

BUSUN XXI

NOVEMBER 10-12, 2017 • PROVIDENCE, RI



Assembly of States Parties
to the Rome Statute

Contents

Introduction.....	3
Procedure	4
Position papers	4
Parliamentary procedure	4
General background.....	5
Development of the Rome Statute	5
Jurisdiction and structure	6
Funding	7
Topic 1: Protection of cultural heritage.....	8
Guiding questions	10
Topic 2: Equitable treatment of all countries.....	10
African Union withdrawals.....	11
Neocolonialism	11
Politics and justice	12
Other considerations	13
Guiding questions	14
List of positions.....	15
Resources	21
Works cited.....	21

Introduction

Dear delegates,

I am thrilled to welcome you to the BUSUN XXI simulation of the Assembly of States Parties to the Rome Statute (Hague 2017) – in other words, the committee on the International Criminal Court. I am Aliosha Bielenberg and I will be the chair of this committee. I was born in California but have lived most of my life in the United Arab Emirates and Cyprus. I am a sophomore concentrating in Archaeology and Religious Studies. Outside of my studies, I play clarinet in the Brown University Orchestra and engage in the community through outreach and tutoring programs. I have participated in MUN since long before coming to Brown and last year I was the director for a crisis committee at BUSUN. I am excited to make this year better than ever!

To create a productive, enjoyable, and constructive experience for everyone I would like to request that you follow certain guidelines. In this committee – as is the case throughout BUSUN – collaboration with your fellow delegates is of the utmost importance. I recognize that our issues are extremely contentious and that you must faithfully represent your country's position. Nevertheless, this duty should not be misconstrued as license for being inflexible, uncooperative, or unnecessarily critical. Throughout this session, I will look for delegates who use their country's position as a starting point to find lasting, viable solutions to the issues we will discuss. Most importantly, in this committee you are responsible for working together to effect changes that reflect a genuine desire to improve the International Criminal Court (ICC).

As we will see, the Rome Statute was created – at least partly – because of a common desire to achieve shared interests and goals and a recognition that these are best implemented through international cooperation. The Assembly of States Parties (ASP) is responsible for furthering this mission by fostering the ICC's growth, establishing a budget, and amending the Rome Statute as necessary. In recent years, the ICC has been criticized for its inefficacy, inequity, and narrowness, among other issues. You must not take this committee as a chance to simply replicate these debates. Instead, you should use our time together to collaborate to find good solutions to difficult issues – aiming always to exemplify the best spirit of international cooperation.

Yours sincerely,

Aliosha Bielenberg
Brown University '20
rome_statute@busun.org

Procedure

Position papers

Please submit a position paper at the latest two weeks before the first committee session – i.e. by 27 October 2017 – to rome_statute@busun.org. This position paper should describe your stance on both topics in the committee as well as a (brief) summary of your country’s general position. In your research, you will find this document to be a useful starting point. However, your position paper must include substantial original work. I therefore encourage you to thoroughly explore the [list of resources](#) and the [works cited](#). To help you think about our topics, I have provided guiding questions at the end of every section. Please make sure you address these in your position paper.

Some form of reference is necessary for every source you use, but no specific citation style is required. If you would like some guidance, though, I will look favorably upon correct use of Chicago notes (the style used in this background guide).¹ Thorough and honest citation is essential to any scholarly work and is a crucial part of avoiding plagiarism. If you have any difficulty whatsoever accessing resources for your research, please do not hesitate to email me. I will be more than happy to find and send documents to you – for example, journal articles behind a paywall and books you cannot access. In addition, I have a Zotero library that includes almost all sources in full, which I am happy to make available to you if you download Zotero and create an account.² If you would like guidance on this or any other matter pertaining to the position paper, please send me an email at rome_statute@busun.org.

Please try to keep your position paper to 750–1000 words in total. The position paper must be submitted as a .docx and/or .pdf file. No other formats are permitted. The file should be saved with the title of your position as the name of the document (for example, “Burundi.pdf”). You should include a heading with your name, school, and position in the committee at the beginning of your position paper. Please also include this information in your email to me. Position papers will be returned, with comments, at the latest three days before the start of BUSUN XXI. Don’t hesitate to contact me with any questions, comments, or concerns at rome_statute@busun.org. I look forward to reading your position papers!

Parliamentary procedure

In this committee, we will not adhere to the rules of parliamentary procedure as strictly as you may be used to. Because we are a small committee that is simulating a body outside the structure of the United Nations, our main goal is to foster orderly debate and constructive discussion – not, for

¹ For information, see <http://www.chicagomanualofstyle.org/> and

<https://owl.english.purdue.edu/owl/resource/717/01/>, under “Notes and bibliography (NB) in Chicago style.”

² Zotero is, in their words, “a free, easy-to-use tool to help you collect, organize, cite, and share your research sources.” Instructions and more information are available at https://www.zotero.org/support/quick_start_guide.

example, to test your knowledge of obscure procedure. Keep these points in mind when reading the following guidelines and aims of our committee’s procedure.

The Assembly of States Parties will follow the rules detailed in the Official Parliamentary Procedure and Other Official Policies booklet published by BUSUN.³ In particular, our committee will be in a perpetual moderated caucus. This means that throughout the session, delegates may propose short debates by setting a topic and a speaking time. Each of these debates will be moderated by the chair. You may also use other motions in the committee, with the important exception of the speakers’ list. In our debate, we will only discuss the topics described in this paper, guided primarily by the questions provided at the end of every topic. However, there will be some leeway to discuss related issues in the interest of good diplomacy.

The outcomes of our debates may take one of two forms. First, amendments may be proposed to the Rome Statute. These will take the form of a resolution, but the operative clauses must add, strike, or replace specific articles and clauses of the Rome Statute.⁴ The chair will smile upon solutions that use amendments to the Rome Statute to achieve significant, realistic, and practical results. In order to achieve this goal, make sure you are familiar with the Rome Statute. In particular, thoroughly read articles 5–19, with special attention paid to the crimes the ICC can prosecute as detailed in articles 6, 7, 8, and 8 *bis*. Second, you may also propose resolutions that do not amend the Rome Statute but rather issue recommendations, censures, and other official actions and statements on behalf of the ASP.⁵ The chair will look favorably upon the use of both types of resolutions to complement each other. For example, an amendment may be proposed to eliminate some function of the ICC in conjunction with a resolution that urges the UN General Assembly to assign that function to some agency of the UN.

General background

Development of the Rome Statute

The Rome Statute of the International Criminal Court (ICC) was adopted on 17 July 1998 by 160 countries, gathered together in the United Nations (UN) Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. By establishing the ICC, the gathered countries hoped to improve the chances of global peace and justice. In the words of Kofi Annan, then Secretary-General of the UN, the Rome Statute was written in “the fervent hope that human rights and fundamental freedoms may be extended to all the peoples of the United Nations.”⁶

³ Available at https://storage.googleapis.com/busun_assets/rules.pdf. For a quick overview, see <https://www.youtube.com/watch?v=otDuAX27uwQ>.

⁴ For an example of this type of resolution, see https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res7-ENG.pdf.

⁵ For examples of these types of resolutions, see https://asp.icc-cpi.int/en_menus/asp/resolutions/Pages/resolutions.aspx.

⁶ Annan, “Advocating for an International Criminal Court,” 363.

This motivation was complemented by an acknowledgement that existing legal instruments had significant deficiencies. For many years, war crimes had been dealt with through the establishment of ad hoc tribunals – that is, courts set up by the international community (mostly through UN Security Council resolutions) to deal with specific situations. Examples of these include the International Military Tribunal (which conducted the Nuremberg trials at the end of World War Two), the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda. But the establishment of ad hoc tribunals is haunted by the specter of “selective justice.” These tribunals are created when the international community judges there to be significant evidence of war crimes. Yet geopolitics hinders the establishment of ad hoc tribunals in many other situations with equally or more troubling evidence of war crimes. For example, Russia and China have vetoed UN Security Council resolutions to create mechanisms of international justice in Syria.⁷ Other bodies have severe constraints on their jurisdiction that allow for the impunity of criminals. For example, the rulings of the International Court of Justice are only binding on states, and then only if these states agree to submit to the ruling of the court. Similarly, many organs that are ordinarily responsible for prosecuting crimes – most prominently, domestic courts – are often rendered “unwilling or unable to act” by the very conflict that is being examined.⁸

The Rome Statute entered into force on 1 July 2002, after it had been ratified by 60 countries. As of 2016 (with the accession of El Salvador), there are 139 signatories and 124 parties to the Rome Statute.⁹ Four states – Israel, Russia, Sudan, and the United States – have declared that they no longer intend to ratify the treaty, thereby releasing them from their obligation under international law “to refrain from acts which would defeat the object and purpose of a treaty.”¹⁰

Under the provisions of the Rome Statute, States Parties gather at least once a year in the Assembly to establish a budget, provide funding, and elect the court’s judges and Prosecutor. In addition, there is time for general debate on amendments to the Rome Statute, resolutions, and other topics.¹¹ Because the ICC was established by a treaty and not as part of the United Nations, the Assembly of States Parties has full power over the Rome Statute and by extension the International Criminal Court itself.

