

The United States also released a joint statement with foreign ministers of Australia, Canada, New Zealand, and the United Kingdom calling the disqualifications a breach of the Sino-British Joint Declaration and asking China to reinstate the legislators.⁵³ On December 7, the United States announced additional sanctions directed against fourteen vice chairpersons of the NPCSC for their role in adopting the national security law.⁵⁴ In response, China announced that “it would revoke visa exemption treatment for U.S. diplomatic passport holders visiting Hong Kong and Macau” and impose “reciprocal sanctions” on unspecified “U.S. officials, members of Congress, personnel at non-governmental organisations, and their family members.”⁵⁵

INTERNATIONAL CRIMINAL LAW

United States Imposes Economic Sanctions and Visa Restrictions on International Criminal Court Officials

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On September 2, 2020, the Trump administration announced that the United States had added the International Criminal Court (ICC) prosecutor, Fatou Bensouda, and the head of the Office of the Prosecutor’s Jurisdiction, Complementarity, and Cooperation Division, Phakiso Mochochoko, to the Treasury Department’s Office of Foreign Assets Control List of Specially Designated Nationals and Blocked Persons.¹ The action followed Executive Order 13,928, signed in June, which authorized economic sanctions and visa restrictions on ICC employees who are investigating whether U.S. forces committed war crimes in Afghanistan.² Governments and human rights groups decried the sanctions as an attack on international justice.

The sanctions freeze any assets that Bensouda or Mochochoko may have within the United States or that are otherwise subject to U.S. law, and the designation subjects them to visa restrictions, effectively preventing their travel to the United States.³ In a press release announcing the sanctions, U.S. Secretary of State Mike Pompeo stated:

⁵³ U.S. Dep’t of State Press Release, Joint Statement on Hong Kong (Nov. 18, 2020), at <https://www.state.gov/joint-statement-on-hong-kong-2> [<https://perma.cc/K7DC-GVS2>].

⁵⁴ U.S. Dep’t of State Press Release, Designations of National People’s Congress Officials Undermining the Autonomy of Hong Kong (Dec. 7, 2020), at <https://www.state.gov/designations-of-national-peoples-congress-officials-undermining-the-autonomy-of-hong-kong/> [<https://perma.cc/TX2J-PCR7>].

⁵⁵ Reuters Staff, *China Revokes Visa Exemptions for U.S. Diplomat Passport Holders Visiting Hong Kong, Macau*, REUTERS (Dec. 10, 2020), at <https://www.reuters.com/article/us-usa-china-sanctions/china-revokes-visa-exemptions-for-us-diplomat-passport-holders-visiting-hong-kong-macau-idUSKBN28K0N4>.

¹ U.S. Dep’t of State Press Release, Actions to Protect U.S. Personnel from Illegitimate Investigation by the International Criminal Court (Sept. 2, 2020), at <https://www.state.gov/actions-to-protect-u-s-personnel-from-illegitimate-investigation-by-the-international-criminal-court> [<https://perma.cc/T4BN-WVEH>].

² Exec. Order No. 13,928, 85 Fed. Reg. 36,139 (June 11, 2020).

³ *Id.*; U.S. Dep’t of Treasury Press Release, Blocking Property of Certain Persons Associated with the International Criminal Court Designations (Sept. 2, 2020) at <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20200902> [<https://perma.cc/8HKS-39ES>].

The United States is a strong advocate for justice around the world but is not a party to the Rome Statute that created the ICC, nor have we ever accepted its jurisdiction over our personnel. The ICC's recklessness has forced us to this point, and the ICC cannot be allowed to follow through with its politically-driven targeting of U.S. personnel. The sanctions and visa restrictions announced today apply to individuals who have directly engaged in ICC efforts to investigate U.S. personnel without the consent of the United States or have materially supported individuals who are designated for such actions.

To that end and pursuant to Executive Order (E.O[.]) 13928, the United States is designating ICC Prosecutor Fatou Bensouda for having directly engaged in an effort to investigate U.S. personnel, and the ICC's Head of the Jurisdiction, Complementarity and Cooperation Division Phakiso Mochochoko for having materially assisted Prosecutor Bensouda.⁴

The ICC condemned the sanctions as “coercive acts” that are “unprecedented and constitute serious attacks against the Court, the Rome Statute system of international criminal justice, and the rule of law more generally.”⁵ The Court decried the U.S. actions as “another attempt to interfere with the Court’s judicial and prosecutorial independence and crucial work to address grave crimes of concern to the international community as mandated under the ICC Rome Statute.”⁶ In an interview, Bensouda said, “[t]hese are the kind of sanctions that we normally reserve to be used as a mechanism to target narcotic traffickers, notorious terrorists and the like. But not professional lawyers, not prosecutors, not investigators, not judges or others who are working tirelessly to prevent atrocity crimes.”⁷ President of the ICC Assembly of States Parties, O-Gon Kwon, also denounced the sanctions in a separate statement, writing: “I strongly reject such unprecedented and unacceptable measures against a treaty-based international organization. They only serve to weaken our common endeavor to fight impunity for mass atrocities.”⁸ He stated that the Assembly would meet “to consider the measures imposed by the United States and ways to give effect to our unstinting support for the Court” and “call[ed] upon the States Parties . . . to uphold and defend the principles and values enshrined in the [Rome] Statute and to preserve its integrity undeterred by any measures and threats against the Court.”⁹

The U.S. sanctions also drew condemnation from the European Union and foreign governments. The European Union’s High Representative of the Union for Foreign Affairs and Security Policy Josep Borrell called the U.S. sanctions “unacceptable and unprecedented measures that attempt to obstruct the Court’s investigations and judicial proceedings,” and urged

⁴ U.S. Dep’t of State Press Release, *supra* note 1.

