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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by International Probono Legal Services Association Limited, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2025]

* Issued as received, in the language of submission only.



A Critical Examination of the United States of America's Misuse of Emergency Powers to Undermine Judicial Independence

Introduction

The United States of America has repeatedly invoked emergency powers under the National Emergencies Act (NEA) and the International Emergency Economic Powers Act (IEEPA) to impose sanctions that obstruct international justice and intimidate judicial authorities. While ostensibly justified as responses to national security threats, the prolonged and unchecked application of such measures however violates fundamental principles of judicial independence, due process, and the rule of law under international human rights standards, particularly the International Covenant on Civil and Political Rights (ICCPR).

A particularly egregious example of this abuse is the sanctioning of the International Criminal Court (ICC) and its personnel through Executive Order (EO) 14203 (2025), which explicitly opposes ICC investigations into the United States of America personnel and allied officials, including Israeli leaders accused of war crimes. This follows EO 13928 (2020), which sanctioned ICC Prosecutor Fatou Bensouda and Head of Jurisdiction Phakiso Mochochoko for pursuing accountability for the United States of America conduct in Afghanistan.

I. The Legal Framework Enabling Abuse of Emergency Powers

Under the NEA (50 U.S.C. §§ 1601–1651) and IEEPA (50 U.S.C. §§ 1701–1706), the President of the United States of America can unilaterally declare emergencies, bypassing congressional approval. These powers are further expanded by 3 U.S.C. § 301, which authorises agencies such as the Office of Foreign Assets Control (OFAC) to impose sanctions—including asset freezes and travel bans—on individuals and entities deemed threats, without judicial oversight.

Article 4 of the ICCPR strictly limits emergency derogations to existential threats (e.g., war or large-scale civil unrest), requiring the State Party to: (1) issue an official proclamation of an emergency threatening the "life of the nation"; (2) implement measures that are "strictly required by the exigencies of the situation"; and (3) notify the UN Secretary-General of any derogations. The United States of America fails all three conditions: its emergencies target political adversaries (e.g., the ICC) rather than existential threats; sanctions remain indefinite, with some renewed annually for decades (e.g., Iran since 1979); and no derogation notices have ever been submitted to the UN.

The sanctions against the ICC exemplify this abuse. By designating ICC officials as Specially Designated Nationals (SDNs), the U.S. seeks to intimidate judges and prosecutors investigating the United States of America or allied conduct, deter future accountability efforts through financial coercion, and violate the ICC's judicial independence under Article 70 of the Rome Statute, which criminalises obstruction of the Court's functions.

II. Violations of ICCPR Standards and Judicial Independence

The sanctions regime of the United States of America systematically violates multiple international legal standards. First, it contravenes ICCPR Article 14 (Right to a Fair Trial) by denying ICC personnel due process, freezing assets without evidence or right of appeal. Second, it breaches Rome Statute Article 70, which explicitly criminalises interference with the ICC's functions, precisely the effect of the United States of America sanctions. Third, it undermines the presumption of innocence by presuming guilt for ICC officials engaged in lawful investigations.

A case study of the sanctions against the ICC illustrates these violations. EO 13928 (2020) and EO 14203 (2025) were enacted in retaliation for the ICC's investigations into the United States of America's war crimes in Afghanistan and Israeli actions in the State of Palestine.

The United States of America has falsely accused the Court of being "politicised," while its sanctions directly politicise justice, a contradiction condemned by UN experts as "an assault on the rule of law" and a mockery of Nuremberg-era accountability principles.

The broader implications are deeply concerning. Sanctions against the ICC establish a dangerous precedent that could intimidate other international tribunals. Furthermore, by shielding allies such as Israel from accountability, the United States of America risks contravening ICCPR Article 20, which prohibits war propaganda and incitement to aggression—though it should be noted that the United States of America maintains reservations regarding this provision.

III. Recommendations

To align with international law, IPLSA recommends the Council to urge the United States of America to undertake several critical reforms:

1. First, it should repeal all sanctions against the ICC and its personnel;
 2. Second, it must narrow the scope of emergency powers to comply with ICCPR Article 4, restricting their use to genuine existential threats;
 3. Third, it should introduce judicial review for sanctions to prevent executive overreach; and,
 4. Fourth, it must end perpetual emergencies by requiring congressional reauthorisation.
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