Jurisdiction and structure

The Rome Statute outlines the ICC’s structure and areas of jurisdiction. The ICC can prosecute individuals (but not states or organizations) for four kinds of crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. These crimes are detailed in articles 6, 7, 8, and 8 *bis* of the Rome Statute, respectively.¹² They must have been committed after 1 July 2002,

⁷ Taub, “Does Anyone in Syria Fear International Law?”

⁸ United Nations Office of Legal Affairs, “Rome Statute of the International Criminal Court: Overview.”

⁹ United Nations Depository, “Status of Treaties: Rome Statute of the International Criminal Court.”

¹⁰ United Nations, “Vienna Convention on the Law of Treaties,” sec. 2 art. 18.

¹¹ See, for example, Assembly of States Parties, “Assembly of States Parties Concludes Its Fifteenth Session.”

¹² In this case, “*bis*” means that the Rome Statute was amended with an article inserted after the original article 8.

when the Rome Statute came into effect. The ICC has jurisdiction over these crimes in three cases: first, if they took place on the territory of a State Party; second, if they were committed by a national of a State Party; and third, if the crimes were referred to the Prosecutor by the UN Security Council. The ICC may begin an investigation before issuing a warrant if the crimes were referred to it by the UN Security Council or if a State Party requests an investigation. Otherwise, the Prosecutor must seek authorization from a Pre-Trial Chamber of three judges to begin an investigation *proprio motu* (on its own initiative). The only type of immunity the ICC recognizes is that it cannot prosecute those who were under 18 when the crime was committed. In particular, no officials – not even heads of state – are immune from prosecution.

The Rome Statute established three bodies: the ICC itself, the Assembly of States Parties (ASP), and the Trust Fund for Victims. The ASP has two subsidiary bodies. These are the Permanent Secretariat, established in 2003, and an elected Bureau which includes a president and vice-president.¹³ The ICC itself has four organs: the Presidency (with mostly administrative responsibilities); the Divisions (the Pre-Trial, Trial, and Appeals judges); the Office of the Prosecutor; and the Registry (whose role is to support the other three organs). The functions of these organs are detailed in Part 4 of the Rome Statute.

Funding

The Assembly of States Parties is responsible for establishing a budget every year, along with considering audit reports and the status of contributions. In its 2016 report, the ASP Committee on Budget and Finance discussed these issues with reference to the proposed 2017 budget.¹⁴ The total amount requested by the ICC was €47.25 million (around \$169 million), which represented an increase of 7.2 percent from the 2016 budget.¹⁵ Full details of the expense allocations are available in the budget. However, it is worth noting that more than 85 percent of the total (€25.88 million, to be precise) is allocated to the Registry and the Office of the Prosecutor. This includes around €79 million, or more than half of the total budget, for the Registry – despite a reduction of €3.8 million in staff costs. In total, staff salaries across the entire ICC (not including temporary positions) amounted to €86 million in the proposed budget.¹⁶ A number of initiatives have been attempted to increase efficiency, eliminate redundancy, and reduce overall costs, including the Registry's *ReVision* project¹⁷ and a “synergies exercise” following the One-Court principle.¹⁸

¹³ This committee simulates a session of the ASP.

¹⁴ Assembly of States Parties, “Report of the Committee on Budget and Finance on the Work of Its Twenty-Seventh Session.”

¹⁵ Assembly of States Parties, “Proposed Programme Budget,” 6.

¹⁶ *Ibid.*, 27.

¹⁷ See Easterday, “Major Changes at the ICC”; Registry of the International Criminal Court, “Report on the Reorganisation of the Registry.”

¹⁸ Assembly of States Parties, “Proposed Programme Budget,” 16. See also Assembly of States Parties, “Resolution on the Programme Budget for 2016,” 21–22.

Funding for the ICC (and the other bodies established by the Rome Statute) comes mostly from the States Parties. These contributions “are determined by the same method used by the UN, which roughly corresponds with a country’s income.”¹⁹ There have been tensions in the past over the ICC budget and some states have not paid their contributions as required. As of 15 April 2017, there were €14.56 million in outstanding contributions from 2016; 15 states were in arrears and therefore ineligible to vote in the Assembly of States Parties under article 112 paragraph 8 of the Rome Statute.²⁰ There has been significant discussion of the ICC’s budget in the media, often alongside other criticisms of the court.²¹ These critics point to the many expenses incurred by the court despite the small number of convictions. In short, they often perceive the court as using too much but accomplishing too little. Some critics have even pushed for the ICC’s funding and staff to be reallocated to national and regional judicial institutions. Short of this, though, most advocates and critics of the court agree that the ICC should adopt and implement more prudent financial practices.

Topic 1: Protection of cultural heritage

On 29 September 2016, Ahmad al-Faqi al-Mahdi was convicted of destroying cultural property in Timbuktu and sentenced to nine years’ imprisonment by the International Criminal Court. On 17 August 2017, the court further found al-Mahdi liable for €2.7 million (\$3.2 million) in reparations. After referral by the Government of Mali, the Office of the Prosecutor began an investigation into the situation in Mali in January 2013. It found that at least nine mausoleums and one mosque were destroyed in Timbuktu during the conflict in Mali. Article 8 clause (2)(e)(iv) of the Rome Statute states that “intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purpose, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives” is a war crime. Under this authority, the Prosecutor issued arrest warrants for members of Ansar Eddine – a Tuareg movement associated with al-Qaeda in the Islamic Maghreb – on 18 September 2015.²²

This case is significant for the International Criminal Court because it was “the first time that war crimes for the destruction of cultural heritage had been the principal charge in an international criminal case.”²³ The conviction was particularly notable because it occurred not long after the destruction of Palmyra in Syria by ISIS. This ancient city was cherished for its invaluable architecture and artifacts, many of which were irreparably damaged by ISIS. Khaled Asaad, the Director of Antiquities and Museum in Palmyra, was tortured and beheaded when he refused to

¹⁹ Calzonetti, “Frequently Asked Questions about the International Criminal Court.”

²⁰ Assembly of States Parties, “Report of the Committee on Budget and Finance on the Work of Its Twenty-Eighth Session,” 10–11. The status of contributions for each State Party may be found on page 23 of this report.

²¹ For a sample of the diverse opinions on this issue, see Hatcher-Moore, “Is the World’s Highest Court Fit for Purpose?”; Silverman, “Ten Years, \$900m, One Verdict”; Davenport, “International Criminal Court: 12 Years, \$1 Billion, 2 Convictions”; Cruvellier, “The ICC, Out of Africa.”

²² A current overview of this case may be found at <https://www.icc-cpi.int/mali/al-mahdi>.

²³ Casaly, “Al Mahdi before the ICC: Cultural Property and World Heritage in International Criminal Law,” 1200.

reveal information about the city and its treasures.²⁴ Similar crimes have been committed and decried on numerous occasions – including the infamous destruction of the Buddhas of Bamiyan in 2001. The gigantic statues were carved into a mountain in the sixth century and stood until they were blown up by the Taliban in March 2001. Hopes that the ICC might prosecute members of ISIS or the Taliban are unwarranted; neither Syria nor Iraq is a signatory to the Rome Statute and Security Council referrals face a likely veto by Russia or China.²⁵

Why is cultural heritage so important? There is a vast literature in both law and the humanities (especially archaeology) devoted to this question. The consensus was encapsulated by Fatou Bensouda, the ICC Prosecutor, at the opening of the al-Mahdi trial: “what makes this crime so serious is the fact that it is a profound attack on the identity, the memory and, therefore, the future of entire populations.” Furthermore, “deliberate attacks on cultural property are often the precursor to the worst outrages against a population.”²⁶ In these statements, Bensouda outlines why the international community must care about the destruction of cultural heritage. The UN Security Council reaffirmed many of these rationales in Resolution 2347, issued in March 2017. In this document, the Security Council reiterated its condemnation of “unlawful destruction of cultural heritage, religious sites and artefacts, and the smuggling of cultural property by terrorist groups during armed conflict, affirming that such attacks might constitute a war crime and must be brought to justice.”²⁷ The Security Council further appealed for cooperation among the relevant actors, including UNESCO, INTERPOL, national governments, and the private sector. Many heritage professionals – archaeologists, historians, museum curators, and others – particularly emphasize the importance of the private sector, since terrorist groups sell looted artifacts to dealers and collectors in order to finance their illicit activities.²⁸

Almost everybody believes that cultural heritage should be protected to some extent and that its destruction should be prosecuted at some point. However, significant questions have been raised about the severity of this crime and *how* and *when* it should be prosecuted. In our case, the relevant question is whether the ICC is the right forum for these discussions and the right place for this crime’s prosecution. The ICC primarily prosecutes those responsible for the death and suffering of humans, including war crimes like genocide, massacre, and rape. Some worry that if the

²⁴ Shaheen and Black, “Beheaded Syrian Scholar Refused to Lead Isis to Hidden Palmyra Antiquities.”

