

Editorial

An Unusual and Extraordinary Assault on International Justice

The President of the United States of America (USA) has taken what is probably an unprecedented decision: Fatou Bensouda, the chief prosecutor of the first permanent international criminal court in the history of law, a Gambian national, and Phakiso Mochochoko, another high-ranking member of the Court's Office of the Prosecutor, a national of Lesotho, have recently been placed on the 'black list' of persons on whom the USA has imposed targeted economic sanctions.

The background to these sanctions is the International Criminal Court's decision to open investigations on war crimes, including torture, that members of the US armed forces and the CIA may have committed in Afghanistan since May 2003. This prompted Donald Trump to classify the International Criminal Court as an 'unusual and extraordinary threat' to the national security of the United States.

With his decree, President Trump has placed the International Criminal Court, which was established to prosecute genocide, crimes against humanity, war crimes and crimes of aggression, on a par with transnational terrorist organizations and associations dedicated to the proliferation of weapons of mass destruction. Moreover, the President has chosen intimidation of officials as a form of confrontation with the court. The Rome Statute of the International Criminal Court states that the intimidation of officials of the Court for the purpose of forcing them not to perform their duties is an offence against the international administration of justice.

The legal view of the US Government is that investigations against US organs by the Court without specific US consent violate the sovereignty of that state. This legal view could be made a matter of civilized legal argument, either in the course of the ongoing proceedings before the International Criminal Court or in suitable proceedings before another international court. President Trump, however, has chosen to rely on a blatant demonstration of the very considerable economic power of his country. How could the International Criminal Court — or any court of law — give in to this intimidation without risking damage to people's trust in its judicial integrity?

Now, what is required is dedication and courage from members of the International Criminal Court's Office of the Prosecutor, who are investigating the situation in Afghanistan and who are all exposed to the acute danger of a 'listing', to withstand the US assault. The States Parties to the Rome Statute should accordingly continue to calmly and firmly reject the course of action

chosen by President Trump and all those who believe in the idea of a rules-based international order supported by international courts should join them.

For most Americans, the approaching presidential election will probably not be primarily about this idea. But the outcome of the election may also have an effect on the future prospects of this idea — an idea whose foothold and beneficial effects on the world stage is not least due to the USA.

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