

Blackmailing international criminal justice

by Alfred de Zayas,* Geneva



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(25 May 2024) The prosecutor and the judges of the “International Criminal Court” (ICC) are bound to observe the “Statute of Rome” and apply it uniformly, without preferences or double standards. Otherwise, they will forfeit their authority and credibility. They

must resist blackmail by any country that pretends to instrumentalize the Court for geopolitical games.

Capitulating to threats of illegal sanctions by the United States would subvert the international rule of law that our civilization has been building over centuries. Pushback is necessary not only by the Court itself but by the 124 states that are parties to the ICC Statute,¹ by inter-governmental organizations and by civil society. Students in universities worldwide are already demonstrating and demanding accountability and an immediate ceasefire in Gaza.

Chief Prosecutor’s request implements the object and purpose of the ICC

The ICC’s Chief Prosecutor Karim Khan’s request to the Court to indict Israeli and Hamas leaders implements the object and purpose of the ICC.² It is supported by the unanimous report of a panel of experts that advised the prosecutor.³ In the light of the ongoing genocide in Gaza and the egregious crimes that have been committed by both sides, it is necessary and logical to start judicial investigations.

Indeed, the ICC’s sister tribunal, the International Court of Justice (ICJ), also based in The Hague, is already seized of the international

legal questions raised in the cases *South Africa v. Israel* and *Nicaragua v. Germany*.

On the history of the ICC

The ICC has been operating since July 2002, but its 22-year history is marred by a troubled beginning and many states have begun to question its legitimacy, since hitherto it has only conducted trials against Africans and spared Western leaders from criticism. Indeed, many observers think that the ICC has become a tool of Western neo-colonial politics.

This is evidenced by its failure to indict Western political and military leaders, notwithstanding well-documented legal briefs submitted to three prosecutors, particularly concerning war crimes and crimes against humanity in Afghanistan and Iraq, including torture in Abu Ghraib, Mosul, and Guantanamo.

Much credibility lost

The ICC lost much credibility when it surrendered to massive United States pressure and illegal sanctions imposed in 2020 by then-U.S. President *Donald Trump* on the then Prosecutor *Fatou Bensouda* and her staff,⁴ when she attempted to investigate reports of war crimes by U.S., Australian and German forces in Afghanistan. This perception of bias was confirmed when the new ICC Prosecutor Karim Khan announced in 2021 that his office would discontinue the investigations of U.S. crimes while continuing the investigation of crimes by the Taliban. This blatantly political decision was condemned by human rights groups worldwide.

Although U.S. President *Joe Biden* lifted the sanctions imposed by Trump on the ICC in 2021, voices in the U.S. Senate have again been raised with regard to the necessity to “punish” the ICC for its audacity in seeking indictments against Israeli leaders.

U.S. Senator *Lindsey Graham* proposed to work with Secretary of State *Antony Blinken* in adopting bipartisan sanctions on the ICC “not only for the outrage against Israel but to protect,

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in the future, our own interests". Blinken answered: "I welcome working with you on that."

Soon after, human rights groups sent a letter to President Biden asking him to oppose any legislative effort to undermine the ICC: "The previous administration's sanctions [...] aligned the United States with authoritarian tactics of threatening judges and independent judicial institutions."⁵

Frontal attack on the essence of international law

The new U.S. threats to impose sanctions on the ICC constitute a frontal attack on the very essence of international law and international order. They upend the independence of the international judiciary and the object and purpose of the ICC, which is to investigate all reports of violations of the Rome Statute, in particular the *crime of aggression* (Art. 5), *genocide* (Art. 6), *crimes against humanity* (Art. 7) and *war crimes* (Art. 8).

Alas, this kind of U.S. "hardball diplomacy" is *déjà vu*, as the U.S. has a long record of pressuring the *International Criminal Tribunal for the former Yugoslavia*, the *International Criminal Tribunal for Rwanda* and even the *International Court of Justice* itself.

Criminal Court at a crossroads

Now the Court stands at a crossroads. It has an opportunity to vindicate the hopes of humanity for justice and accountability, or it can surrender to the *animus dominandi* of the United States and the European neo-colonial powers.

If the ICC judges fail to indict Israeli Prime Minister *Netanyahu* and his Minister of Defense *Yoav Gallant*, as recommended by Prosecutor Karim Khan, it risks a massive departure of members of the Statute of Rome, because it will

become all too evident that the ICC has abandoned its mandate and failed to even try to stop the genocide in Gaza by judicial means. The ICC would have failed not only the Palestinians but also humanity at large.