²⁵ Another reason the ICC cannot prosecute members of the Taliban is because the Buddhas of Bamiyan were destroyed before the Rome Statute came into effect.

²⁶ Bensouda, “Statement of the Prosecutor.”

²⁷ United Nations Security Council, “Security Council Condemns Destruction, Smuggling of Cultural Heritage by Terrorist Groups, Unanimously Adopting Resolution 2347 (2017).”

²⁸ For a concise overview, see Howard, Elliott, and Prohov, “Opinion: How ISIS Funds Terror Through Black Market Antiquities Trade.” To begin exploring the research on this topic, consult the guide at <http://guides.lib.jjay.cuny.edu/AntiquitiesTrafficking>. A few of the most pertinent works are Tribble, “Antiquities Trafficking and Terrorism”; Howard, Elliott, and Prohov, *IS and Cultural Genocide*; Bowman, “Transnational Crimes Against Culture.”

destruction of cultural heritage and genocide are both prosecuted by the ICC, the crimes will be seen as equal in some ways. For example, Amnesty International and the International Federation for Human Rights expressed concern that “other crimes, such as the murder, rape, and torture of civilians, had not received the same degree of attention” as the destruction of cultural heritage.²⁹ In their words, prosecuting the destruction of cultural heritage “must be the first step towards broader accountability for all crimes committed” – not an end in its own right, but subsidiary to the pursuit of justice.³⁰ Similar arguments had been made in previous situations – such as Bosnia in 1992–95 – in which cultural heritage was being destroyed alongside campaigns of ethnic cleansing. In the case of Bosnia, the International Criminal Tribunal for the Former Yugoslavia (ICTY) recognized the significance of the destruction of cultural heritage not only as yet another war crime but also as a critical step on the path towards ethnic cleansing. The reemergence of the crime of cultural heritage requires careful consideration of the ICC’s relationship to it.

Guiding questions

- To what degree should the destruction of cultural heritage be prosecuted by the ICC? Should it enjoy the same emphasis and treatment as genocide and war crimes?
- How should the ICC work with members of the international community on this issue?
- Should a more explicit definition of the crime of destroying cultural heritage be included in the Rome Statute?
- To what extent should the Assembly of States Parties advise the Office of the Prosecutor on how and when to prosecute this crime?

Topic 2: Equitable treatment of all countries

This topic is complex and quite broad. Below, I focus on the recent African withdrawals; the critique of neocolonialism that largely motivated these actions; and the fundamental tension between politics and justice that underlies the ICC and its relationship with African countries. I conclude by briefly surveying other criticisms of the ICC and the kinds of responses advocates of the court have made. The structure of this overview is indebted to the work of Clarke, Knottnerus, and de Volder. In particular, I follow their distinction between pragmatic and normative assessments of the International Criminal Court, coupled with a strong emphasis on deconstructing the discourse of global justice.³¹

²⁹ Daniels and Walasek, “Is the Destruction of Cultural Property a War Crime?”

³⁰ Amnesty International, “Landmark ICC Verdict against Al-Mahdi Must Be First Step to Broader Justice in Mali Conflict.”

³¹ See the invaluable volume by Clarke, Knottnerus, and Volder, *Africa and the ICC*. For a thorough and rigorous overview of this topic, see especially the introduction, 1–35.

African Union withdrawals

On 31 January 2017, the African Union adopted a strategy for “‘collective withdrawal’ by a large group of African nations.”³² This followed South Africa’s withdrawal from the ICC in October 2016 and plans to leave by Burundi and Gambia. However, support for the withdrawals is by no means universal among African states. Nigeria, Senegal, and Cape Verde “entered formal reservations to the decision” of the African Union, while Malawi, Tanzania, Tunisia, and Zambia “requested more time to study” the withdrawal strategy.³³ In February 2017, South Africa’s High Court ruled that the country’s withdrawal in October 2016 was “unconstitutional and invalid.”³⁴ Gambia rescinded its decision to withdraw from the Rome Statute in February 2017 after a change in administration. As a result, only Burundi is still set to withdraw from the Rome Statute – going into effect on 27 October 2017.

Nevertheless, there is a great deal of resentment towards the ICC among African nations. The most commonly cited complaint they make is of anti-African bias among the prosecutions and convictions of the court. In a characteristic example, the Information Minister of Gambia said that the ICC “is in fact an International Caucasian Court for the persecution and humiliation of people of colour, especially Africans.”³⁵ The ICC has convicted only Africans – three from Congo and one from Mali – and nine out of its ten current investigations are in Africa. There at least two caveats to this, as pointed out by Fatou Bensouda, the ICC Prosecutor. First, six of the cases under investigation were referred to the ICC by the African countries themselves. Second, the “nine out of ten” statistic refers only to “situations under investigation”; in contrast, six out of ten “preliminary examinations” are outside Africa.³⁶ These caveats should be kept in mind when evaluating the African Union’s assertion of the ICC’s “selectivity and inequality.”

Neocolonialism

A deeper worry, which the African Union also expressed, is that the ICC is an instrument of “neocolonialism.” A prominent instance of this accusation can be traced to Sudan and specifically to the conflict in Darfur that began in 2003. This violence started as an insurrection of non-Arab Sudanese against the government, followed by a campaign of ethnic cleansing by the mostly Arab Sudanese government. In 2005, the ICC initiated an investigation that resulted in an arrest warrant for Omar al-Bashir, the president of Sudan since 1989. The justification for claims of neocolonialism lies in the perception that indictments of government officials – especially heads of state like al-Bashir – are attempts at regime change. Similar language was used when the situation in Libya was referred to the ICC and when the president of Côte d’Ivoire, Laurent Gbagbo, was arrested and transferred to the court. In both cases, the heads of state were indicted

³² York, “African Union’s Mass Withdrawal Strategy Mounts Pressure on ICC.”

³³ Keppler, “AU’s ‘ICC Withdrawal Strategy’ Less than Meets the Eye.”

³⁴ Gramer, “South African Court Tells Government It Can’t Withdraw From the ICC.”

³⁵ Hutchins, “African Nations Walk out of the ‘International Caucasian Court.’”

³⁶ See <https://www.icc-cpi.int/pages/situations.aspx> and <https://www.icc-cpi.int/Pages/Preliminary-Examinations.aspx>.

by the ICC partly at the urging of other countries, including some – like the United States – which are not States Parties to the Rome Statute. Just like these countries once controlled the administration of colonial regions, the argument goes, so do they now use international institutions like the ICC to get their way.

The negative perception of the ICC in Africa was further aggravated by the investigation of Kenyan election violence in 2007–8. The ICC attempted to try President Uhuru Kenyatta and five other suspects, but the Prosecutor was stymied by the Kenyan government and National Assembly. Kenya wrote to the UN Security Council asking for the trials to be deferred and later appealed directly to the judges of the ICC.³⁷ As a result of Kenya's efforts, the Prosecutor dropped charges against Uhuru Kenyatta in late 2014.³⁸ Other countries, including most prominently Burundi, supported Kenya by asserting that prosecuting heads of state while they are in office amounts to “regime change” that is contrary to “customary international law.”³⁹ However, many of these assertions came from the very officials who are threatened by the ICC's attempts at “regime change.” For example, Burundi's decision to leave the ICC came a few weeks after the UN Human Rights Council created a Commission of Inquiry for Burundi over allegations of serious human rights abuses.⁴⁰ Cases like these have led one commentator to observe that “the exodus from the court ... is not for the benefit of African people, but for the benefit of leaders who want to keep ruling their countries with an iron fist.”⁴¹

Politics and justice

Sarah Nouwen and Wouter Werner argue that these accusations of neocolonialism fundamentally stem from the fact “that the ICC, presented by its advocates as a legal bastion immune from politics, is inherently political by making a distinction between the friends and enemies of the international community which it purports to represent.”⁴² The ICC is widely portrayed as a triumph of the rule of law and an opportunity to subordinate politics to law.⁴³ Being able to avoid politics plays a significant part in making the ICC an attractive forum for resolving disputes. But invoking the “impartiality” of the ICC is itself a political act: in the words of Nouwen and Werner, “the ICC provides a vocabulary with which opponents can label the enemy as a violator of universal norms, and thereby as the enemy of humanity itself.”⁴⁴ In the case of Sudan, the rebels consciously presented themselves as friends of the ICC, in opposition to the “outlaw” government led by Omar al-Bashir. By indicting the president of Sudan, the ICC entrenched this distinction between “friends” and “enemies” of the international community. The universalizing rhetoric of

³⁷ Nichols, “Africa Fails to Get Kenya ICC Trials Deferred at United Nations.”

