

Connecticut Debate Association

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AITE and Simsbury High School

Resolved: The US should join the International Criminal Court.

A Stronger Court for Crimes Against Humanity

The New York Times, By THE EDITORIAL BOARD, NOV. 3, 2016

Since it began operations in 2002, the International Criminal Court has secured just four convictions, fueling the perception that it has been largely ineffectual as a tribunal of last resort for the world's worst criminals. Making matters worse, Gambia, Burundi and South Africa have announced their intention to leave the court, which some African leaders see as a vestige of colonialism because it has so far tried cases only from their continent.

At a time when President Bashar al-Assad of Syria and President Omar Hassan al-Bashir of Sudan are eluding accountability for a litany of war crimes, these defections have called into question the long-term viability of the court and the world's commitment to the principles it was created to uphold. Instead of allowing it to wither, the international community should redouble efforts to strengthen the court's mandate and its mission — no easy task given its complex history.

World leaders explored the possibility of establishing an international criminal court after War World I. But it became diplomatically feasible only when the Cold War ended and the United Nations saw the need to establish special tribunals to bring to justice the perpetrators of atrocities in the Balkans and Rwanda during the 1990s.

The court's foundational document, adopted in 1998, is the Rome Statute, which decreed that there should be no statute of limitations for genocide and crimes against humanity. Its jurisdiction over atrocities committed in member states applies only when the local judicial system is unable or unwilling to bring people to justice or with the blessing of the United Nations Security Council.

There were 120 votes in favor of the statute, seven against and 21 abstentions. Among the opponents, shamefully, was the United States, which feared irrationally that the court could become a vehicle for politicized and arbitrary prosecutions of Americans and Israelis. After much international and domestic criticism, President Bill Clinton signed the treaty shortly before leaving office, a largely symbolic step since there was little support in the Senate to ratify it.

President George W. Bush tried to undermine the court, lobbying allies to abandon it, and in 2002, Congress passed the deceptively named American Servicemembers Protection Act, which barred American cooperation with the court and authorized the use of force to rescue any American on trial before it. The Bush-era position has angered human rights champions, like Senator Patrick Leahy of Vermont, who has been among the court's few defenders on Capitol Hill. "At a time when some governments are withdrawing from the I.C.C.," he said, "we should set an example by joining the court and actively supporting its work."

The next administration should make resolute support for the court one of its foreign policy priorities. The first step is to draw attention to the actual reasons African nations are defecting. The autocratic leaders of Gambia and Burundi fear not a resurgence of colonialism but being held accountable for their abuses. In South Africa, President Jacob Zuma is motivated by domestic and regional politics at a time when his integrity and leadership have rightly come under scrutiny. The International Criminal Court has focused much of its resources on Africa not out of racism, but at the request of victims' groups and often governments that recognized they were not equipped to handle complex prosecutions.

A strong commitment by the next American president to the tribunal would strengthen it and encourage countries to stay in. Early during her tenure as secretary of state, Hillary Clinton expressed "great regret" at Washington's failure to join the court. If she is elected, she will have the chance to try to turn that regret into action.

What does the International Criminal Court do?

The BBC, 25 June 2015

The International Criminal Court in The Hague has been part of the global justice system since 2002, but its concentration on African issues has led to accusations of bias.

The Rome Statute which established the court has been ratified by 123 countries, but the US is a notable absence.

What is the court designed to do?

To prosecute and bring to justice those responsible for the worst crimes - genocide, crimes against humanity, and war crimes. The court has global jurisdiction. It is a court of last resort, intervening only when national authorities cannot or will not prosecute.

Aren't there already several international courts?

Yes, but they either do different jobs or have a limited remit. The International Court of Justice (sometimes called the World Court) rules on disputes between governments but cannot prosecute individuals. The international criminal tribunals for the former Yugoslavia and Rwanda have tried individuals for crimes against humanity, but only if they were committed in those territories over a specified period. Unlike the international tribunals, the International Criminal Court is a permanent body.

Are there any time limits on what it covers?

The court has no retrospective jurisdiction - it can only deal with crimes committed after 1 July 2002 when the Rome Statute came into force. Additionally, the court has automatic jurisdiction only for crimes committed on the territory of a state which has ratified the treaty; or by a citizen of such a state; or when the United Nations Security Council refers a case to it.

What kind of cases does the court pursue?

The court's first verdict, in March 2012, was against Thomas Lubanga, the leader of a militia in the Democratic Republic of Congo. He was convicted of war crimes relating to the use of children in that country's conflict and sentenced in July to 14 years.

The highest profile person to be brought to the ICC is Ivory Coast's former President Laurent Gbagbo, who was charged in 2011 with murder, rape and other forms of sexual violence, persecution and "other inhumane acts".

