A Shield with Gaps: Sánchez's Blocking Statute and the Limits of European Legal Protection for the ICC

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The statement issued by Spanish Prime Minister Pedro Sánchez on 6 May 2026 marks an important intervention with implications beyond Israel's genocidal campaign in Gaza and the broader Palestinian cause. Sánchez's call for the European Union to activate the EU Blocking Statute in response to United States sanctions against the International Criminal Court (ICC) signals a determined effort to protect international judicial institutions from outside political pressure. Rather than acting solely as a symbolic diplomatic gesture, the proposal aims to provide concrete legal resistance against external coercion directed at the ICC.

This policy outlook argues that while Sánchez's proposal is politically significant and normatively welcome, its practical utility is severely constrained by structural economic asymmetries that the Blocking Statute cannot overcome. The proposal exposes a central tension in European strategic autonomy: the EU can assert legal protection for the ICC, but it cannot compel its own corporate actors to prioritise European law over access to US markets. Unless complemented by broader efforts to reduce dollar dependency and insulate European finance from US secondary sanctions, the Blocking Statute risks functioning as little more than a symbolic gesture—a legal shield with gaping holes.

As is well known, the EU's "Blocking Statute" was established to limit the extraterritorial effects of unilateral sanctions imposed by third states and to protect European persons and entities from the legal and economic consequences of such measures. Sánchez's proposal should therefore be understood as an effort to defend both European legal sovereignty and a foreign policy framework grounded in international law against growing American economic and diplomatic pressure directed at the ICC. In this respect, the issue has evolved beyond a mere jurisdictional dispute between Washington and The Hague, becoming a broader systemic debate over the independence of international law, the protection of global justice mechanisms, and the future of the multilateral order.

Notably, Sánchez's position received strong support from a number of pro-Palestinian actors across Europe. Among the most prominent voices was Slovenia's Robert Golob, whose government has, in recent years, adopted a more active and critical stance on the Palestinian issue. Golob and several other European figures argued that American pressure against the ICC does not merely target the Court itself, but also undermines the normative principles which Europe claims to uphold. His statement on the social media platform X — asserting that "*Europe's response so far does not reflect the gravity of the situation. We must act because fundamental European values cannot come at a price. The independence of international courts is non-negotiable*" — illustrates the extent to which the matter is increasingly perceived within Europe not only as a diplomatic dispute, but also as a normative and institutional crisis.

The debate centres on whether international criminal justice, embodied by the ICC, can remain independent under major power pressure. US sanctions against the ICC challenge the idea of a universal international legal order and test Europe's stated commitment to the rule of law and multilateral governance. Rather than just a bilateral dispute, these sanctions mark a structural shift with the potential to shape global legal frameworks.

US Sanctions on the ICC

The relationship between the United States and the International Criminal Court has, since the Court's inception, been shaped by a persistent undercurrent of mistrust and competing conceptions of sovereignty. In recent years, however, the imposition of unilateral sanctions against the Court has evolved into one of the most contentious issues in international law and global justice governance. While successive US administrations have maintained a generally distant stance towards the ICC, the sanctions adopted, particularly under the Trump administrations, have not only intensified political tensions between Washington and The Hague but also contributed to a deeper legitimacy crisis surrounding the future of international criminal justice.

The United States signed the 1998 Rome Statute, the founding treaty of the ICC, but never ratified it and has consistently refused to accept the Court's jurisdiction. Washington's official position rests on the argument that US nationals, particularly members of the US armed forces, cannot be subjected to the jurisdiction of an international tribunal without the US's explicit consent. This position has been justified with reference to concerns that American military personnel involved in operations such as the Iraq War, the intervention in Afghanistan, and the broader so-called "War on Terror" could become subject to politically motivated prosecutions. Yet such an explanation remains incomplete if confined solely to questions of sovereignty. At its core, the US posture reflects a broader strategic concern: the potential exposure of American military and political actors to international criminal accountability for alleged violations of international humanitarian law. In this sense, Washington has historically regarded the possibility of external judicial scrutiny over its global military operations as a structural challenge to its strategic autonomy.

In line with this approach, the United States formally "unsigned" the Rome Statute in 2002 and adopted the American Service-Members' Protection Act (ASPA) in the same year. Often referred to in public discourse as the "Hague Invasion Act", this legislation is symbolically and legally significant. It authorises, at least in theory, the use of all necessary means to secure the release of US personnel detained by or on behalf of the ICC. Beyond its rhetorical force, the Act reflects Washington's perception of the Court not merely as a legal institution, but as a potential constraint on US global military mobility. The result is a relationship that goes beyond the conventional dynamic between a state and an international organisation, instead reflecting a structural tension between global power projection and the emerging architecture of international criminal justice.