³⁸ Bowcott, “ICC Drops Murder and Rape Charges against Kenyan President.”

³⁹ For details on the evolution of the African Union's animosity towards the ICC, see Vilmer, “The African Union and the International Criminal Court,” 1321–28.

⁴⁰ See <http://www.ohchr.org/EN/HRBodies/HRC/CoIBurundi/Pages/CoIBurundi.aspx>.

⁴¹ Simwaka, “Africa's Retreat from International Criminal Court Is about Impunity, Not Dignity.”

⁴² Nouwen and Werner, “Doing Justice to the Political,” 941.

⁴³ See the characteristic example of Annan, “Advocating for an International Criminal Court,” and especially 364–6.

⁴⁴ Nouwen and Werner, “Doing Justice to the Political,” 962.

the ICC was invoked in Sudan for national political ends and the ICC itself became a political instrument. But the ICC's role in politics does not mean that it has betrayed justice or the rule of law. Nor does it mean that the ICC is doomed to be helpless and hypocritical. In the eyes of Nouwen and Warner, what it *does* mean is that we must acknowledge and understand the ICC's political dimensions, especially when undertaking a normative project like amending the Rome Statute. Following this analysis, the African Union correctly recognized the political nature of the ICC but then abandoned it rather than acknowledging its shortcomings and attempting to work through them.

An analysis of the ICC along similar lines – but broader and more critical – may be found in Kamari Maxine Clarke's *Fictions of Justice*. In this book, Clarke also recognizes that the universalist, apolitical rhetoric of the ICC is fundamentally a fiction. But Clarke goes further than Nouwen and Werner: she argues for legal pluralism. In other words, Clarke advocates abandoning the universalism of the ICC and its “disregard” for the “many pluralities of justice-making domains.”⁴⁵ Clarke criticizes the ICC for its marginalization and devaluation of alternative legal systems, such as “Islamic Shari’a revivalism, Ugandan *Acholi* and Rwanda [*sic*] *Gachacha* reconciliation mechanisms.”⁴⁶ Furthermore, Clarke agrees with the neocolonial critique, arguing that the assumptions that underlie the ICC “privilege Western ideas of justice over African ones and obscure the post-colonial economic forces behind Africa’s turmoil.”⁴⁷ In Clarke’s analysis, the Rome Statute fails to address the root causes of violence because it is complicit in creating “universal,” transnational fictions of justice. These conclusions are reflected in the report written for the African Union by Clarke and Kassaye, in which the authors propose concrete recommendations for reform of the ICC.⁴⁸

Other considerations

Other criticisms of the ICC also contribute to African animosity. One of the most prominent is the fact that the most powerful countries – namely Russia, China, and the United States, along with Israel, India, and other smaller states – are not party to the Rome Statute. As such, actions on the territory of these states is not subject to the ICC’s jurisdiction. Other countries have alleged that this allows for serious war crimes to go unpunished, simply because their perpetrators are nationals of powerful countries. At the same time, the three permanent members of the Security Council who are not States Parties – Russia, China, and the US – nonetheless have the power to refer any state to the Prosecutor of the ICC. Furthermore, by virtue of their permanent seats on the Security Council these countries may veto any such referral brought by another state. For instance, in 2014

⁴⁵ Clarke, *Fictions of Justice*, xii.

⁴⁶ Rothchild, “Review of *Fictions of Justice*,” 213.

⁴⁷ Geoghegan, “Book Review: Clarke’s *Fictions of Justice*.”

⁴⁸ Clarke and Kassaye, “African State Withdrawals from the Rome Statute for the International Criminal Court: Legal-Political Considerations.” According to Clarke, this report “shaped the development” of the African Union’s withdrawal strategy, “which really was not just about a strategy for mass withdrawal but a strategy for reform and if that fails then to pursue particular unilateral state withdrawals” (personal communication, August 20, 2017).

Russia and China blocked a Security Council resolution to refer the situation in Syria to the International Criminal Court. In sum, the most powerful countries avoid the ICC's jurisdiction while retaining the power to initiate – or block – ICC investigations in other states. These issues feed into concerns about the selectivity, impunity, and politicization of the ICC.

Along with these many criticisms of the ICC, there have been significant movements to defend it. For example, Jean-Baptiste Jeangène Vilmer has responded in detail to the African Union allegations and has proposed concrete steps to improve relations. These include structural changes – among them some that the African Union also supports in its withdrawal strategy – as well as a call for “African voices ... to defend the ICC in public debate.”⁴⁹ Prominent figures have already heeded the latter appeal. For example, in a *New York Times* editorial Desmond Tutu (a prominent South African cleric) argued that “leaving the ICC would be a tragedy for Africa.”⁵⁰ Similarly, Kofi Annan (the former UN Secretary-General) defended the ICC in an interview with the *Financial Times*. In response to claims about anti-African bias, Annan pointed out that “Slobodan Milošević and others convicted of war crimes in the former Yugoslavia had been tried in The Hague before the ICC was established.” Annan recognized the immense obstacles facing the ICC, but maintained that the Rome Statute was a crucial step in the fight to protect the “little guy.”⁵¹ Apart from these high-profile advocates of the court, a number of non-governmental organizations and other actors in civil society have promoted the work of the ICC. For example, the Coalition for the International Criminal Court supports a number of campaigns to promote the ICC, including collaborating with Parliamentarians for Global Action on “Promoting Universality of the Rome Statute.”⁵² Furthermore, a number of African NGOs joined Human Rights Watch in denouncing the withdrawal of South Africa as “a slap in the face for victims of the most serious crimes.”⁵³

In the end, both critics and defenders of the International Criminal Court acknowledge that it has significant positive and negative effects. As the International Criminal Court has matured, several scholars have attempted to draw up a balance sheet and argue for their assessment of the ICC. Kirsten Ainley might put it best when she concludes that the Rome Statute may not have established “justice for *all*,” but it has achieved better “justice for *more*.”⁵⁴

Guiding questions

- How significant and how reasonable is the accusation that the ICC is an instrument of neocolonialism?
- To what extent is the ICC an instrument of politics and of justice? How should the ICC negotiate its role in the political and legal realms?

⁴⁹ Vilmer, “The African Union and the International Criminal Court,” 1341.

⁵⁰ Tutu, “In Africa, Seeking a License to Kill.”

⁵¹ Pilling, “Kofi Annan Defends International Criminal Court despite Africa Row.”

⁵² See <http://www.pgaction.org/campaigns/icc/universality.html> and <http://www.coalitionfortheicc.org/about/what-we-do>.

⁵³ Human Rights Watch, “South Africa: Continent Wide Outcry at ICC Withdrawal.”

⁵⁴ Ainley, “The International Criminal Court on Trial,” 330.

- How should the ASP respond to critiques and threats to withdraw from African countries?
- How should the ASP work with other members of the international community, including non-States Parties and members of the UN Security Council?
- In what ways can the Rome Statute be amended to address the specific criticisms expressed about the ICC?

List of positions

When reading the following descriptions of each country’s position on our topics, please keep in mind the guidelines laid out in the [introduction](#). In short, remember that you must faithfully represent your country in the committee, but without becoming inflexible and uncooperative. The most important value of our committee is international collaboration in pursuit of a common goal: ending impunity and advancing global justice.

1. South Africa

In October 2016, the government of South Africa declared its intention to withdraw from the ICC. This decision was partly motivated by the common critique of the ICC as an instrument of neocolonialism; in 2015, the government “signaled its discontent” with the court by refusing to arrest Omar al-Bashir.⁵⁵ However, in February the High Court found the government’s withdrawal to be unconstitutional. On 8 March 2017, the government submitted a letter to António Guterres, the UN Secretary-General, informing him that it no longer intends to withdraw from the ICC.

2. Burundi⁵⁶

In October 2016, Burundi said that it would leave the ICC. After Gambia and South Africa revoked their withdrawals, Burundi is set to become the only country to leave the ICC in October 2017.⁵⁷ Burundi’s attitude to the ICC has generally been hostile, especially since the Prosecutor began investigating violence in the country that started in April 2015. Although Burundi has not clearly outlined its reasons for withdrawal, commentators have noted that the ICC’s preliminary examination may lead to the indictment of top government officials, including President Pierre Nkurunziza.⁵⁸

3. Kenya

Kenya has generally indicated discontent with the ICC, dating back at least to the investigation begun by the Prosecutor in the wake of violence after the 2007 presidential

⁵⁵ Chan and Simons, “South Africa to Withdraw From International Criminal Court.”