Other notable cases included charges of crimes against humanity against Kenya's President Uhuru Kenyatta, who was indicted in 2011 in connection with post-election ethnic violence in 2007-08, in which 1,200 people died. The ICC dropped the charges against Mr Kenyatta in December 2014.

Among those wanted by the ICC are leaders of Uganda's rebel movement, the Lord's Resistance Army (LRA), which is active in northern Uganda, north-eastern DR Congo and South Sudan. Its leader Joseph Kony is charged with crimes against humanity and war crimes, including abduction of thousands of children.

The court has an outstanding arrest warrant for Sudanese President Omar al-Bashir - the first against a serving head of state. When Mr Bashir - who faces three counts of genocide, two counts of war crimes and five counts of crimes against humanity - attended a African Union summit in South Africa in June 2015, a South African court ordered that he be prevented from leaving the country while it decided whether he should be arrested under the ICC warrant. The South African government allowed Mr Bashir to leave and in the fallout a judge angrily accused the government of ignoring the constitution. The government in turn threatened to leave the ICC.

In 2015, the ICC began a preliminary investigation into the 2014 Gaza conflict. The Palestinian Authority submitted evidence to the court in June of what it claims were war crimes committed by the Israeli military. A UN report found evidence of war crimes by both Palestinian militant group Hamas and the Israeli military.

Alleged African bias

The ICC has been criticised, particularly by the African Union, for its focus on Africa. In the court's 11-year history it has only brought charges against black Africans. The ICC denies any bias, pointing to the fact that some cases - such as the LRA in Uganda - were self-referred by the country affected, and some were referred by the UN. Fatou Bensouda, the chief prosecutor of the ICC, who is Gambian, has argued that the ICC is helping Africa by its prosecutions of criminals.

"The ICC is working with Africa, and working for African victims, so I don't think the African Union should be against that," she said.

How can the court secure the arrest and trial of suspects?

The ICC has no police force of its own to track down and arrest suspects. Instead it must rely on national police services to make arrests and seek their transfer to The Hague. The case of Mr Bashir illustrates the problem this can present for the court. Several ICC signatory countries, including Chad and Kenya, have refused to co-operate in his arrest. A South African court did order that he be prevented from leaving the country, only for the government to override the order. The African Union has instructed members not to carry out the ICC arrest warrant against him while it conducts its own investigation.

How does the system work?

The prosecutor begins an investigation if a case is referred either by the UN Security Council or by a ratifying state. He or she can also take independent action, but prosecutions have to be approved by a panel of judges. Both the prosecutor and the judges are elected by the states taking part in the court. Luis Moreno Ocampo of Argentina was the first chief prosecutor of the court. He has been replaced by Ms Bensouda. Each state has a right to nominate one candidate for election as a judge.

Who has agreed to co-operate with the court?

The Rome Treaty has been ratified by 121 states so far, meaning they have bound themselves to co-operate. A further 34 have signed and may ratify it in the future. Only one Arab state has ratified so far - Jordan.

Why isn't the United States involved?

During negotiations, the US argued that its soldiers might be the subject of politically motivated or frivolous prosecutions. Various safeguards were introduced, and Bill Clinton did eventually sign the treaty in one of his last acts as president but it was never ratified by Congress. The Bush administration was adamantly opposed to the court and to any dilution of US sovereignty in criminal justice, and the US threatened to pull its troops out of the UN force in Bosnia unless they were given immunity from prosecution by the ICC.

In a much-criticised decision, the UN Security Council voted on 12 July 2002 on a compromise that gave US troops a 12-month exemption from prosecution - renewed annually. But the Security Council - prompted by then UN Secretary General Kofi Annan - refused to renew the exemption in June 2004, two months after pictures of US troops abusing Iraqi prisoners shocked the world.

The court's operation is seen as weakened without US involvement. However, Washington has not ruled out co-operation with the court in particular cases.

Are there other dissenters?

Yes, a number of important countries seem determined not to submit to the jurisdiction of the ICC. Some have not even signed the treaty, such as China, India, Pakistan, Indonesia and Turkey. Others, including Egypt, Iran, Israel and Russia, have signed but remain dubious and have not ratified. It is unlikely that alleged crimes against humanity in those states will be prosecuted.

How does the ICC fit in with each nation's judicial system?

States that join the treaty may want to make sure that they themselves are able to prosecute all the crimes that it covers - otherwise the court may intervene. Some governments have already introduced legislation to make changes to their own judicial systems.

Who is paying?

The states which take part. This will be according to the same rules that govern their contributions to the UN - roughly based on their national wealth. The absence of the US in particular makes funding of the court more expensive for others. Japan, Germany, France and Britain are among the the largest contributors.