This tension became particularly pronounced during the first Trump administration. In response to the ICC Prosecutor's decision to pursue investigations into alleged war crimes committed by US forces in Afghanistan, the administration imposed targeted sanctions on senior ICC officials, including then Prosecutor Fatou Bensouda. These measures included asset freezes, travel restrictions, and limitations on access to the US financial system. For the first time, a state directly targeted officials of an international judicial institution through coercive economic instruments, thereby establishing a highly controversial precedent with far-reaching implications for judicial independence at the international level.

A more expansive and aggressive sanctions regime emerged during the second Trump administration. A presidential executive order issued on 6 February 2025 extended the scope of restrictive measures beyond ICC judges and prosecutors to include individuals and entities cooperating with the Court, as well as third parties providing indirect support. The immediate catalyst for this escalation was the ICC's renewed focus on the Gaza genocide, including the issuance of arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant. The US administration characterised these developments as an "illegitimate intervention" against a key ally, while the sanctions regime expanded to encompass Palestinian human rights organisations, civil society actors, and entities involved in documenting alleged crimes committed by Israeli officials.

The practical impact of these measures extended well beyond symbolic condemnation. Throughout 2025, ICC staff reportedly encountered significant disruptions in banking operations, constraints on digital communications infrastructure, and the termination of institutional relationships with US-based companies. In response to the risk of secondary sanctions, a range of private actors—including banks, technology firms, law firms, and consulting companies—began to limit or suspend their cooperation with the Court. This created tangible operational constraints affecting evidence collection, witness protection, logistical coordination, and funding mechanisms. Consequently, multiple reports indicated delays in ongoing investigations, disruptions to field operations, and significant procedural bottlenecks, particularly in cases involving Sudan and Palestine.

Taken together, these developments have not only weakened the ICC's institutional capacity but also undermined broader confidence in the international criminal justice system. The willingness of a superpower to deploy economic and political coercion against a judicial institution, particularly in cases involving its allies or nationals, directly challenges the claim that international law operates on a universal and impartial basis. More fundamentally, the US approach to the ICC highlights the structural limits of international legal governance when confronted with great power politics, raising profound questions about the autonomy and resilience of global justice mechanisms.

Against this background, Sánchez's call to activate the EU Blocking Statute acquires particular significance as an attempt to counterbalance these adverse dynamics and reaffirm the autonomy of a legal order grounded in multilateral principles.

A Territorial Shield: The Blocking Statute

The EU Blocking Statute constitutes far more than a technical instrument of economic regulation; it is more accurately understood as a key legal mechanism through which the European Union seeks to affirm its normative autonomy, preserve a multilateral understanding of international order, and defend the independence of international law from unilateral external coercion. Revived in contemporary debates by Pedro Sánchez's call, the instrument has increasingly come to symbolise Europe's search for an institutional response to United States sanctions targeting the ICC.

Formally adopted in 1996 under Council Regulation (EC) No 2271/96, the Blocking Statute was originally designed as a defensive response to the extraterritorial application of US sanctions regimes, particularly those concerning Cuba, Iran, and Libya. Its central purpose was to mitigate the impact of foreign legislation that the European Union considered incompatible with international law or with its own legal order. In essence, the regulation reflects a structural assertion of European legal sovereignty against attempts by third states to project their domestic legal frameworks beyond their territorial jurisdiction.

At its core, the Blocking Statute operates on a principle of legal non-recognition. It seeks to prevent the internal effect of designated foreign sanctions within the European legal space. In practice, this may include prohibiting EU-based companies from complying with certain extraterritorial measures, enabling recovery of damages arising from such sanctions, and refusing recognition or enforcement of foreign judicial decisions within the Union. Through these mechanisms, the EU aims to neutralise the spillover effects of US secondary sanctions, which derive much of their effectiveness from the centrality of the American financial system and the US dollar in global transactions.

Although the Blocking Statute was widely regarded for many years as largely symbolic or under-enforced, its relevance was revived during the Trump administration's withdrawal from the Iran nuclear agreement. In response to the reimposition of sweeping US sanctions on Iran, the EU activated and updated the Blocking Statute to shield European economic operators from US secondary

sanctions. However, in practice, its effectiveness proved limited. The structural dependence of major European firms on US financial markets and on access to dollar-denominated transactions led many corporations to comply with US sanctions rather than adhere to EU protective measures. This revealed a fundamental limitation of the instrument: while legally significant, its practical impact is constrained by global economic asymmetries.

