Hague Tribunal Remains Deeply Controversial After 20 Years

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The International Criminal Court's March calendar illustrates why the Hague-based tribunal remains a deeply polarizing institution, two decades after its conception.

Three appeals judgements next week deal with atrocities in Central African Republic, Democratic Republic of Congo, and attacks against cultural treasures in Timbuktu, Mali. Later this month, trial hearings continue against Dominic Ongwen, a former child soldier and senior commander of Uganda's Lord's Resistance Army rebel movement.

For years, the ICC has weathered accusations of being excessively and unfairly focused on Africa, and a painfully slow, inefficient and expensive institution. Some of the world's biggest heavyweights, including the United States, China and Russia, are not ICC members, weakening its credibility.More recently, the tribunal opened an internal probe into questionable dealings between court employees and its former prosecutor, Luis Moreno Ocampo.

But as is marks the 20th anniversary of the Rome Statute that created it, there are signs the ICC is broadening its scope, even if the controversy surrounding it has not diminished.

New directions?

In February, court prosecutor Fatou Bensouda opened preliminary investigations into alleged crimes by governments in the Philippines and Venezuela. And late last year she requested court approval to turn a decade-long initial inquiry into the war in Afghanistan into a formal investigation, which might include alleged torture by American forces and the Central Intelligence Agency. If granted, the only formal investigations pursued against a non-African country, after Georgia.

"The ICC has been working where it can work, and now it's starting to work in other regions of the world and that is positive," says Elizabeth Evenson, associate international justice director for Human Rights Watch."But we still have a long way to go to make sure the court has the political support and space to address atrocities in more places around the world."

Court supporters argue the Hague-based tribunal's existence and mandate, covering some of the most heinous crimes on the planet, committed in countries without the means or will to offer justice, makes it an inevitable lightening rod, and that its budget, in fact, cannot cover it's daunting mandate.

The ICC has scored a few victories, including a groundbreaking case treating the destruction of cultural heritage as a war crime.Its 2016 conviction of former Congolese vice-president and warlord Jean-Pierre Bemba drew jubilation and fueled hopes of justice in places with little history of it.Some also argue the ICC gives victims a powerful voice and serves as a deterrent against more heinous crimes.

Yet the 40 or so indictments the ICC has issued since opening its doors in 2002 have led to just four convictions. And at every step in the judicial process, African cases dominate, accounting for all the convictions and, until recently, almost all the preliminary and formal investigations.

"Africa does not count for 100 percent of the world's population, but not a soul outside of Africa has been indicted after 20 years," says J. Peter Pham, vice-president of Washington DC research group, the Atlantic Council.

Anger over Africa bias'

The perception of bias has nurtured mounting resentment and outright rebellion among some African governments, depriving the court of the political legitimacy it needs, Pham says.

[[Sudan's President Omar Bashir has made dozens of trips around the world since the ICC's 2009 arrest warrant against him.Last October, Burundi became the first member state to withdraw from the ICC, complicating a formal investigation the ICC opened days later into killings and disappearances in the country between 2015-2017.

In one of its biggest setbacks, the ICC was also forced to drop cases against Kenya's president and vice-president for lack of sufficient evidence, amid accusations of witness harassment and lack of cooperation from the Kenyan government.

Analyst Pham says, the ICC not only took on a "democratically elected president" in Uhuru Kenyatta, albeit following a disputed vote, but also refused to give him time to manage a terrorist attack in Nairobi that took place during the proceedings.

"I'm not a cheerleader for President Kenyatta," Pham adds."But it's precisely this full-speed-ahead, torpedoes-be-damned approach that gets the court into trouble, and enables those, for less-than-honorable reasons, to discredit it."

The ICC does not always choose its targets, a number come at the request of the U.N. Security Council and African nations.

New challenges beyond Africa

In the Philippines, where the court is looking into the government's deadly war on drugs, President Rodrigo Duterte has called the tribunal "useless" and threatened to withdraw.Analysts say the court will be challenged to protect witnesses, get government cooperation and manage expectations in what may be a years-long effort.

In Venezuela, where the prosecution is examining arrests and allegations of excessive force during anti-government protests from 2017 or earlier, the attorney general claimed the prosecution is basing its investigation on "biased" information.

Afghanistan may be most formidable challenge.If the court grants a formal investigation, after an 11-year preliminary investigation, it could lead to groundbreaking war-crime indictments against Americans for alleged atrocities committed in Afghanistan, and also at alleged CIA detention centers in Eastern European countries where the he court has jurisdiction.

Some critics consider such a move foolhardy, joining broader calls for the ICC to take on cases it stands a chance to win.

"The problem is that none of the target authorities is likely to cooperate," professor and author Thierry Cruvellier wrote in the New York Times, referring to the United States, the Afghan government, and Taliban. "The ICC will be able to claim it no longer targets only Africans ... but it will keep showing its own powerlessness."

But Katherine Gallagher, a senior lawyer at the New York-based the Center for Constitutional Rights, called a formal probe into Afghanistan's war and holding U.S. officials accountable "long overdue."

"It will demonstrate," she wrote, "that no-one is above the law."