⁵⁶ As noted below, Burundi may withdraw in October 2017. For the purposes of this committee, however, Burundi will keep its current status as a full member of the Assembly of States Parties.

⁵⁷ Blair, “Burundi Notifies U.N. of International Criminal Court Withdrawal.”

⁵⁸ Kersten, “Burundi’s Awkward – and Mostly Pointless – Farewell to the ICC.”

election. In response, the National Assembly voted in December 2010 to withdraw from the ICC, with the Energy Minister calling it “a colonial imperialist court.”⁵⁹ Nevertheless, Kenya is still a State Party and a 2011 poll indicated that “a vast majority of Kenyans support” the ICC.⁶⁰ More recently, Kenyan president Uhuru Kenyatta – who had previously been indicted by the ICC – proposed the withdrawal strategy that the African Union later adopted.⁶¹

4. Tunisia

In 2011 – in the wake of the Arab Spring – Tunisia became the first country in North Africa and the fourth member of the Arab League to join the ICC.⁶² In a speech in 2013, President Moncef Marzouki defended the ICC against African criticisms, stating: “We need this court. We need it for the sake of Africa, and we have to stick with it.”⁶³ Tunisia also opposed the withdrawal strategy in the 2016 African Union summit, saying that it needed “more time to study” the Kenyan proposal.⁶⁴

5. Nigeria⁶⁵

During discussions of the African Union’s withdrawal strategy, Foreign Minister Geoffrey Onyeama said that Nigeria and a few other countries “made clear that they were not going to subscribe to that decision.”⁶⁶ In reaction to the withdrawals of Gambia, Burundi, and South Africa, a representative at the United Nations reaffirmed “Nigeria’s continuous commitment to support and cooperate with the court.”⁶⁷ The ICC is currently investigating alleged crimes that occurred in violence between Boko Haram and Nigerian government forces.⁶⁸ Because Nigeria has not made its required contributions to the ICC, it is ineligible to vote in the Assembly of States Parties.

6. Mali

In July 2012, the government of Mali referred to the ICC the situation associated with an Islamist insurgency in the north of Mali. The alleged crimes include serious violence as well as the destruction of cultural heritage, which Ahmad al-Faqi al-Mahdi was convicted of in 2016.⁶⁹ As its action in this case indicates, Mali is generally supportive of the ICC.

⁵⁹ Rugene, “Parliament Pulls Kenya from ICC Treaty.”

⁶⁰ Baldauf and Kioi, “ICC Case Highlights Divide between Political Elite and Kenyans Hungry for Change.”

⁶¹ Oneko, “Will AU Members Really Withdraw from the ICC?”

⁶² Charbonneau, “Tunisia Joins International War Crimes Court.”

⁶³ International Peace Institute, “President of Tunisia: Africa Should Not Desert the ICC.”

⁶⁴ Lamony, “New African Union Strategy on ICC Plays Politics with Justice.”

⁶⁵ For the purposes of this committee, Nigeria will have full voting rights.

⁶⁶ Momoh, “Africa: Nigeria Opposes Mass ICC Withdrawal.”

⁶⁷ Lansky, “Africans Speak Out Against ICC Withdrawal,” citing <https://papersmart.unmeetings.org/media2/7663460/nigeria.pdf>.

⁶⁸ Eyre, “Nigeria: The International Criminal Court’s Next Challenge in Africa?”

⁶⁹ See <https://www.icc-cpi.int/mali> and <http://www.coalitionfortheicc.org/country/mali>.

On 13 February 2013, the government and the ICC signed an agreement to strengthen their cooperation.⁷⁰

7. Jordan

Jordan is one of only four members of the Arab League that are also States Parties to the Rome Statute. In 2014, the Jordanian ambassador to the UN, Dina Kawar, reaffirmed Jordan's belief that the ICC is "a cornerstone in promoting criminal justice, ending impunity on behalf of the perpetrators of the most egregious crimes and in the maintenance of international peace and security and upholding the rule of law."⁷¹ In March 2017, Omar al-Bashir attended the Arab League summit in Amman, even though he is subject to an outstanding arrest warrant by the ICC.⁷² Jordan has significant concerns about the protection of cultural heritage, especially preventing looting of ancient sites.

8. Georgia

In January 2016, the ICC Prosecutor began an investigation *proprio motu* (on its own initiative) into the 2008 Russo-Georgian War.⁷³ One commentator observed that this is "a big step for the court" since it is the first full-fledged investigation the ICC is conducting outside of Africa.⁷⁴ The investigation is complicated by Russia's refusal to cooperate with the ICC. Although Georgia is at least a State Party to the Rome Statute, it has been criticized for its "failure ... to fully investigate" alleged crimes committed during the 2008 war.⁷⁵

9. Afghanistan

The conflict in Afghanistan is subject to an ongoing preliminary examination by the ICC Prosecutor. In November 2016, the Prosecutor said a full-fledged investigation was "imminent," but reports in July 2017 indicated that it "was pushed back after Prosecutors received 'substantial' new information from Kabul."⁷⁶ This may indicate that the Afghan government is committed to cooperation with the ICC, though "an Afghan civil society delegation that visited the court in April ... saw little progress on accountability."⁷⁷ Afghanistan was the location of the Bamiyan Buddhas, which were destroyed by the Taliban in 2001.

⁷⁰ Worldwide Movement for Human Rights, "Mali: The Hearing of Al Mahdi before the ICC Is a Victory, but Charges Must Be Expanded."

⁷¹ United Nations Security Council, "Records of the 7306th Meeting of the UNSC," 12.

⁷² Human Rights Watch, "Jordan."

⁷³ See <https://www.icc-cpi.int/georgia>.

⁷⁴ Jeiranashvili, "Georgia – A Unique Case For The ICC."

⁷⁵ Gogolashvili and Tsagareishvili, "Getting Full Cooperation from the Georgian Side Will Be One of the Challenges for ICC."

⁷⁶ van den Berg, "ICC: New Information Delays Decision on Afghan War Crimes Investigation."

⁷⁷ Bosco, "Will the ICC Launch a Full Investigation in Afghanistan?"

10. Bosnia and Herzegovina

Bosnia and Herzegovina was the location of much violence after the breakup of Yugoslavia. The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by the UN Security Council to prosecute serious crimes committed in this period. A total of 161 individuals have been indicted, of whom 83 have been convicted. These trials included a number of prosecutions of the crime of destruction of cultural heritage.⁷⁸ The perception of the ICTY has played a significant role in Bosnia's attitude to the ICC, which is mostly supportive.

11. Portugal

Portugal has had an uneventful relationship with the ICC; all evidence indicates that it supports the ICC. In a July 2017 donation of artwork to the court, the Portuguese ambassador to the Netherlands stated that “the International Criminal Court has done an extraordinary job in its 15 years of existence.”⁷⁹

12. Malta

Malta generally supports the ICC. In January 2015, it ratified the Kampala amendments which allow the ICC to prosecute crimes of aggression and the use of chemical weapons in internal conflicts.⁸⁰

13. Austria

Austria strongly supports the ICC. In 2014, Austria ratified the Kampala amendments and affirmed that “the fight against impunity for grave violations of human rights and the strengthening of the International Criminal Court is a top priority of Austrian foreign policy.”⁸¹

14. New Zealand

New Zealand staunchly supports the ICC. In 2016, the Permanent Representative to the UN emphasized that “New Zealand is and remains a strong supporter of the Court and the universality of the Rome Statute.” Furthermore, he affirmed that New Zealand is committed to “dialogue that is open, honest, respectful, and focused on our common goal of ending

⁷⁸ See <http://www.icty.org/en/in-focus/documentaries/dubrovnik-and-crimes-against-cultural-heritage>.

⁷⁹ International Criminal Court, “Portuguese Ambassador and ICC President Unveil Artwork Donation.”

⁸⁰ Ministry of Foreign Affairs, “Malta Ratifies Amendments of the Rome Statute of the International Criminal Court.”