Russia Cuts Ties With International Criminal Court, Calling It 'One-Sided'

The New York Times, By IVAN NECHPURENKO and NICK CUMMING-BRUCE, NOV. 16, 2016

MOSCOW — President Vladimir V. Putin of Russia instructed his government on Wednesday to withdraw from the treaty that created the International Criminal Court, while his government assailed the tribunal as “ineffective and one-sided.”

The action was largely symbolic, because Russia — like the United States — has not ratified the treaty and is not under the court’s jurisdiction. But it was another setback for the fairly young court, which handles cases of war crimes and crimes against humanity and is an emblem of the international order that is being shaken by populist revolts across the West.

“Essentially, this is just a gratuitous slap in the face, not a body blow,” said Kate Cronin-Furman, a human rights lawyer and political scientist at the Harvard Kennedy School, who predicted that the election of Donald J. Trump as president of the United States would lead to more harm for the court.

Burundi, Gambia and South Africa moved recently to withdraw from the court, calling it biased because all the people it had convicted so far had been Africans or because, in the case of South Africa, it disagreed with the court’s mandate to prosecute any individual, including a head of state.

Zeid Ra’ad al-Hussein, the United Nations high commissioner for human rights, tried on Wednesday to rally support for the court. “A new trend of isolationist and unprincipled leadership is building up across the world,” he said in an

address to the General Assembly of the court's member countries in The Hague. "Renewed attacks on the court may well be in the offing."

Mr. al-Husseini has sharply criticized the divisive and racist rhetoric of several European right-wing politicians. Last month, he said that Mr. Trump would "without any doubt" be a threat to global stability if the president-elect stood by his campaign pledges to bar Muslims from entering the United States, to deport millions of undocumented immigrants and to endorse the use of torture.

"In a world that seems increasingly adrift, the turmoil yet to face humanity may be far greater than any challenge we have yet experienced," Mr. al-Husseini said on Wednesday. "We face a choice. We can safeguard our societies by standing firm on the principles of justice which anchor this institution. Or we can cast away the moorings of law laid down to save the world from horror."

In announcing Russia's withdrawal from the treaty, the Russian Foreign Ministry said the court had failed to live up to expectations that it would serve as an impartial and authoritative arbiter of international law.

This week, the court's top prosecutor called Russia's annexation of Crimea an "ongoing state of occupation," a judgment affirmed by a United Nations human rights committee, which reiterated the world body's commitment to Ukraine's sovereignty over the Black Sea peninsula.

The ministry cited the court's approach toward Russia's brief war with Georgia in 2008. The court has said it would investigate possible war crimes in Georgia — which is a member of the court — by all parties, including Russian armed forces.

An even sharper rebuke to the Russian government came on Monday, when the court's chief prosecutor, Fatou Bensouda, said in a report that "the situation within the territory of Crimea and Sevastopol factually amounts to an ongoing state of occupation."

Russia has insisted that its capture of Crimea was warranted by the legitimate popular vote of the Crimean people in a referendum.

The prosecutor's report also said that the information available points to Russia's direct military involvement in the armed conflict in eastern Ukraine, something that the Russian authorities have denied repeatedly.

"The Russian Federation deployed members of its armed forces to gain control over parts of the Ukrainian territory without the consent of the Ukrainian government," the report said.

Russia might also be concerned about calls by Western officials, including Secretary of State John Kerry, to have the court look into the bombing campaign in Syria.

The court is the world's first international tribunal with permanent jurisdiction to prosecute war crimes, genocide, crimes against humanity and the crime of aggression. It was founded in 1998, when 120 countries adopted the Rome Statute, and began operations in 2002. The court has headquarters in The Hague.

Mr. Putin directed Russia to sign the Rome Statute in 2000, but Parliament did not ratify it. The United States never ratified the Rome Statute, though the Obama administration has cooperated with the court's proceedings.

Ms. Bensouda, the chief prosecutor, said this week that she was considering an investigation into allegations of war crimes, torture and related treatment by American military forces and intelligence agencies in Afghanistan, raising the prospect of a confrontation with the Trump administration.

"Given that the I.C.C. is a relatively young institution, and the norms surrounding it are not firmly entrenched, the loss of American leadership on accountability for mass atrocities could be profoundly damaging," said Ms. Cronin-Furman, the human rights lawyer.

Vladimir Frolov, a scholar of international relations, called Russia's move a "symbolic gesture" prompted by Ms. Bensouda's report on Crimea.

"At the time when Russia signed the Rome Statute in 2000, it wanted to be a part of the modern world," he said. "Now it doesn't." He added that he believed that many of Russia's actions in Syria could "potentially be subject to an investigation by this court."

