

U.S. attacks on ICC require a Canadian response

By Fergus Watt

Only time will tell what will come of the recent escalation of hostilities between the U.S. government and the International Criminal Court (ICC).

A June 11 Executive Order authorized by President Trump enables U.S. officials to take action against individuals (and their property in the U.S.) who carry out work on behalf of or cooperate with the ICC, when their work includes investigations of U.S. nationals or those of U.S. allies.

This could mark another instance of the current U.S. administration's many well-documented attacks on multilateralism and the rule of law. Or, the Executive Order could amount to a lot of smoke but no fire – just so much bluster and pandering to elements of the Republican base in an election year.

Court officials are taking the threat seriously. O-Gon Kwon, President of the ICC Assembly of States Parties, has called an extraordinary meeting of the Bureau of the Assembly. And a statement on the Court's website in response to the Executive Order declared that "The Court stands firmly by all its officials and staff, who perform, with integrity and dedication, essential duties for the ICC's mandate on behalf of its 123 States Parties. . . . As an independent and impartial judicial institution, the ICC and its organs act strictly within the mandate bestowed upon them by the Rome Statute, the ICC's founding treaty."

On March 5 this year, the Appeals Chamber of the ICC authorized the Prosecutor to open an investigation into alleged war crimes and crimes against humanity in Afghanistan. The investigation is expected to cover not only accusations of torture of detainees by U.S. forces, but also alleged crimes by the Afghan government and the Taliban.

While American officials claim that any actions taken against their service personnel constitute a violation of U.S. sovereignty, the Rome Statute is clear: the ICC may exercise its jurisdiction over crimes committed on the territory of states parties or by its nationals. Afghanistan became a state party to the Rome Statute in 2003.

Court supporters also point out that the ICC is "a Court of last resort." It can only exercise jurisdiction when national judicial systems prove unable or unwilling to address atrocity crimes. Therefore U.S. personnel would not be at risk now if the U.S. civilian and military justice systems had undertaken proper investigations when allegations of mistreatment of detainees first came to light.

Of course, such arguments fall on deaf ears in today's Washington.

The fact that current U.S. Secretary of State Mike Pompeo was CIA Director at the time when many of the “black site” detainee torture centers are alleged to have operated may also fuel the anti-ICC rancor and rhetoric that pervades the current American government.

It will be up to ICC States Parties to demonstrate to the U.S. government the diplomatic costs of these unwarranted attacks on the Court and the international justice system embedded in the Rome Statute.

That’s why Canada’s reaction to these latest threats to the ICC will matter.

The ICC is a Canadian diplomatic success story. Foreign Minister Champagne’s mandate letter from the Prime Minister includes instructions to “reinforce international institutions like the International Criminal Court, the World Trade Organization” (another Trump target) and others, including by providing additional resources to promote and uphold international law.

A Global Affairs Canada statement in March 2019 affirmed Canada’s longstanding support for the ICC and stated unequivocally that, “Personnel of the International Criminal Court should not be targeted for the important work that they do.”

It is time for Canada to stand up for the ICC once more.

Fergus Watt is Executive Director of the World Federalist Movement – Canada, an organization focused on global governance that has been advocating for the development and effective functioning of an independent ICC for over two decades.

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