⁸¹ Assembly of States Parties, “Austria Ratifies the Amendments to the Rome Statute on the Crime of Aggression and on Article 8 Related to War Crimes.”

impunity.”⁸² This is despite reports that some members of the military might be investigated by the ICC.⁸³

15. Canada

Canada strongly supports the ICC. It prides itself on “the central role Canada played in establishing the International Criminal Court,” including through the important efforts of Philippe Kirsch, a Canadian diplomat and later judge at the ICC.⁸⁴ In November 2016, Foreign Minister Stéphane Dion said he was “deeply saddened” by the African Union withdrawals.⁸⁵ In 2017, Canada began “a quiet backroom effort” to find a compromise with South Africa over the African criticisms.⁸⁶

16. Philippines

There have been rumors that the ICC will investigate President Rodrigo Duterte and his associates for human rights abuses, although the Prosecutor has yet to initiate a preliminary examination.⁸⁷ The Philippines ratified the Rome Statute in 2011, but in November 2016 President Duterte threatened to withdraw from the Rome Statute.⁸⁸

17. Japan

Japan acceded to the Rome Statute in July 2007. The delay has been attributed partly to legal issues, partly to avoid antagonizing the US, and partly because Japan’s advanced economy means that its contributions to the ICC’s budget would be significant.⁸⁹ At an artwork donation in January 2017, the Japanese Ambassador emphasized Japan’s “dedication to upholding the Court’s resolution to guarantee lasting respect for and the enforcement of international justice.”⁹⁰

18. Mongolia

Mongolia supports the ICC. In 2002, the Mongolian ambassador to the UN expressed his wish that the Rome Statute also include the crime of aggression. He also emphasized that “Mongolia believed the Court could be instrumental in ending impunity and upholding justice, deterring future crimes and further strengthening international criminal law.”⁹¹

⁸² New Zealand Ministry of Foreign Affairs and Trade, “Statement as Delivered by Gerard van Bohemen, Permanent Representative of New Zealand to the United Nations.”

⁸³ Cole, “Could New Zealand Face the International Criminal Court for War Crimes in Afghanistan?”

⁸⁴ Foreign Affairs Trade and Development Canada, “Canada and the International Criminal Court.”

⁸⁵ Blanchfield, “Canada Bothered by African ICC Pullouts.”

⁸⁶ York, “Canada in Talks with South Africa over International Criminal Court Dispute.”

⁸⁷ Rauhala, “Duterte Says the International Criminal Court Doesn’t Worry Him.”

⁸⁸ Forster, “Philippines ‘May Withdraw from International Criminal Court’ after Russia.”

⁸⁹ Garský, “Japan’s Ratification of the Rome Statute of the International Criminal Court.”

⁹⁰ International Criminal Court, “Japanese Delegation Unveils Artwork Donation to International Criminal Court.”

⁹¹ Enkhsaikhan, “Promises and Challenges of the International Criminal Court,” 25.

19. Brazil

Brazil supports the ICC and participated in its creation and evolution. In cables released by Wikileaks, the Brazilian government indicated that the ICC “enjoys considerable public support in Brazil.”⁹² Unlike many other states, Brazil refused to sign an article 98 agreement with the United States to give US citizens blanket immunity from ICC prosecution.

20. Colombia

Colombia is subject to an ongoing preliminary examination, initiated by the ICC Prosecutor in 2004. The ICC’s role as an instrument of justice has had an interesting interplay with Colombian desires for peace. An ICC investigation has long been stalled to avoid “derailing a fragile peace process.”⁹³ That being said, the Colombian government has long prided itself on compliance with international norms and institutions, including “conforming with rulings against it at the Inter-American Court of Human Rights.”⁹⁴ It therefore generally supports the ICC.

21. El Salvador

El Salvador ratified the Rome Statute in March 2016, the latest country to do so. In the ceremony that followed, the Minister of Foreign Affairs said that El Salvador “extend[s] the call for more states to join the International Criminal Court. Together ... we will contribute towards a world where no one can endanger the integrity of our people.”⁹⁵

⁹² Miller, “WikiLeaks Update: Defying Bush, Brazil Backed Criminal Court in 04-05.”

⁹³ Ainley, “The Great Escape?”

⁹⁴ Daniels, “Peace with Justice in Colombia.”

⁹⁵ International Criminal Court, “ICC Welcomes El Salvador as a New State Party.”

Resources

- [“Official Parliamentary Procedure and Other Official Policies”](#) (pdf)
- [A quick overview of parliamentary procedure at BUSUN](#) (video)
- [All the resolutions passed by the Assembly of States Parties](#)
- [Homepage of the ASP, including news and recent documents](#)
- [“Rome Statute of the International Criminal Court”](#) (pdf)
- [“The ICC in 3 minutes”](#) (video)
- [“The ICC at a glance”](#) (pdf)
- [“Understanding the ICC”](#)
- The ICC’s list of [“situations under investigation”](#)
- US Congressional Research Service, [“International Criminal Court Cases in Africa: Status and Policy Issues”](#) (pdf)
- [“Al Mahdi case: Opening statement, ICC Prosecutor Fatou Bensouda”](#) (video)
- [“Al Mahdi case: Public hearing, judgement and sentence”](#) (video)
- Al-Mahdi [“Case Information Sheet”](#) (pdf)
- African Union, [“Withdrawal Strategy Document”](#) (draft, pdf)

Works cited

- Ainley, Kirsten. “The Great Escape? The Role of the International Criminal Court in the Colombian Peace Process.” *Justice in Conflict*, October 13, 2016. <https://justiceinconflict.org/2016/10/13/the-great-escape-the-role-of-the-international-criminal-court-in-the-colombian-peace-process/>.
- . “The International Criminal Court on Trial.” *Cambridge Review of International Affairs* 24, no. 3 (September 1, 2011): 309–33. https://www.academia.edu/362897/The_International_Criminal_Court_on_Trial.
- Amnesty International. “Landmark ICC Verdict against Al-Mahdi Must Be First Step to Broader Justice in Mali Conflict.” *Amnesty International*, September 27, 2016. <https://www.amnesty.org/en/latest/news/2016/09/landmark-icc-verdict-against-almahdi-must-be-first-step-to-broader-justice-in-mali-conflict/>.
- Annan, Kofi. “Advocating for an International Criminal Court.” *Fordham International Law Journal* 21, no. 2 (December 1997): 363–66. <http://ir.lawnet.fordham.edu/ilj/vol21/iss2/2>.
- Assembly of States Parties. “Assembly of States Parties Concludes Its Fifteenth Session.” Press release, November 25, 2016. <http://www.icc-cpi.int/Pages/item.aspx?name=pr1260>.
- . “Austria Ratifies the Amendments to the Rome Statute on the Crime of Aggression and on Article 8 Related to War Crimes.” Press release, July 18, 2014. <http://www.icc-cpi.int/Pages/item.aspx?name=pr1029&TermStoreId=2b103483-3844-4191-bcbd-498116b98edd&TermSetId=bo86ad9f-cbbb-4af4-8752-01c870d429f3&TermId=d5c6946b-5562-4226-a607-58508c0c440e>.
- . “Proposed Programme Budget for 2017 of the International Criminal Court.” The Hague, August 17, 2016. https://asp.icc-cpi.int/iccdocs/asp_docs/ASPI5/ICC-ASP-15-10-ENG.pdf.

- . “Report of the Committee on Budget and Finance on the Work of Its Twenty-Eighth Session.” The Hague, July 5, 2017. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-5-ENG.pdf.
- . “Report of the Committee on Budget and Finance on the Work of Its Twenty-Seventh Session.” The Hague, October 28, 2016. https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/ICC-ASP-15-15-ENG.pdf.
- . “Resolution on the Programme Budget for 2016, the Working Capital Fund and the Contingency Fund for 2016, Scale of Assessments for the Apportionment of Expenses of the International Criminal Court and Financing Appropriations for 2016.” The Hague, November 26, 2015. https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP14/ICC-ASP-14-ResI-ENG.pdf.
- Baldauf, Scott, and Muchiri Kioi. “ICC Case Highlights Divide between Political Elite and Kenyans Hungry for Change.” *Christian Science Monitor*, January 21, 2011. <https://www.csmonitor.com/World/Africa/2011/0121/ICC-case-highlights-divide-between-political-elite-and-Kenyans-hungry-for-change>.
- Bensouda, Fatou. “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of Trial in the Case against Mr Ahmad Al-Faqi Al Mahdi.” Statement, August 22, 2016. <http://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-al-mahdi-160822>.
- Berg, Stephanie van den. “ICC: New Information Delays Decision on Afghan War Crimes Investigation.” *Reuters*, July 5, 2017. <http://www.reuters.com/article/us-warcrimes-afghanistan-icct-idUSKBN19Q206>.
- Blair, Edmund. “Burundi Notifies U.N. of International Criminal Court Withdrawal.” *Reuters*, October 26, 2016. <http://www.reuters.com/article/us-burundi-icc-idUSKCN12Q287>.
- Blanchfield, Mike. “Canada Bothered by African ICC Pullouts: Dion.” *TheRecord.Com*, November 16, 2016. <https://www.thercord.com/news-story/6969668-canada-bothered-by-african-icc-pullouts-dion/>.
- Bosco, David. “Will the ICC Launch a Full Investigation in Afghanistan?” *Lawfare*, May 8, 2017. <https://www.lawfareblog.com/will-icc-launch-full-investigation-afghanistan>.
- Bowcott, Owen. “ICC Drops Murder and Rape Charges against Kenyan President.” *The Guardian*, December 5, 2014. <http://www.theguardian.com/world/2014/dec/05/crimes-humanity-charges-kenya-president-dropped-uhuru-kenyatta>.
- Bowman, Blythe. “Transnational Crimes Against Culture: Looting at Archaeological Sites and the ‘Grey’ Market in Antiquities.” *Journal of Contemporary Criminal Justice* 24, no. 3 (August 1, 2008): 225–42. <http://dx.doi.org/10.1177/1043986208318210>.
- Calzonetti, Claire. “Frequently Asked Questions about the International Criminal Court.” *Council on Foreign Relations*, July 23, 2012. <https://www.cfr.org/backgrounder/frequently-asked-questions-about-international-criminal-court>.
- Casaly, Paige. “Al Mahdi before the ICC: Cultural Property and World Heritage in International Criminal Law.” *Journal of International Criminal Justice* 14, no. 5 (December 1, 2016): 1199–1220. <https://academic.oup.com/jicj/article/14/5/1199/2609028/Al-Mahdi-before-the-ICC-Cultural-Property-and-World>.
- Chan, Sewell, and Marlise Simons. “South Africa to Withdraw From International Criminal Court.” *New York Times*, October 21, 2016.

