Research Report

Leiden Model United Nations 2015
~ fresh ideas, new solutions ~

Forum: *African Union*
Issue: *The future of international criminal law in Africa*

Position: *Chair*

Introduction

As of September 2015, 34 of the 54 member states of the African Union are state parties to the Rome Statute of the International Criminal Court (ICC). The ICC is currently investigating 10 situations out of which 9 are aimed at member states of the African Union (AU). Within this proud organization, there have been calls of member states to withdraw African nations from the ICC, as reaction to the ICC's focus on prosecuting African leaders.

As the Chairman of our November 2015 assembly, I suggest the attending AU member states to carefully examine and review their positions towards cooperation with the International Criminal Court, and to find ways to create a vital and robust dialogue between the African Union and the ICC. It is of importance that we find a way of bringing back trust in the ICC amongst the people of the African continent whilst 34 AU members remain party states to the Rome Statute, or to find common ground between the members of the African Union to find a way how to, possibly, leave the ICC.

Definition of Key Terms

Rome Statute of the International Criminal Court (ICC)
The Rome Statute of the International Criminal Court is the treaty that established the International Criminal Court.

Jurisdiction
The territory or area over which a legal authority of a court or institution extends.

International criminal law
International criminal law concerns interstate-relations regarding the prosecution of individuals.

General Overview

On 15 June 2015, the international community was distressed by President of Sudan, Omar Hassan al-Bashir leaving South Africa after an African Union (AU) summit. This

was in defiance of a court-ordered travel ban by the South African court whilst its judges reviewed the issued arrest warrant by the International Criminal Court (ICC).

South Africa is a state-party to the Rome Statute and was legally obliged to arrest al-Bashir, who is being charged by the ICC for carrying out a genocide in the Darfur region of Sudan, where according to the United Nations 300,000 people have died since 2003. Before al-Bashir's departure from South Africa that June 15, the South African ruling government party African National Congress (ANC) issued a statement denouncing and condemning the ICC arrest warrant.
Despite the South African court not being able to enforce the travel ban of al-Bashir, al-Bashir has been able to travel around several AU member-states and Rome Statute party states since the ICC issued al-Bashir's arrest warrant in 2009. Al-Bashir has travelled to Chad frequently since 2009 for example, with the Chadian government defending his visits with a 2009 AU decision calling AU governments not to cooperate in al-Bashir's arrest.

By now, the AU seems split on the issue of the ICC's influence and jurisdiction over Africa. The AU chair, Robert Mugabe, also the sitting Zimbabwean President, is openly critical of the International Criminal Court. His thoughts are shared by various other AU member states, including Kenia, whose President Uhuru Kenyatta faced ICC charges. Kenyatta has also called the ICC "a tool of Western neocolonialism"[1].

Major Parties Involved

International Criminal Court
The International Criminal Court (ICC) is an international tribunal, established via the adoption of the Rome Statute on 17 Juli 1998. The tribunal aims at prosecuting persons over the most serious crimes of international concern, including genocide; crimes against humanity; war crimes and the crime of aggression, according to the ICC. Currently, the ICC is investigating and indicting 32 individuals; all being Africans.

A notable example of when the ICC got all AU member-states required to cooperate with an ICC investigation was in 2005, when the International Commission of Inquiry on Darfur referred the situation in the Darfur region in Sudan to the United Nations Security Council, which then referred the situation to the ICC by adopting resolution 1593 (S/RES/1593) on 31 March 2005.
African Union
The African Union (AU) resolved that no sitting head of state in Africa should be required to appear before court or international tribunal and that the ICC should not continue with the prosecution of the sitting Kenyan President, Uhuru Kenyatta. In Article 98 of the Rome Statute, stated is "cooperation with respect to waiver of

[1] Rosen, Jonathan W. "Reporters, Witnesses Silenced 'one by One' with ICC Link Deadly in Kenya." *Kenya's Dark Path to Justice*. Al Jazeera America, 24 Aug. 2015. Web. 04 Sept. 2015.

immunity and consent to surrender", meaning that the ICC is not allowed to pursue a request for surrender of an individual when a sending state is not willing to cooperate with the ICC's request for surrender.

Although the AU as a political body opposes some cooperation with the ICC, some AU countries, including Botswana, have opposed this AU decision. Botswana and others argue that the AU is obliged to work according in cooperation with the ICC under the Rome Statute.