U.S. Forces May Have Committed War Crimes in Afghanistan, Prosecutor Says

The New York Times, By SOMINI SENGUPTA and MARLISE SIMONSONOV. 14, 2016

The prosecutor of the International Criminal Court said Monday that she had a "reasonable basis to believe" that American soldiers committed war crimes in Afghanistan, including torture.

The international prosecutor has been considering whether to begin a full-fledged investigation into potential war crimes in Afghanistan for years. In Monday's announcement, the prosecutor, Fatou Bensouda, signaled that a full investigation

was likely.

Still, the prosecutor did not announce a final decision on an investigation, which would have to be approved by judges, and it is unlikely that the United States will cooperate.

The United States is not a party to the court, which was established to prosecute war crimes, crimes against humanity and genocide. But Afghanistan is a member of the court, so allegations of crimes committed in its territory, no matter the nationality of the perpetrators, are widely considered to be fair game.

The international court is under great pressure to show that it is unbiased in its targets for investigation. Almost all of its full-fledged investigations have focused on Africa, and in recent weeks three African nations — South Africa, Gambia and Burundi — have announced their intention to withdraw from the court.

Ms. Bensouda, in an annual report published Monday, said there was a “reasonable basis” for her to open investigations into “war crimes of torture and related ill-treatment, by U.S. military forces deployed to Afghanistan and in secret detention facilities operated by the Central Intelligence Agency.” The focus, she said, would be mostly on any crimes that occurred in 2003 and 2004.

David Bosco, an Indiana University professor who follows the court, said the language of the report suggested that Ms. Bensouda was ready to seek its permission to proceed to an investigation in “a matter of days or weeks.”

Mr. Bosco said he was also struck by references in the report that signaled an interest to broaden her inquiry into prisoner abuse in secret detention facilities in other countries that belong to the court, including Poland and Romania.

The report also said she had found evidence of “torture and related ill treatment by Afghan government forces,” particularly by its intelligence agency and the police. War crimes and crimes against humanity committed by the Taliban and its affiliated networks would also be a target of investigation, the report said.

The investigation could also set up a potential showdown with President-elect Donald J. Trump, who has said he supports torture as a tool of counterterrorism.

The rules of the court set a very high bar for the prosecutor to begin a full investigation. That can often take years to meet, frustrating the court’s critics and champions alike. The prosecutor has to conclude, for instance, that the courts in individual nations are not taking adequate steps to hold perpetrators accountable.

The prosecutor’s report said that American soldiers and C.I.A. officials had, while interrogating detainees in American-run facilities in Afghanistan, “resorted to techniques amounting to the commission of the war crimes of torture, cruel treatment, outrages upon personal dignity, and rape.”

Soldiers subjected at least 61 detainees to these practices, and C.I.A. officers did so to at least 27 detainees, mostly between 2003 and 2004, the report found.

“These alleged crimes were not the abuses of a few isolated individuals,” the report said. “Rather, they appear to have been committed as part of approved interrogation techniques in an attempt to extract ‘actionable intelligence’ from detainees.”

The report went on to note that American officials ordered that the practices be discontinued.

The prosecutor has come under criticism for not acting faster on the Afghanistan cases; she has blamed a lack of resources and cooperation.

The United States has assiduously sought to avoid scrutiny by the international court, arguing that its national authorities have investigated allegations of abuse. The prosecutor pointed out that American soldiers had not been prosecuted through the court-martial process.

As for the C.I.A. officers, the Justice Department had carried out an inquiry into ill treatment of detainees. It decided not to prosecute anyone in connection to the death of a prisoner.

The report said it was still seeking clarity from the American authorities on the inquiries into the conduct of C.I.A. officials before making a final decision on whether to open a full investigation. That decision would be made “imminently,” the prosecutor said.

The prosecutor’s annual report comes at a delicate moment for the court. Of its 10 current investigations, nine involve African politicians or warlords; the one exception is in Georgia.

The prosecutor’s 10 preliminary examinations — the prosecutor’s first look at a case before diving into a full-fledged investigation — are geographically broader, including inquiries in Ukraine, Afghanistan, Iraq and the Palestinian territories.

Cracks in the International Criminal Court

The Wall Street Journal, By JOHN BOLTON, Oct. 31, 2016

Human-rights violators may not fear the ICC, but sovereign nations and their elected officials should.

The International Criminal Court—established by an international treaty and operating since 2002 in The Hague—is under assault from within. South Africa, Burundi and Gambia have announced their intent to withdraw from the ICC (the first members to do so), and other African states, such as Kenya, are also on the brink.

When “nonaligned” nations begin deserting any international organization, it surely is in real trouble. But for reasons that have been clear since the Statute of Rome creating the ICC was negotiated, it has never been in America’s interest to see the court succeed. We should hope the African exodus continues.