- <https://www.nytimes.com/2016/10/22/world/africa/south-africa-international-criminal-court.html>.
- Charbonneau, Louis. “Tunisia Joins International War Crimes Court.” *Reuters*, June 24, 2011. <http://www.reuters.com/article/us-tunisia-warcrimes-idUSTRE75N6JV20110624>.
- Clarke, Kamari, and Ermias Kassaye. “African State Withdrawals from the Rome Statute for the International Criminal Court: Legal-Political Considerations.” African Court Research Initiative, November 1, 2016. <https://1drv.ms/b/s!AuFgmBywTR75gsh2hCKI5kpBreCR6A>.
- Clarke, Kamari, Abel Knottnerus, and Eefje de Volder, eds. *Africa and the ICC: Perceptions of Justice*. Cambridge: Cambridge University Press, 2016. <https://drive.google.com/file/d/oB6CuCbILUcWqSFBKQUs3do5GTHk1ZEc4Z3N1VXXxSThNkgw/view?usp=sharing>.
- Clarke, Kamari Maxine. *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge University Press, 2009. <http://www.cambridge.org/catalogue/catalogue.asp?isbn=9780521889100>.
- Cole, Alison. “Could New Zealand Face the International Criminal Court for War Crimes in Afghanistan?” *Vice*, March 21, 2017. https://www.vice.com/en_nz/article/gv3k74/could-new-zealand-be-heading-to-the-international-criminal-court-for-war-crimes-in-afghanistan.
- Cruvellier, Thierry. “The ICC, Out of Africa.” *New York Times*, November 6, 2016. <https://www.nytimes.com/2016/11/07/opinion/the-icc-out-of-africa.html>.
- Daniels, Brian, and Helen Walasek. “Is the Destruction of Cultural Property a War Crime?” *Apollo Magazine*, November 28, 2016. <https://www.apollo-magazine.com/is-the-destruction-of-cultural-property-a-war-crime/>.
- Daniels, Lesley-Ann. “Peace with Justice in Colombia: Why the ICC Isn’t the Guarantor.” *Justice in Conflict*, October 13, 2016. <https://justiceinconflict.org/2016/10/13/peace-with-justice-in-colombia-why-the-icc-isnt-the-guarantor/>.
- Davenport, David. “International Criminal Court: 12 Years, \$1 Billion, 2 Convictions.” *Forbes*, March 12, 2014. <http://www.forbes.com/sites/daviddavenport/2014/03/12/international-criminal-court-12-years-1-billion-2-convictions-2/>.
- Easterday, Jennifer. “Major Changes at the ICC: The Registry’s ReVision.” *International Justice Monitor*, August 24, 2015. <https://www.ijmonitor.org/2015/08/major-changes-at-the-icc-the-registry-revision/>.
- Enkhsaikhan, Jargalsaikhan. “Promises and Challenges of the International Criminal Court: View from a Small State.” *Mongolian Journal of International Affairs*, no. 10 (January 31, 2014): 14–28. <http://www.mongoliajol.info/index.php/MJIA/article/view/115>.
- Eyre, Daniel. “Nigeria: The International Criminal Court’s Next Challenge in Africa?” *Justice in Conflict*, March 3, 2017. <https://justiceinconflict.org/2017/03/03/nigeria-the-international-criminal-courts-next-challenge-in-africa/>.
- Foreign Affairs Trade and Development Canada. “Canada and the International Criminal Court.” *Global Affairs Canada*, June 12, 2017. <http://www.international.gc.ca/court-court/index.aspx?lang=eng>.
- Forster, Katie. “Philippines ‘May Withdraw from International Criminal Court’ after Russia.” *The Independent*, November 17, 2016. <http://www.independent.co.uk/news/world/philippines-president-rodriago-duterte-says-they-may-withdraw-from-the-international-criminal-court-a7422076.html>.

- Garský, Salla. “Japan’s Ratification of the Rome Statute of the International Criminal Court.” *The Tokyo Foundation*, June 24, 2013. <http://www.tokyofoundation.org/en/articles/2013/japans-ratification-of-rome-statute>.
- Geoghegan, Kelly. “Book Review: Clarke’s *Fictions of Justice*.” *New York University Journal of International Law and Politics*, July 27, 2010. <http://nyujilp.org/126/>.
- Gogolashvili, Natia, and Nino Tsagareishvili. “Gunnar M. Ekeløve-Slydal: Getting Full Cooperation from the Georgian Side Will Be One of the Challenges for ICC.” *Humanrights.Ge*, April 25, 2017. <http://www.humanrights.ge/index.php?a=main&pid=19191&lang=eng>.
- Gramer, Robby. “South African Court Tells Government It Can’t Withdraw From the ICC.” *Foreign Policy*, February 22, 2017. <https://foreignpolicy.com/2017/02/22/south-african-court-tells-government-it-cant-withdraw-from-the-icc/>.
- Hatcher-Moore, Jessica. “Is the World’s Highest Court Fit for Purpose?” *The Guardian*, April 5, 2017. <https://www.theguardian.com/global-development-professionals-network/2017/apr/05/international-criminal-court-fit-purpose>.
- Howard, Russell, Marc Elliott, and Jonathan Prohov. *IS and Cultural Genocide: Antiquities Trafficking in the Terrorist State*. Tampa, FL: Joint Special Operations University Press, 2016. <http://theantiquitiescoalition.org/wp-content/uploads/2017/01/IS-and-Cultural-Genocide-Antiquities-Trafficking-in-the-Terrorist-State.pdf>.
- . “Opinion: How ISIS Funds Terror Through Black Market Antiquities Trade.” *USNI News*, October 27, 2014. <https://news.usni.org/2014/10/27/isis-funds-terror-black-market-antiquities-trade>.
- Human Rights Watch. “Jordan: Arrest Sudan’s Bashir.” *Human Rights Watch*, March 28, 2017. <https://www.hrw.org/news/2017/03/28/jordan-arrest-sudans-bashir>.
- . “South Africa: Continent Wide Outcry at ICC Withdrawal.” *Human Rights Watch*, October 22, 2016. <https://www.hrw.org/news/2016/10/22/south-africa-continent-wide-outcry-icc-withdrawal>.
- Hutchins, Kathryn. “African Nations Walk out of the ‘International Caucasian Court.’” *Columbia Journal of Transnational Law*, December 13, 2016. <http://jtl.columbia.edu/african-nations-walk-out-of-the-international-caucasian-court/>.
- International Criminal Court. “ICC Welcomes El Salvador as a New State Party.” Press release, June 2, 2016. <http://www.icc-cpi.int/Pages/item.aspx?name=pr1218&TermStoreId=2b103483-3844-4191-bcbd-498116b98edd&TermSetId=bo86ad9f-cbbb-4af4-8752-01c870d429f3&TermId=d5c6946b-5562-4226-a607-58508coc440e>.
- . “Japanese Delegation Unveils Artwork Donation to International Criminal Court.” Press release, January 24, 2017. <http://www.icc-cpi.int/Pages/item.aspx?name=PR1269&TermStoreId=2b103483-3844-4191-bcbd-498116b98edd&TermSetId=bo86ad9f-cbbb-4af4-8752-01c870d429f3&TermId=d5c6946b-5562-4226-a607-58508coc440e>.
- . “Portuguese Ambassador and ICC President Unveil Artwork Donation to International Criminal Court.” Press release, July 5, 2017. <http://www.icc-cpi.int/Pages/item.aspx?name=pr1317&TermStoreId=2b103483-3844-4191-bcbd-498116b98edd&TermSetId=bo86ad9f-cbbb-4af4-8752-01c870d429f3&TermId=d5c6946b-5562-4226-a607-58508coc440e>.