The AU has opposed the ICC's strategies to fight crimes and impunity on the African continent, with the ICC being an external tribunal.

South Africa

On 15 June 2015, the Sudanese president Oman Hassan al-Bashir, attended an AU summit in Johannesburg, South Africa. South Africa, party-state to the Rome Statute, was obliged to arrest al-Bashir, who is being sought by the ICC for genocide in Darfur, according to the Rome Statute. The Pretoria High Court imposed a travel ban on the Sudanese president while its judges were investigating the ICC warrant. However, the Sudanese president was able to travel back to Sudan on 15 June despite the travel ban.

While South Africa is a party-state to the Rome Statute, its ruling government party, the African National Congress (ANC), issued a statement condemning the arrest warrant of the Sudanese president.

By having the second largest gross domestic product of all AU member-states, South Africa bears the responsibility of a leadership role within the African Union.

Timeline of Events

17 July 1998	Rome Statute adopted
1 July 2002	International Criminal Court operations commence
9 July 2002	African Union founded
4 March 2009	First warrant of arrest issued against sitting President of Sudan, Hassan Ahmad al-Bashir
23 January 2012	Charges against sitting President of Kenya, Uhuru Muigai Kenyatta, confirmed
26-27 May 2013	The Twenty-First Ordinary Session of the AU requests the ICC to withdraw charges against Hassan al-Bashir of Sudan and Uhuru Kenyatta of Kenya

13 March 2015	The ICC withdraws charges against Uhuru Kenyatta, President of Kenya.
15 June 2015	Hassan Ahmad al-Bashir, sought by the ICC, leaves South Africa, party-state to the Rome Statue, despite Pretoria High Court had imposed a travel ban upon al-Bashir.

Previous Attempts to solve the issue

While there have not been major attempts to solve the issue, the AU remains divided. Opposition to the ICC within the AU is widespread. Al-Bashir, the Sudanese President, has called the ICC a Western tool to terrorize countries the West sees as disobedient, and the Ethiopian foreign minister accused the ICC of having become a political instrument targeting Africa.

Robert Mugabe, current President of Zimbabwe and chair of the AU, has also been a vocal critic of the ICC. Mugabe calls for the establishment of Africa's own International Criminal Court to try Europeans. Mugabe has also called for a mass withdrawal of African states from the ICC, viewing that option as a solution to oppose ICC's jurisdiction over Africa.

However not all AU members oppose the ICC's jurisdiction in Africa. Countries such as Uganda, Congo and the Central African Republic have called upon the ICC's involvement, with Libya getting the ICC's involvement through the United Nations Security Council.

Possible Solutions

Possible solutions to the opposition within the AU towards the ICC vary. Robert Mugabe's idea of establishing an AU International Criminal Court could be a viable option worth exploring during our November Assembly, but it should be considered carefully if considered at all. Will two International Criminal Courts, one located in the Hague and one in, possibly, Addis Adeba, not work contra productive? If the African Union were to establish its very own international criminal court, a possible location for it might be Arusha, Tanzania, host of the International Criminal Tribunal for Rwanda and the African Court on Human and Peoples' Rights.

Secondly there have been calls of AU member states and the AU chair for a mass withdrawal of the ICC of African nations. Will such a mass withdrawal lead to the establishment of an AU ICC and might it lead to impunity in Africa regarding war crimes?

As the chair of the November 2015 AU meeting in Leiden, I suggest improving the relations with the ICC. For that, it is vital that the trust for the ICC within the AU and

amongst Africans is restored. I suggest a robust dialogue between the AU and the ICC, perhaps via the current chief prosecutor of the ICC and former Gambian justice minister, Fatou Bensouda. However, this is merely a suggestion, and as heads of state of the AU member-states you are most open to explore and introduce your own solutions to the current relationship between the AU and ICC.

Also, I advise AU members to keep improving their capacities of investigating and prosecuting international crimes committed within their borders. This could be done with the help of the AU.

Useful documents

I. http://www.brookings.edu/~/media/Research/Files/Reports/2014/foresight-africa-2014/03-foresight-international-criminal-court-africa-mbaku.pdf?la=en
II. http://iccforum.com/africa
III. http://www.iccnow.org/documents/draft_letter_AUsummit.pdf
IV. http://www.iccnow.org/documents/AU_decisions_21st_summit_May_2013.pdf
V. http://www.iccnow.org/?mod=au

Appendix/Appendices

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