The ostensible trigger for the withdrawal is that many African nations are unwilling to arrest and remand to the ICC Sudan’s President Omar al-Bashir, accused of genocide and war crimes, when he enters their sovereign territory. There is hardly a less sympathetic figure on the planet, outside of Islamic State and al Qaeda. However, the issue is emphatically not whether one favors “justice” for international wrongdoers, but whether the ICC—with its inherent illegitimacy—could ever be the right vehicle for the job.

Within the African Union (open to all countries on the continent) the issue is also made more complex by a rising feeling that the ICC is the latest European neocolonial pretext to interfere in their internal affairs. Since the court’s founding, all 39 public ICC indictments have been of Africans.

Given the European Union’s deepening travails, Europe hardly has the time, will or resources to dabble much in neocolonialism. Yet it is also true that the ICC has been the Western human-rights community’s dearest project, pursued with near-religious devotion in much of Europe and the U.S., and much less enthusiastically elsewhere.

Europeans happily embraced this additional effort to reduce their own sovereignty by joining an institution that could severely compromise their own justice systems. Yet only 124 of 193 U.N. members have joined. The U.S. removed its signature from the Rome Statute in 2002, and even Barack Obama never re-signed, knowing that Senate ratification was impossible—Americans up to the president himself remain at risk of ICC prosecution if U.S. personnel are alleged to commit offenses on a member state’s territory.

Russia, China and India are the most prominent among nearly 70 other nations that have not become members, although something called “Palestine” has joined. This is hardly the trajectory of a viable international institution.

What Africa’s simmering discontent really exposes are the fundamental fallacies underlying the ICC project itself. The world is not one civil society, like a real country, within which disputes are resolved peacefully under the rule of law. Pretending that the globe is a nation under construction, and establishing institutions that pretend to perform like national legislatures, courts and executives, won’t make the world a country.

Even characterizing the ICC primarily as a court ignores the real problem. The Rome Statute’s actual danger is less the court than its prosecutor, which, as Americans understand the separation of powers, is not a judicial function but an executive one. Next to the power to wage war, prosecutorial authority is the most-potent, most-feared responsibility in any executive’s arsenal.

In the case of the ICC, its ability to prosecute democratically elected officials and their military commanders for allegations of war crimes or crimes against humanity could undercut the most fundamental responsibility of any government, the power of self-defense. This power, lodged in the ICC’s prosecutor, is what Africans are really protesting, and also why the U.S. will not join the ICC in the imaginable future.

The prosecutor is much like the “independent counsels” created in America by post-Watergate legislation. These prosecutors performed so irresponsibly and oppressively that a bipartisan congressional majority quietly allowed the statute to lapse. Americans now understand that political accountability—in the broad constitutional sense that federal prosecutorial legitimacy stems from the president’s election—is absolutely critical to responsible law-enforcement.

ICC advocates contend that the prosecutor is supervised by the court itself. Yet in the U.S., for instance, our separation of governmental powers specifically rejects judicial supervision of prosecutors—precisely because elected, and therefore politically accountable, officials must be vested with responsibility for prosecutorial decisions. ICC advocates also argue that the prosecutor is supervised by the Rome Statute’s 124 state parties.

This is purest fantasy. Anything supervised by 124 governments isn’t supervised by anyone, as the sprawling U.N. system demonstrates on virtually a daily basis. Particularly from an American perspective, the ICC’s lack of political accountability and dangerous potential to impede resolution of global conflicts proves it is not fit for purpose.

No wonder the ICC is well on the way to becoming yet another embarrassment like the International Court of Justice or the U.N. Human Rights Council.

Mr. Bolton is a senior fellow at the American Enterprise Institute and the author of “Surrender Is Not an Option: Defending America at the United Nations and Abroad” (Simon & Schuster, 2007).

The ICC, Out of Africa

The New York Times, By THIERRY CRUVELLIERNOV. 6, 2016, Op Ed

In just a few weeks, Burundi, South Africa and Gambia have announced that they would withdraw from the International Criminal Court, a permanent tribunal investigating war crimes, genocide and crimes against humanity. Since its creation in 1998, the I.C.C. has been hobbled by the refusal of major countries like the United States, China and Russia to subject themselves to its jurisdiction. But the recent defections by member states, on grounds that the court is biased and undermines peace, seem like an unprecedented blow to its legitimacy.

Yet even before the withdrawals were announced, the court itself was already trying to find a way out of African cases, and away from the types of wartime atrocities that have been its mainstay. It had begun to look into other forms of widespread violence, including in countries at peace, apparently in the hope that broadening its reach would quiet claims that it is prejudiced and widen its appeal.

The current crisis had been brewing for years. Of the I.C.C.'s 124 members, 34 are African states. The Office of the Prosecutor has sought to bring charges against 31 individuals since the I.C.C. began operating in 2002 — all of them African.