- International Peace Institute. “President of Tunisia: Africa Should Not Desert the ICC.” *International Peace Institute*, September 25, 2013. <https://www.ipinst.org/2013/09/president-of-tunisia-africa-should-not-desert-the-icc>.
- Jeiranashvili, Nika. “Georgia – A Unique Case For The ICC.” *International Justice Monitor*, March 8, 2017. <https://www.ijmonitor.org/2017/03/georgia-a-unique-case-for-the-icc/>.
- Keppler, Elise. “AU’s ‘ICC Withdrawal Strategy’ Less than Meets the Eye.” *Human Rights Watch*, February 1, 2017. <https://www.hrw.org/news/2017/02/01/aus-icc-withdrawal-strategy-less-meets-eye>.
- Kersten, Mark. “Burundi’s Awkward – and Mostly Pointless – Farewell to the ICC.” *Justice in Conflict*, October 16, 2016. <https://justiceinconflict.org/2016/10/16/burundis-awkward-and-mostly-pointless-farewell-to-the-icc/>.
- Lamony, Stephen. “New African Union Strategy on ICC Plays Politics with Justice.” *Justice Hub*, February 5, 2017. <https://justicehub.org/article/new-african-union-strategy-icc-plays-politics-justice>.
- Lansky, Sarah Rayzl. “Africans Speak Out Against ICC Withdrawal.” *Human Rights Watch*, November 2, 2016. <https://www.hrw.org/news/2016/11/02/africans-speak-out-against-icc-withdrawal>.
- Miller, Luke. “WikiLeaks Update: Defying Bush, Brazil Backed Criminal Court in 04-05.” *Crikey*, December 22, 2010. <https://www.crikey.com.au/2010/12/22/wikileaks-update-defying-bush-brazil-backed-criminal-court-in-04-05/>.
- Ministry of Foreign Affairs. “Malta Ratifies Amendments of the Rome Statute of the International Criminal Court.” Press release, January 30, 2015. https://foreignaffairs.gov.mt/en/Embassies/Pr_New_York/Pages/News/Malta-ratifies-Amendments-of-the-Rome-Statute-of-the-International-Criminal-Court.aspx.
- Momoh, Mohammed. “Africa: Nigeria Opposes Mass ICC Withdrawal.” *The East African*. January 27, 2017. <http://allafrica.com/stories/201701270605.html>.
- New Zealand Ministry of Foreign Affairs and Trade. “Statement as Delivered by Gerard van Bohemen, Permanent Representative of New Zealand to the United Nations.” Statement, October 31, 2016. <https://mfat.govt.nz/en/media-and-resources/ministry-statements-and-speeches/report-of-the-international-criminal-court-31-october-2016/>.
- Nichols, Michelle. “Africa Fails to Get Kenya ICC Trials Deferred at United Nations.” *Reuters*, November 15, 2013. <https://www.reuters.com/article/us-kenya-icc-un-idUSBRE9AEoS420131115>.
- Nouwen, Sarah, and Wouter Werner. “Doing Justice to the Political: The International Criminal Court in Uganda and Sudan.” *European Journal of International Law* 21, no. 4 (November 1, 2010): 941–65. <https://academic.oup.com/ejil/article/21/4/941/418139/Doing-Justice-to-the-Political-The-International>.
- Oneko, Sella. “Will AU Members Really Withdraw from the ICC?” *Deutsche Welle*, February 1, 2017. <http://p.dw.com/p/2Woh6>.
- Pilling, David. “Kofi Annan Defends International Criminal Court despite Africa Row.” *Financial Times*, June 16, 2016. <https://www.ft.com/content/204df924-32cd-11e6-bdao-04585c31b153>.
- Rauhala, Emily. “Duterte Says the International Criminal Court Doesn’t Worry Him.” *Washington Post*, June 4, 2017. https://www.washingtonpost.com/world/asia_pacific/duterte-says-the-international-

- criminal-court-doesnt-worry-him/2017/06/03/8a8foc62-44d6-11e7-bo8b-1818ab401a7f_story.html.
- Registry of the International Criminal Court. “Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court.” The Hague, August 2016. <https://www.icc-cpi.int/itemsDocuments/ICC-Registry-CR.pdf>.
- Rothchild, Jonathan. Review of *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*, by Kamari Maxine Clarke. *Journal of Law and Religion* 27, no. 1 (2011): 213–18. <http://www.jstor.org/stable/41428286>.
- Rugene, Njeri. “Parliament Pulls Kenya from ICC Treaty.” *Daily Nation*, December 22, 2010. <http://www.nation.co.ke/news/politics/Parliament-pulls-Kenya-from-ICC-treaty/1064-1077336-us2knmz/index.html>.
- Shaheen, Kareem, and Ian Black. “Beheaded Syrian Scholar Refused to Lead Isis to Hidden Palmyra Antiquities.” *The Guardian*, August 19, 2015. <https://www.theguardian.com/world/2015/aug/18/isis-beheads-archaeologist-syria>.
- Silverman, Jon. “Ten Years, \$900m, One Verdict: Does the ICC Cost Too Much?” *BBC News*, March 14, 2012. <http://www.bbc.com/news/magazine-17351946>.
- Simwaka, Fletcher. “Africa’s Retreat from International Criminal Court Is about Impunity, Not Dignity.” *Washington Post*. Accessed July 27, 2017. <https://www.washingtonpost.com/news/global-opinions/wp/2016/11/08/africas-retreat-from-international-criminal-court-is-about-impunity-not-dignity/>.
- Taub, Ben. “Does Anyone in Syria Fear International Law?” *The New Yorker*, August 31, 2016. <http://www.newyorker.com/news/news-desk/does-anyone-in-syria-fear-international-law>.
- Tribble, Jennifer. “Antiquities Trafficking and Terrorism: Where Cultural Wealth, Political Violence, and Criminal Networks Intersect.” Monterey Terrorism Research and Education Program, 2014. http://www.miis.edu/media/view/37908/original/illicit_antiquities_networks_final_1.pdf.
- Tutu, Desmond. “In Africa, Seeking a License to Kill.” *New York Times*, October 10, 2013. <http://www.nytimes.com/2013/10/11/opinion/in-africa-seeking-a-license-to-kill.html>.
- United Nations. “Vienna Convention on the Law of Treaties.” United Nations Treaty Series, 1980. <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>.
- United Nations Depository. “Status of Treaties: Rome Statute of the International Criminal Court,” April 7, 2017. https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280025774&clang=_en.
- United Nations Office of Legal Affairs. “Rome Statute of the International Criminal Court: Overview,” December 19, 2003. <https://www.un.org/law/icc/index.html>.
- United Nations Security Council. “Records of the 7306th Meeting of the UNSC.” *United Nations*, November 11, 2014. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7306.
- . “Security Council Condemns Destruction, Smuggling of Cultural Heritage by Terrorist Groups, Unanimously Adopting Resolution 2347 (2017).” Accessed July 2, 2017. <https://www.un.org/press/en/2017/sc12764.doc.htm>.
- Vilmer, Jean-Baptiste Jeangène. “The African Union and the International Criminal Court: Counteracting the Crisis.” *International Affairs* 92, no. 6 (November 1, 2016): 1319–42. <http://onlinelibrary.wiley.com/doi/10.1111/1468-2346.12747/full>.

- Worldwide Movement for Human Rights. “Mali: The Hearing of Al Mahdi before the ICC Is a Victory, but Charges Must Be Expanded.” *Worldwide Movement for Human Rights*, September 30, 2015. <https://www.fidh.org/en/issues/international-justice/international-criminal-court-icc/mali-the-hearing-of-abou-tourab-before-the-icc-is-a-victory-but>.
- York, Geoffrey. “African Union’s Mass Withdrawal Strategy Mounts Pressure on ICC.” *The Globe and Mail*, February 1, 2017. <http://www.theglobeandmail.com/news/world/african-unions-mass-withdrawal-strategy-a-fresh-blow-to-international-court/article33869212/>.
- . “Canada in Talks with South Africa over International Criminal Court Dispute.” *The Globe and Mail*, April 4, 2017. <https://www.theglobeandmail.com/news/world/canada-in-talks-with-south-africa-over-international-criminal-court-dispute/article34597023/>.