⁵ Int’l Crim. Ct. Press Release, International Criminal Court Condemns US Economic Sanctions (Sept. 2, 2020), at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1535> [<https://perma.cc/Q2KS-V3C7>].

⁶ *Id.*

⁷ Pranshu Verman, *Trump’s Sanctions on International Court May Do Little Beyond Alienating Allies*, N.Y. TIMES (Oct. 18, 2020), at <https://www.nytimes.com/2020/10/18/world/europe/trump-sanctions-international-criminal-court.html>.

⁸ Int’l Crim. Ct. Press Release, ASP President, O-Gon Kwon, Rejects US Measures Against ICC (Sept. 2, 2020), at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1534> [<https://perma.cc/MV79-5P5K>].

⁹ *Id.*

the United States to “reverse the measures it has taken.”¹⁰ France and Germany similarly called for the withdrawal of the sanctions.¹¹

Human rights groups decried the sanctions. Amnesty International stated that Bensouda and Mochochoko “should be commended for their commitment, not subjected to a punitive campaign of intimidation.”¹² Human Rights Watch said that the “unprecedented imposition of asset freezes on prosecutors at the International Criminal Court (ICC) shows an egregious disregard for victims of the world’s worst crimes.”¹³

In the meantime, the original investigation of conduct in Afghanistan that sparked the imposition of sanctions on Bensouda and Mochochoko is on hold. Pursuant to Article 18(2) of the Rome Statute, the Afghan government asked the ICC to defer the investigation, asserting that Afghanistan is conducting credible domestic investigations of the same alleged war crimes.¹⁴ In part because the ICC prosecutor’s office is assessing Afghanistan’s request and in part because of restrictions due to COVID-19, the ICC is not currently taking any active investigative steps.¹⁵

USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

United States Fails to Secure Multilateral Snapback Sanctions Against Iran

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The United States withdrew from the Joint Comprehensive Plan of Action (JCPOA) on May 8, 2018, and subsequently reimposed a range of unilateral sanctions on Iran.¹ Throughout mid-2020, the Trump administration sought multilateral support for renewed

¹⁰ European External Action Service Press Release, International Criminal Court: Statement by the High Representative/Vice-President Josep Borrell on US Sanctions (Sept. 3, 2020), at https://eeas.europa.eu/headquarters/headquarters-homepage/84721/international-criminal-court-statement-high-representativevice-president-josep-borrell-us_en [<https://perma.cc/X8ME-VE5M>]; see also Office of the UN Secretary-General Press Release, Highlights of the Noon Briefing by Stéphane Dujarric, Spokesman for Secretary-General António Guterres (Sept. 2, 2020), at <https://www.un.org/sg/en/content/noon-briefing-highlight?date%5Bvalue%5D%5Bdate%5D=2%20September%202020> [<https://perma.cc/77FM-QX8C>] (noting “with concern” the designation of sanctions).

¹¹ German Federal Foreign Office Press Release, Foreign Minister Maas on the US Sanctions Imposed on ICC Officials (Sept. 4, 2020), at <https://www.auswaertiges-amt.de/en/newsroom/news/maas-us-sanctions-icc/2381666> [<https://perma.cc/DG2H-7SSY>]; Ministry of Eur. and Foreign Aff. Press Release, International Criminal Court – Announcement of Individual Sanctions by the United States – Statement by Jean-Yves Le Drian, Minister for Europe and Foreign Affairs (Sept. 3, 2020), at <https://www.diplomatie.gouv.fr/en/french-foreign-policy/international-justice/news/article/international-criminal-court-announcement-of-individual-sanctions-by-the-united> [<https://perma.cc/SD8L-WNBK>].

¹² Amnesty Int’l, *U.S. Sanctions Against ICC Staff Create Chilling Effect for International Justice* (Sept. 2, 2020), at <https://www.amnestyusa.org/press-releases/iccsanctions> [<https://perma.cc/2PQG-LWYX>].

¹³ Hum. Rts. Watch, *US Sanctions International Criminal Court Prosecution* (Sept. 2, 2020), at <https://www.hrw.org/news/2020/09/02/us-sanctions-international-criminal-court-prosecutor> [<https://perma.cc/Q6H4-R2BQ>].

¹⁴ Deferral Request Made by the Government of the Islamic Republic of Afghanistan Pursuant to Article 18(2) of the Rome Statute, ICC-02/17-139-Anx1 (Int’l Crim. Ct. Mar. 26, 2020), available at https://www.icc-cpi.int/RelatedRecords/CR2020_01538.PDF [<https://perma.cc/337X-KP86>].

¹⁵ Proposed Programme Budget for 2021 of the International Criminal Court, para. 137, ICC-ASP/19/10 (Int’l Crim. Ct. Aug. 31, 2020), available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/ICC-ASP-19-10-ENG-PPB-2021-31aug20-1530.pdf [<https://perma.cc/MLS2-594L>].

¹ See Jean Galbraith, Contemporary Practice of the United States, 112 AJIL 487, 517, 521 (2018); Exec. Order No. 13,846, 83 Fed. Reg. 38,939 (2018).