In the current context, the potential application of the Blocking Statute to US sanctions against the ICC broadens the debate beyond traditional economic statecraft. Unlike previous instances, the present situation involves not only measures targeting third states but also direct coercive action against an international judicial institution and its collaborators. Consequently, invoking the Blocking Statute assumes a distinctly political and normative dimension, centred on the protection of judicial independence and the integrity of international criminal justice.

From a functional perspective, the mechanism's activation could provide a degree of legal protection for European-based banks, technology companies, law firms, and consultancy firms engaged with the ICC. In particular, it may reduce the chilling effect generated by the risk of US secondary sanctions, thereby facilitating continued cooperation with the Court in areas such as financial services, digital infrastructure, legal support, and operational logistics. In turn, this could help preserve the ICC's institutional capacity at a time when its operational environment is increasingly constrained by external pressure.

Nevertheless, serious doubts remain about the instrument's practical effectiveness. The dominance of the US dollar in global finance, combined with the structural centrality of US-based technological and financial infrastructure, means that many multinational actors may continue to prioritise compliance with US sanctions over EU legal protections. For major banks, technology corporations, and global service providers, access to US markets often outweighs the legal obligations imposed under European law. Consequently, while the Blocking Statute represents a robust normative assertion of legal autonomy, its practical effectiveness ultimately depends on Europe's broader economic and political willingness to sustain it in the face of external pressure.

The implications of this structural limitation are not merely technical but strategic. If European-based companies consistently choose US compliance over EU protection, as they did during the Iran sanctions episode, then the Blocking Statute's deterrent effect collapses. Washington can continue its sanctions policy, knowing that the practical cost to targeted institutions, such as the ICC, will remain high, regardless of Brussels' legal objections. This reveals a deeper truth: the Blocking Statute protects European legal sovereignty on paper, but not European economic actors in practice. For Sánchez's proposal to have genuine strategic weight, the EU would need to accompany it with credible enforcement mechanisms against companies that choose US compliance, including fines, procurement exclusions, or loss of public contracts. Without such measures, the Blocking Statute functions as a declaration of normative intent rather than an operational defence mechanism—a signal of what Europe opposes, not a tool for what it can protect.

Beyond its legal and economic dimensions, however, the most significant aspect of the Blocking Statute debate lies in its symbolic and systemic implications. Its potential deployment in defence of the ICC would not merely constitute a protective measure for a judicial institution, but would also signal a broader commitment to safeguarding the independence of international adjudicative bodies against great-power coercion. In this sense, the issue transcends technical sanctions law and becomes part of a wider structural contest over multilateralism, the rule of law, and the future autonomy of global justice mechanisms.

The Latest Target of a Systematic Smear Campaign Against the ICC: Karim Khan

Any assessment of the sustained negative campaign directed at the International Criminal Court must also account for what appears to be a decade-long pattern of covert operations allegedly aimed at undermining the Court's work, particularly its investigations into Palestine. Within this broader context, the situation surrounding ICC Prosecutor Karim Khan—the figure who initiated arrest warrant applications against Benjamin Netanyahu and former Defence Minister Yoav Gallant—has increasingly been interpreted by some observers as the continuation of a wider strategy that extends beyond legal contestation and into the realm of reputational warfare.

Revelations that emerged in 2024 generated significant international attention, alleging that Tel Aviv had conducted a long-term covert campaign aimed at obstructing ICC investigations into alleged war crimes in the Occupied Palestinian Territories. At the centre of these allegations was the Israeli intelligence service Mossad, alongside its then-director Yossi Cohen. According to the investigative reporting, Israeli intelligence allegedly conducted a systematic and sustained intelligence operation over approximately nine years designed to disrupt and deter the ICC's Palestine-related proceedings.

The reported scope of this alleged operation included extensive surveillance of ICC prosecutors' communications,

including telephone monitoring, email interception, and access to internal correspondence. It was further alleged that intelligence was gathered on Court personnel, that pressure was exerted through the monitoring of family members, and that materials potentially suitable for coercion or reputational damage were collected. In addition, the reports suggested that diplomatic and intelligence-based pressure was applied to influence or halt ongoing prosecutorial processes. According to the same accounts, Yossi Cohen allegedly conveyed remarks to then-ICC Prosecutor Fatou Bensouda in terms widely interpreted as implicitly coercive, including the statement: "You should help us and let us take care of you." It was also reported that intelligence materials relating to Bensouda's spouse may have been obtained and considered for leverage. The alleged operation was not limited to Mossad alone; it was further claimed that Israel's internal security service, Shin Bet and its cyber-intelligence unit Unit 8200 were also involved in surveillance activities targeting the ICC.