For their part, major powers like the United States, Russia and China are shielded from prosecution because they reject the court's jurisdiction over them and can veto any referral to the I.C.C. by the United Nations Security Council. (Consent and referral are the two main methods by which an I.C.C. case can be opened; the prosecutor's office may also initiate a case itself, but only in a member state.) Yet nonparties to the court have sometimes encouraged it to intervene in countries that also refuse to recognize its jurisdiction.

And the I.C.C., eager to gain recognition from powerful nations, has obliged with zeal. For example, it indicted President Omar Hassan al-Bashir of Sudan and Col. Muammar el-Qaddafi of Libya at the request of the U.N. Security Council. (Neither state is a party to the I.C.C.) The United States, China and Russia either voted for those referrals or abstained: Considering their own rejection of the I.C.C.'s authority over them, their decision not to veto the referrals can only be seen as a tacit — as well as opportunistic and hypocritical — endorsement of the cases.

This is one reason Mr. Bashir's indictment alienated many African leaders. During the campaign for Kenya's 2013 presidential election, Uhuru Kenyatta and William Ruto, two candidates who were charged by the I.C.C. for their alleged role in postelection violence in 2008, denounced the court as a tool of Western neocolonialism. Once elected, they refused to cooperate with the I.C.C.'s investigation and, the court claims, "interfered" with it. The case collapsed.

At the same time, major powers that instrumentalized the I.C.C. have then left it hanging out to dry. After the court opened the Sudan case, for example, governments that had long denounced Mr. Bashir's regime — including those of the United States and several European countries — did nothing to help enforce the court's arrest warrant against him and instead continued to engage his administration with soft diplomacy and conflict-management strategies.

Defenders of that approach argue that negotiations over humanitarian aid and peace talks took priority over seeking criminal accountability. But to others, the main and predictable effect was to defang the I.C.C. Nobody feared it any longer, and nobody respected it.

The court's predicament was compounded by the mediocrity of some of its investigations, inefficiency — only five individuals have been tried in 14 years — a cumbersome bureaucracy and the haughtiness of some of its representatives. I.C.C. prosecutors have claimed to also be considering alleged crimes in Georgia, Colombia, Afghanistan, Ukraine and Palestine, but no concrete action has come of those preliminary examinations. Meanwhile, by some estimates, the court's activities have cost at least \$1.5 billion.

Could this change? With the I.C.C. facing mounting criticism and inching toward an institutional crisis, Fatou Bensouda, a Gambian national and the court's chief prosecutor since 2012, recently announced a major policy shift.

On Sept. 15, Ms. Bensouda's office put out a policy paper describing a new outlook: The court would also consider crimes against humanity relating to "the illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing or the destruction of the environment."

One such case concerns Cambodia and a raft of alleged crimes — including murder, illegal imprisonment and forcible relocations — said to have been committed in the course of widespread and systematic land-grabbing by state officials, military officers and businesspeople. Other possible files concern extrajudicial killings in Mexico and the activities of members of the Islamic State. (No formal investigation has been opened yet for any of these instances.)

In late September, the I.C.C. sentenced a former Islamic extremist from Mali to nine years in prison on charges of destroying cultural heritage — specifically, Muslim shrines in Mali's ancient city of Timbuktu. With that case, Ms. Bensouda was further demonstrating her willingness to diversify the court's mandate and focus on crimes that usually garner little attention, giving them — and hopefully also the court — more visibility.

The shift is remarkable. Not only is the I.C.C. beginning to move away from cases involving African states; it is also partly moving away from atrocities committed during war. The repositioning is at once modest and ambitious: Conflicts related to land use and ownership, for example, are a major source of social and political violence in many parts of the world, and they usually affect the most vulnerable populations, like minority groups and the poor.

Will this be enough to burnish the court's reputation, and answer the charge that it has been biased?

Christine Schwobel-Patel, a senior lecturer at the University of Liverpool, thinks not. She has argued that the court's rebranding may "further stigmatize the global South while protecting the interests of the military and economic powers of the global North." As the I.C.C. tries to overcome one apparent bias, the argument goes, it may be falling prey to another, broader kind.

Perhaps, but in appearing to tackle abuses, like land grabs, that often are precursors for widespread violence, the I.C.C. might be able to buttress the fragile claim that its activities can help prevent conflict.

What's more, the request for the I.C.C. to look into land-grabbing in Cambodia was driven by victims' groups, whereas the court's investigations to date were the result of requests by states or the United Nations. Were the prosecutor's office to take on more files brought by victims or civil society, the I.C.C. would appear to act on behalf of victims' rights rather than as a compliant tool of opportunistic political interests.

The I.C.C.'s new direction may not make its life any easier; in fact, it may cause even more parties to withdraw from the court. But it would make the institution seem more independent — and then any defections by member states, rather than appearing to expose the I.C.C.'s flaws, would only underline its newfound relevance.

