an aggressive stance towards the ICC, and what does this mean for broader prospects of international accountability and justice? This Explainer discusses the content and goals of the US’ policy toward the ICC and situates it in a historical context to highlight how, while more severe than previous attempts, this policy is not an aberration and instead reflects longstanding tensions between the US and international accountability mechanisms.

WHAT IS THE HISTORY OF THE US-ICC RELATIONSHIP?

While recently reaching new levels of hostility, the US has been skeptical of the ICC since its founding. Although the Clinton administration participated in the Court’s negotiations, it largely focused on limiting the Court’s jurisdiction. US negotiators expressed concerns over the Court’s territorial jurisdiction over non-state party nationals, emphasizing the effort they had put in to negotiating the text on this point.¹ Despite these concerns, President Clinton did sign the Rome Statute – indicating a US commitment to move toward ratification, while noting “concerns about significant flaws in the Treaty.”

However, this cautious involvement changed quickly during President George W. Bush’s administration as highlighted by the 2002 passage of the American Service-Members Protection Act and the withdrawal of the US signature from the Rome Statute. The Act prohibited US cooperation with the ICC, and US military assistance to ICC members, unless they are explicitly excluded. Exclusions apply to NATO members and major non-NATO allies, Taiwan, states receiving a National Interest Waiver, and countries who have signed Article 98 agreements with the US. The Act also authorized the President to “use all means necessary” to secure the release of any US persons held by the Court, leading some critics to refer to the law as the ‘Hague Invasion Act.’

The Act’s waiver for states with Article 98 agreements, referred to as Bilateral Immunity Agreements (BIAs) or called Bilateral Nonsurrender Agreements, led to a flurry of diplomatic activity between the US and other states, including ICC members.² BIAs aimed to prevent US personnel from being transferred to the Court without the explicit consent of the US, drawing on the framework laid out in Article 98 of the Rome Stat-

ute, which protects ICC state parties from being requested to surrender a person if doing so would violate their other obligations under international law. However, this interpretation of Article 98 has been questioned. These initiatives were criticized as undermining anti-impunity norms and clearly established the US' willingness to leverage forms of assistance against support for the ICC.³

While the Obama administration adopted a more productive stance toward the ICC – including supporting some of the Court's investigations – the US remained skeptical of the Court, and continued working to restrict the scope of the Crime of Aggression.⁴ Ultimately, the relationship remained tense, with the US having established a policy of remaining outside the Court and a willingness to leverage military and economic assistance, as well as diplomatic pressure, to limit the ICC's scope and capabilities.

HOW DID THE FIRST TRUMP ADMINISTRATION APPROACH THE COURT?

This tense relationship reached a new level during the first Trump administration. Motivated by opposition to the ICC's investigations in Afghanistan which implicated US personnel, and in Palestine, seen as threatening an important US ally in Israel, the US announced a policy of sanctioning ICC staff involved in “any effort by the ICC to investigate, arrest, detain, or prosecute any United States personnel,” or those belonging to US allies who are not members of the ICC. Executive Order (EO) 13928 reaffirmed previously announced plans to ban entry visas for ICC personnel working on the Afghanistan case. The order also proposed freezing assets and prohibiting US individuals and firms from providing any “funds, goods, or services” to listed individuals. On 2 September, 2020, it was announced that Fatou Bensouda, then ICC Chief Prosecutor, and Phakiso Mochochoko, the Head of the ICC's Jurisdiction, Complementary, and Cooperation Division, were being designated under EO 13928.

These sanctions were condemned by the ICC, the majority of its member states,⁵ and civil society groups. Joint letters and individual statements, influenced by dependence on US security assistance,⁶ condemned the sanctions as an inappropriate attempt to influence the Court and undermine the processes of international justice. The sanctions were ultimately, after months of pressure, reversed by President Biden, although the fundamental US position toward the Court did not change. With the return of President Trump, even this reprieve was brief.

WHAT IS THE CURRENT US POLICY TOWARD THE ICC?

On 6 February, 2025, President Trump signed EO 14203, renewing the US sanctions

policy against the ICC. Drawing on the same legal framework as EO 13928, EO 14203 positioned the ICC as a threat to US national security and outlined a similar sanctions framework of asset freezes, travel bans, and prohibitions on US firms and individuals providing goods, funds, or services to designated individuals. Karim Khan, then ICC Chief Prosecutor, was the first designated individual. These sanctions go far beyond those seen during the first Trump administration, with numerous judges, staff members, the United Nations (UN) Special Rapporteur, and foreign NGOs being designated. With the ICC Prosecutor's decision to deprioritize investigating US personnel in Afghanistan, these sanctions have focused almost entirely on the Court's work in Palestine.

