

INDEPENDENCE OF THE ICC (ROME STATUTE ARTICLE 70)

Background

In the lead up to the International Criminal Court (ICC or the Court) Prosecutor, Karim Khan's application for arrest warrants relating to the Situation in Palestine, there have been repeated threats and attempts to undermine the independence and impartiality of the Prosecutor's investigation into crimes in Gaza.¹

Such acts may amount to a violation of Article 70 of the Rome Statute, the governing document of the ICC. The central purpose of Article 70 is to scrupulously protect judicial independence. In announcing his application for arrest warrants, Prosecutor Khan stated that "[i]t is critical in this moment that [his] Office and all parts of the [ICC], including its independent judges, are permitted to conduct their work with full independence and impartiality." He further stressed that "all attempts to impede, intimidate or improperly influence the officials of [the ICC] must cease immediately" and that his "Office will not hesitate to act pursuant to article 70 of the Rome Statute if such conduct continues."²

As a State Party to the Rome Statute, the United Kingdom (UK) has an obligation to ensure that none of its officials impede the judicial independence of the Court, criminalise any attempts to do so, and work to ensure that officials from other countries similarly respect the Court's mandate.³

Overview of Article 70

Article 70(1) of the Rome Statute provides that:

"The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally: ...

(d) 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;

(e) Retaliating against an official of the Court on account of duties performed by that or another official..."

These offenses are punishable with a term of imprisonment not exceeding five years, or a fine, or both.

The purpose of Article 70(d) and (e) is to protect the integrity of the judicial process by penalising illicit conduct involving officials of the Court.⁴ ICC Prosecutors have not hesitated to use this provision⁵—more accused have been convicted of Article 70 offenses than of the Rome Statute's core crimes.⁶

While actions to intimidate or impede the ICC must be intentional, there is no requirement under Article 70(1)(d) that the person's conduct produce the desired effects—namely that a Court official actually becomes impeded, intimidated or corruptly influenced and, as a result, fails to properly perform his or her duties. The conduct committed for the purpose of forcing or persuading the official to that end is sufficient.⁷

¹ UNHCR. (10th May 2024), [Israel/Gaza: Threats against the ICC promote a culture of impunity, say UN experts.](#)

² ICC. (20th May 2024), [Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine.](#)

³ ICC. (1998) [Rome Statute, Article 70\(4\)\(a\).](#)

⁴ *The Prosecutor v Jean-Pierre Bemba Gombo et al.* (19th October 2016) Public Redacted Version of Judgment pursuant to Article 74 of the Statute, [ICC-01/05-01/13-1989-Red](#). para. 14.

⁵ For example, *The Prosecutor v Jean-Pierre Bemba Gombo et al.* (7th November 2016) Public Redacted Version of Judgment pursuant to Article 74 of the Statute, [ICC-01/05-01/13-1989-Red](#) (19th October 2016); *The Prosecutor v Bosco Ntaganda*, Public 'Prosecution's Communication of Disclosure of the Disclosure of Evidence Obtained Pursuant to Article 70', [ICC-01/04-02/06-1616](#) (7 November 2016).

⁶ Sergey Vasilev. (17th September 2018), [The Legal Line Crossed in Bolton's Attack on the ICC.](#) Just Security.

⁷ Geoff Roberts, Lexis (30 June 2016), [Commentary on the Law of the International Criminal Court \(CLICC\), Article 70\(1\)\(d\).](#)

Legal scholars have also argued that the Court has jurisdiction over Article 70 offenses by whomever and wherever they are committed, as long as they encroach upon the integrity of judicial proceedings. In other words, the Court can, in theory, exercise its discretion to prosecute Article 70 offenses irrespective of the perpetrator's nationality or the territory in which the act was committed.⁸

Actions to Impede the ICC's Gaza Investigation

On the 24th April 2024, a group of United States Senators sent a letter to Prosecutor Khan stating that if arrest warrants are issued against Israeli Prime Minister Benjamin Netanyahu and other Israeli officials, such actions “will result in severe sanctions against [the Prosecutor] and [the Court].” The letter went on to state: “Target Israel and we will target you. If you move forward...we will move to...sanction your employees and associates, and bar you and your families from the United States. You have been warned.”⁹ Reports indicate that Netanyahu had also been leading a “nonstop push” to prevent an arrest warrant.¹⁰

These actions likely fall within the remit of Articles 70(1)(d) and (e). The content and circumstances of the letter make clear that the conduct potentially covered by paragraph (d) was committed intentionally, meaning that the US Senators wished to impede and intimidate ICC officials and meant to cause the desired consequences (i.e., that the ICC Prosecutor refuse to apply for arrest warrants against Israeli officials, or that the Prosecutor desist from investigating Israeli officials). Ultimately, the ICC resisted foreign pressure, with Prosecutor Karim Khan announcing his application for arrest warrants for Israeli Prime Minister Benjamin Netanyahu and Israeli Defence Minister Yoav Gallant on the 20th May 2024.¹¹

On the 28th May 2024, an investigation by *The Guardian* found that the Israeli State had been engaging in a nine-year long campaign to undermine the ICC since 2021. The investigation found that Yossi Cohen, the former head of Mossad, Israel's foreign intelligence agency, threatened the former Chief Prosecutor of the ICC in secret meetings, and pressured her to halt an investigation into alleged war crimes and crimes against humanity in the occupied Palestinian territories (oPt).¹²

UK Government's Obligations

Judicial independence and the integrity of adjudication are a cornerstone of the rule of law. As a State Party to the Rome Statute, the UK has an obligation to criminalise each of the acts under Article 70(1).¹³ Further, it is vital that our government takes a clear stance against any attempts to intimidate an independent and impartial international court. Not only could such actions be a crime under Article 70 of the Rome Statute, but they would be a blatant attempt to prevent accountability and to impede justice.

International Response to US and Israeli interference

On the 14th June 2024, 93 out of 124 ICC states released a joint statement, vowing to defend the ICC and “preserve its integrity from any political interference and pressure against the court, its officials and those cooperating with it.”¹⁴ In a noteworthy development, the statement was supported by the UK, Germany, France and Canada, despite the close relations that the countries have to Israel and the US, who have pressured the court.

⁸ Uzay Yasar Aysev, Just Security (30 July 2020), [Can the International Criminal Court Hold the Trump Administration in Contempt?](#); Sergey Vasiliev, Just Security (17 September 2018), [The Legal Line Crossed in Bolton's Attack on the ICC](#).

⁹ United States Senators (24 April 2024), [Letter to Mr. Karim A. A. Khan KC, Office of the Prosecutor](#).

¹⁰ The Times of Israel (1 May 2024), [Netanyahu: ICC arrest warrants would be antisemitic hate crime, distortion of justice](#).

¹¹ ICC. (20th May 2024). [Statement of ICC Prosecutor Karim A. A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine](#).

¹² Harry Davies. (28th May 2024) [Revealed: Israeli spy chief 'threatened' ICC prosecutor over war crimes inquiry](#). The Guardian.

¹³ ICC. (1998) [Rome Statute, Article 70\(4\)\(a\)](#).

¹⁴ Harry Davies. (15th June 2024) [ICC must be allowed to carry out work 'without intimidation', say 93 member states](#). The Guardian.