Thierry Cruvellier is the author of "Court of Remorse: Inside the International Criminal Tribunal for Rwanda" and "Master of Confessions: The Making of a Khmer Rouge Torturer."

South Africa to Withdraw From International Criminal Court

The Wall Street Journal, By GABRIELE STEINHAUSER, Oct. 21, 2016

South Africa's announcement has been condemned by human rights activists

JOHANNESBURG—South Africa said it has initiated its withdrawal from the International Criminal Court, dealing a painful blow to the embattled tribunal from Africa's most prominent democracy and one of its earliest supporters.

The decision, confirmed by Justice Minister Michael Masutha on Friday, tears into the fabric of the ICC, a beacon of post-Cold War enthusiasm for international law that was initially embraced by many African nations. Former South African President Nelson Mandela once said the court might have prevented many of the "horrors emanating from the inhumanity of human beings towards human beings" that had haunted the continent.

But several African leaders have turned against the Netherlands-based court in recent years, accusing it of a misplaced, neocolonialist focus on their countries.

Mr. Masutha said South Africa would extract itself from the ICC to focus on continental instruments and institutions, such as the African Court of Human and Peoples' Rights, which preserves diplomatic immunity for sitting heads of state and government.

The decision was spurred by domestic legal pressures following the government's failure last year to arrest the Sudanese President when he visited for an African Union summit, the minister said at a news conference. The government ferried Omar al-Bashir, who is wanted by the ICC for allegedly instigating genocide in the Darfur region of Sudan, out of the country despite a domestic court order to arrest and transfer him to The Hague-based court.

"South Africa has to [effect ICC warrants] even under circumstances where we are actively involved in promoting peace, stability and dialogue in those countries," Mr. Masutha said.

A spokesman for the ICC declined to comment on South Africa's move.

Legal experts said South Africa's decision could trigger a domino effect from other member states.

"This will have a ripple effect...not only within Africa, but elsewhere as well," said Mark Drumbl, director of the Transnational Law Institute at Washington and Lee University. He added that he wasn't sure whether the court would recover if many other countries followed in South Africa's tracks.

Earlier this week, Burundi's president Pierre Nkurunziza signed a bill to withdraw the country from the Rome Statute, the court's founding treaty. Burundi has been subject to a preliminary investigation by the ICC's prosecutor, Gambian jurist Fatou Bensouda, into deadly violence in the east African nation, since Mr. Nkurunziza's contentious decision last year to pursue a third term.

The ICC was established in 2002 to punish, in the words of the statute, "the most serious crimes of concern to the international community." But the U.S., China and Russia, along with more than 60 other countries, never signed up to

the court, seriously hampering its reach and preventing it from investigating bloody conflicts such as the war in Syria. Instead, the ICC has mostly focused on violence in African nations, which have so far furnished all of the court's defendants.

The African Union has in recent years tried to push through changes to the Rome Statute that would give immunity to leaders—an idea that clashes with one of the ICC's core principle of ending impunity even for the powerful. At its summit in July, the AU discussed a motion to withdraw from the court en masse, but the motion eventually failed amid opposition from Botswana, Nigeria and others.

South Africa's minister of international relations, Maite Nkoana-Mashabane had on Monday notified the United Nations' secretary-general of the country's intention to withdraw from the ICC, triggering a one-year extraction period. Mr. Masutha said the government would soon propose to Parliament a bill that would end the domestic application of the Rome Statute.

Opposition parties decried the notification as illegal, but it was welcomed by the chief whip of the ruling African National Congress, which commands a broad majority in the legislature.

The ICC can launch investigations in all of the 124 countries that have ratified the Rome Statute when domestic authorities have failed to do so. Governments can also request the ICC to intervene—as happened in Uganda and the Central African Republic. The court can also take up referrals from the U.N. Security Council, including the one against Mr. Bashir.

International Criminal Court

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The International Criminal Court (ICC or ICCt)[2] is an intergovernmental organization and international tribunal that sits in The Hague in the Netherlands. The ICC has the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, and war crimes. The ICC is intended to complement existing national judicial systems and it may therefore only exercise its jurisdiction when certain conditions are met, such as when national courts are unwilling or unable to prosecute criminals or when the United Nations Security Council or individual states refer investigations to the Court. The ICC began functioning on 1 July 2002, the date that the Rome Statute entered into force. The Rome Statute is a multilateral treaty which serves as the ICC's foundational and governing document. States which become party to the Rome Statute, for example by ratifying it, become member states of the ICC. Currently, there are 124 states which are party to the Rome Statute and therefore members of the ICC. However, Burundi, South Africa, and Gambia have given formal notice that they will withdraw from the Rome Statute.