Against this backdrop, the appointment of Karim Khan as Prosecutor marked a new phase in the ICC's engagement with the Palestine file. Following his decision to seek arrest warrants in relation to Gaza, the earlier allegations concerning Israeli intelligence activity resurfaced within broader debates on institutional pressure and interference. In parallel, a separate set of allegations concerning sexual misconduct against Khan emerged, rapidly gaining international visibility. While such allegations must, by their nature, be treated with utmost seriousness and subjected to independent scrutiny, the manner in which the process unfolded has itself become the subject of significant controversy.

Over time, what initially appeared to be a discrete ethical inquiry began to be viewed by some commentators as part of a wider pattern of reputational targeting. This perception was further reinforced by the timing of public disclosure, which coincided closely with Khan's most politically sensitive prosecutorial actions, including the Gaza-related arrest warrant applications. The convergence of these developments has led some observers to argue that the matter increasingly bears the hallmarks of a coordinated reputational campaign rather than a purely legal or administrative proceeding.

At the same time, concerns have been raised regarding procedural irregularities surrounding the handling of the allegations. One of the most frequently cited issues relates to confidentiality. In prior ICC practice, investigations concerning judges, prosecutors, or senior officials have typically been conducted under strict confidentiality, with the identities of those under investigation protected until the conclusion of proceedings. In contrast, Khan's name was reportedly circulated in connection with "sexual misconduct" allegations at an early stage, prior to any conclusive findings or formal determination. Critics argue that such early exposure undermines the presumption of innocence and risks generating irreversible reputational harm.

Further concerns have been raised regarding alleged procedural anomalies involving the Assembly of States Parties (ASP), including claims that one of its Vice-Presidents engaged directly with the alleged complainant in a manner considered inconsistent with established procedural norms. Given the inherently political composition of the ASP and its sensitivity to the positions of member states, such interactions have fuelled broader concerns about potential external influence over what should remain an impartial institutional process.

In addition, reports indicating that both an internal three-judge ICC review panel and the United Nations Office of Internal Oversight Services (OIOS) did not find sufficient evidence to substantiate the allegations have added another layer of complexity to the debate. Despite these reported assessments, calls for Khan's resignation and sustained political pressure have not diminished. On the contrary, they appear to have intensified in certain quarters, further reinforcing perceptions that the process has been shaped more by broader political dynamics than by evidentiary standards.

Within this context, the issue extends beyond an isolated disciplinary inquiry. Historically, the ICC has faced sustained political pressure whenever its investigations have touched upon the interests of major powers or their close allies. The developments surrounding Khan therefore fit into a wider pattern in which prosecutorial decisions trigger coordinated responses that combine political criticism, media amplification, institutional pressure, and reputational contestation.

Accordingly, the Khan case is increasingly viewed not merely as an internal ethics matter, but as a critical test of the extent to which international criminal justice can remain insulated from geopolitical contestation. When procedural disputes, selective confidentiality practices, political involvement by state-linked actors, and continued pressure despite reported evidentiary limitations are considered together, the case appears—at least in the view of a number of commentators—to reflect a broader shift in which mechanisms of accountability risk being overshadowed by dynamics of political pressure and reputational contestation rather than governed solely by legal standards.

Conclusion

The central question raised by Sánchez's proposal is not whether the Blocking Statute is a good idea—it is, both politically and normatively. The question is whether it can actually work. The evidence from previous activations, particularly during the Iran sanctions crisis, suggests that

its practical impact will be limited unless accompanied by credible enforcement against European companies that prioritise US compliance over EU law. Without such measures, the Blocking Statute risks becoming a symbolic declaration of resistance rather than an operational shield—a gesture of European normative commitment without the teeth to back it up.

This is not to dismiss Sánchez's initiative. On the contrary, normative gestures matter. They signal political alignment, shape discourse, and establish precedents that future policy can build upon. But they are not sufficient. If Europe genuinely seeks to protect the ICC from US coercion, it must confront the structural asymmetry that makes the Blocking Statute so easily bypassed: the dominance of the US dollar, the centrality of US financial markets, and the reluctance of European governments to penalise their own corporate actors for compliance with US sanctions.

The Khan affair, whatever its final resolution, has already demonstrated how effectively reputational warfare can complement economic coercion. Combined, these pressures create an environment in which international judicial institutions operate under chronic siege—not through direct assault, but through the steady erosion of operational capacity, financial access, and institutional legitimacy.

Sánchez's call is a necessary first step, but only that. Without deeper structural reforms, including the development of non-dollar payment systems, the creation of European financial infrastructure insulated from US secondary sanctions, and credible enforcement against corporate non-compliance, the Blocking Statute will remain what it has always been: a legal shield that declares protection but cannot guarantee it. The question for Europe is whether that is enough.