The African Union has already discussed a few years ago the withdrawal *en masse* from the Statute because of a perceived lack of objectivity by prosecutors and judges. Failure to indict Netanyahu would be the last nail in the coffin.

Impunity no longer acceptable

As an international lawyer, I am optimistic that the ICC will issue the arrest warrants. Impunity is no longer acceptable in the 21st century. Nor can there be impunity for complicity in genocide, for aiding and abetting through military, political, diplomatic, economic and propagandistic support of the perpetrators.

On 22 May the *Geneva International Peace Research Institute* (GIPRI)⁶ submitted a case to the Prosecutor against Ursula von der Leyen for complicity in the Gaza genocide.⁷ The ball is on the ICC's court. (See annex)

¹ <https://asp.icc-cpi.int/states-parties>

² <https://www.counterpunch.org/2024/05/23/the-icc-is-doing-its-job/>

³ <https://www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf>

⁴ <https://ccrjustice.org/factsheet-us-sanctions-international-criminal-court>

⁵ <https://www.hrw.org/news/2024/05/23/biden-should-oppose-us-sanctions-icc>
<https://atrocitieswatch.org/publications/human-rights-groups-urge-president-biden-to-oppose-us-sanctions-on-icc/>

⁶ www.gipri.ch

⁷ <https://dezayasalfred.wordpress.com/2024/05/23/icc-case-against-ursula-v-d-leyen-before-the-icc-for-complicity-in-war-crimes-and-crimes-against-humanity-in-gaza/>

Press Release

Call to the International Criminal Court to investigate on Ursula von der Leyen for complicity in war crimes and genocide committed by Israel in the Occupied Palestinian Territories and in Gaza



(Geneva, 27 May 2024) – On May 22, 2024, the Geneva International Peace Research Institute (GIPRI), the *Collectif de Juristes pour le Respect des Engagements Internationaux de la France* (CJRF) and a group of international concerned citizens, submitted a legal brief to the Prosecutor of the International Criminal Court (ICC) *Karim Khan* requesting the opening of an investigation against Ursula von der Leyen for complicity in war crimes and genocide against Palestinian civilians in the Occupied Palestinian Territories, including the Gaza Strip.

This legal brief, endorsed by various human rights groups and prominent academics and experts in international criminal law, calls the Prosecutor to initiate investigations on the basis of the information provided against Mrs. *Ursula von der Leyen*. The latter has been repeatedly informed of violations of international humanitarian law committed in the Occupied Palestinian Territories, particularly in the Gaza Strip, through reports from international organizations and foreign governments. This is evidenced by a letter sent to her on February 14, 2024, by the President of the Spanish government, Pedro Sánchez, and the then Irish Prime Minister, Leo Varadkar.¹

Mrs Ursula von der Leyen is responsible for aiding and abetting the commission of crimes and violations of international humanitarian law, within the meaning of Article 25(3)(c) of the Rome Statute of the International Criminal

Court. Mrs von der Leyen enjoys no functional immunity before the International Criminal Court by virtue of Article 27 of the Rome Statute.

The President of the European Commission is complicit in violations of Articles 6, 7 and 8 of the Rome Statute by her positive actions (military, political, diplomatic support to Israel) and by her failure to take timely action on behalf of the European Commission to help prevent genocide as required by the 1948 Genocide Convention. Mrs. Ursula von der Leyen cannot deny awareness of the plausibility of these crimes, especially following the International Court of Justice's provisional measures order of 26 January 2024 in the pending ICJ case *South Africa v. Israel*.

More importantly, Mrs. Von der Leyen has failed to take appropriate action to prevent such crimes, whereas the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the Statute of the International Criminal Court make prevention an *erga omnes* obligation.

For any further information, please contact:

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¹ Leo Varadkar and Pedro Sánchez, *Letter to the President of the Commission of the European Union Mrs. Ursula von der Leyen*, Oifig an Taoisigh (Office of the Taoiseach) and Gobierno de España – Presidencia del Gobierno, 14/02/2024: <https://www.lamoncloa.gob.es/presidente/actividades/Documents/2024/Letter-to-Commission-President-Ursula-Von-der-Leyen.pdf>