Even more worryingly, on 9 October, 2026, the US moved to sanction the ICC as an institution. Individual sanctions are severe. With the globalization of financial and technological services, listed individuals encounter significant challenges in accessing banking, finance, and technical services linked to US systems. However, the ICC's institutional ability to work with sanctioned individuals is complicated.⁷ Cases have been brought to US federal courts by individuals blocked from working with the ICC to mixed effect, as providing injunctive relief to individual claimants does not resolve the legal merits of the specific sanctions or the broader legitimacy of the sanctions regime.⁸ Extending these sanctions to the organization as a whole has significantly escalated the matter, with potentially catastrophic effects for the Court. While the ICC had already begun seeking alternative systems out of fear of this type of situation,⁹ the effect remains significant. Institutional-level sanctions pressure all organizations that provide services to the ICC. For example, ABN Amro, which provides banking services to the ICC, is exposed to US sanctions through some of its financial trading operations. It also could have a “chilling effect” on those working with the Court, possibly resulting in early releases of convicted persons if host states are no longer willing to detain them on the Court's behalf.

These latest sanctions are set further apart by the scope of accompanying US policy explicitly aimed at dismantling the ICC. While previous campaigns aimed to limit the Court's operations in certain settings – either jurisdictionally *vis-à-vis* US personnel or in specific cases – the current campaign aims to destroy the Court more broadly. Such a goal helps underscore the threat of institution-level sanctions, isolating the ICC from US-led systems are steps calculated to significantly raise costs for the Court and its supporters. This is exacerbated by diplomatic efforts encouraging current ICC state parties, including US allies, to withdraw from the Court. This includes exerting pressure as well as open calls for withdrawals at the UN, with at least Naoero planning withdrawal, following the US' lead. Chad has also announced its intent to withdraw from the ICC following discussions with senior US officials who had urged the country to reconsider its membership of the Court.

WHAT DOES THIS MEAN FOR THE FUTURE OF INTERNATIONAL JUSTICE?

The combination of sanctions with broader US diplomatic pressure has not gone unnoticed by the ICC's supporters. In 2025, similar to statements issued in 2020, ICC members have joined together to issue statements condemning the sanctions and voicing their support for the Court. The European Union (EU), human rights experts, and civil society groups have also defended the Court. These statements of support have increased during the 2026 UN General Assembly meetings. These are particularly important given the relative weakness of earlier statements defending the Court, which often lacked specificity or avoided outlining any concrete plans or material commitments.¹⁰

Steps to materially support the Court, including advanced payments of dues,¹¹ provide a meaningful defense against some of the immediate risks posed by sanctions. However, other options have not yet been invoked. While some states¹² and civil society groups have called on the EU to invoke its Blocking Statute, this has not yet happened. This would provide European firms with legal protection to continue working with the ICC if the institution is sanctioned by the US. Although challenges exist in the particulars of implementing the Blocking Statute, it remains a “potentially powerful tool” in addressing the material impact of sanctions and signaling normative support for the Court.¹³ However, even with the introduction of institutional sanctions, European states appear unwilling to take this step, instead hoping for a diplomatic resolution.

International support will be vital to the continued success of the Court and the broader project of international justice. The ICC depends on its member states for material support and funding but also jurisdiction, enforcement, and supporting investigations. Further withdrawals or reluctance will only serve to undermine the Court. More broadly, attacks on the Court may be seen as attacks on broader systems of international law, justice, and accountability that the ICC reflects.

While current US hostility toward the ICC is unmatched in its intensity, this is not unprecedented in the context of US-ICC relations. Since the Court's founding, the US has shown itself to be lukewarm at best, but far more often hostile toward the institution. The BIA episodes already demonstrated the US' willingness to use aid and sanctions as tools to limit the Court's reach and effectiveness. More recently, sanctions and attempts to legislate against the Court have received bipartisan Congressional support.¹⁴ While the US has played an important role in shaping international law, particularly after 1945, this has always been a tense relationship not limited to any one party or administration. Defending international justice and accountability norms,

including the ICC, should ensure that opposing such hostilities is considered a default international position, not an exception.

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