The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge chosen by his or her peers in the Judicial Division, which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office.

The Office of the Prosecutor has opened ten official investigations and is also conducting an additional nine preliminary examinations. Thus far, 39 individuals (all Africans) have been indicted in the ICC, including Ugandan rebel leader Joseph Kony, Sudanese president Omar al-Bashir, Kenyan president Uhuru Kenyatta, Libyan leader Muammar Gaddafi, and Ivorian president Laurent Gbagbo.

History

The establishment of an international tribunal to judge political leaders accused of international crimes was first proposed during the Paris Peace Conference in 1919 following the First World War by the Commission of Responsibilities. The issue was addressed again at a conference held in Geneva under the auspices of the League of Nations in 1937, which resulted in the conclusion of the first convention stipulating the establishment of a permanent international court to try acts of international terrorism. The convention was signed by 13 states, but none ratified it and the convention never entered into force.

Following the Second World War, the allied powers established two ad hoc tribunals to prosecute axis power leaders accused of war crimes. The International Military Tribunal, which sat in Nuremberg, prosecuted German leaders while the International Military Tribunal for the Far East in Tokyo prosecuted Japanese leaders. In 1948 the United Nations General Assembly first recognised the need for a permanent international court to deal with atrocities of the kind prosecuted after the Second World War.[3] At the request of the General Assembly, the International Law Commission (ILC) drafted two statutes by the early 1950s but these were shelved during the Cold War, which made the establishment of an international criminal court politically unrealistic.[4]

Benjamin B. Ferencz, an investigator of Nazi war crimes after the Second World War, and the Chief Prosecutor for the United States Army at the Einsatzgruppen Trial, became a vocal advocate of the establishment of international rule of law and of an international criminal court. In his first book published in 1975, entitled *Defining International Aggression: The Search for World Peace*, he advocated for the establishment of such a court.[5]

In June 1989 Prime Minister of Trinidad and Tobago A. N. R. Robinson revived the idea of a permanent international criminal court by proposing the creation of such a court to deal with the illegal drug trade.[4][6] Following Trinidad and Tobago's proposal, the General Assembly tasked the ILC with once again drafting a statute for a permanent court.[7] While work began on the draft, the United Nations Security Council established two ad hoc tribunals in the early 1990s. The International Criminal Tribunal for the former Yugoslavia was created in 1993 in response to large-scale atrocities committed by armed forces during Yugoslav Wars and the International Criminal Tribunal for Rwanda was created in 1994 following the Rwandan Genocide. The creation of these tribunals further highlighted the need for a permanent international criminal court.[8]

In 1994, the ILC presented its final draft statute for the International Criminal Court to the General Assembly and recommended that a conference be convened to negotiate a treaty that would serve as the Court's statute.[9] To consider major substantive issues in the draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995. After considering the Committee's report, the General Assembly created the Preparatory Committee on the Establishment of the ICC to prepare a consolidated draft text. From 1996 to 1998, six sessions of the Preparatory Committee were held at the United Nations headquarters in New York City, during which NGOs provided input and attended meetings under the umbrella organisation of the Coalition for an ICC (CICC). In January 1998, the Bureau and coordinators of the Preparatory Committee convened for an Inter-Sessional meeting in Zutphen in the Netherlands to technically consolidate and restructure the draft articles into a draft.

Finally the General Assembly convened a conference in Rome in June 1998, with the aim of finalizing the treaty to serve as the Court's statute. On 17 July 1998, the Rome Statute of the International Criminal Court was adopted by a vote of 120 to 7, with 21 countries abstaining. The seven countries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, the United States, and Yemen.[10] Following 60 ratifications, the Rome Statute entered into force on 1 July 2002 and the International Criminal Court was formally established.[11][11] The first bench of 18 judges was elected by the Assembly of States Parties in February 2003. They were sworn in at the inaugural session of the Court on 11 March 2003.[12]

The Court issued its first arrest warrants on 8 July 2005,[13] and the first pre-trial hearings were held in 2006.[14] The Court issued its first judgment in 2012 when it found Congolese rebel leader Thomas Lubanga Dyilo guilty of war crimes related to using child soldiers.[15]

In 2010 the states parties of the Rome Statute held the first Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda. There they adopted two amendments to the Statute. The second amendment defined the crime of aggression and outlined the procedure by which the ICC could prosecute individuals. However, the conditions outlined in the amendment have not yet been met and the ICC can not yet exercise jurisdiction over crimes of aggression.

In October 2016, after repeated claims that the court was biased against African states, Burundi, South Africa and Gambia announced their withdrawals from the Rome Statute.[16] Experts believe that Kenya, Namibia and Uganda may soon follow in withdrawing from the court, leading to a mass African exodus.[16]