



INSTITUTE FOR SECURITY STUDIES



**THE INTERNATIONAL CRIMINAL COURT:
WORKING FOR AFRICA**

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EMERGING ROLE OF ICC IN AFRICA:

**PITFALLS AND COLLISION OF INTERNATIONAL JUSTICE
ARCHITECTURE IN THE CONTINENT?**

A Discordant Response...

- The African view
- **The Taylor precedent**
- Bashir: a catalyst for collision?
- **The AU stance: objective defiance or contradiction in terms?**
- The APSA and the regional justice architecture limp
- **The alternative ‘new deal’**
- Emerging ICC roles: dividends and synergies
- **The key issues in approach**
- Some key lessons

The African View...

‘The abuse and misuse of indictments against African leaders have a destabilising effect that will negatively impact on political, social and economic development [o]f member states and their ability to conduct international relations...’

AU Decision (DOC.EX,CL/411 (XIII))

Liberia: a 'New Deal' & Trigger for Collision...

1) Taylor precedent:

- **Mar 2003: SCSL indictment for war crimes**
- **Jun 2003: ambushed in Accra; safe exit to Monrovia**
- **Aug 2003: resignation and exile in Nigeria**
- **Mar 2006: 'capture' in exile and in SCSL prison in SL**
- **Jun 2006: extradition to the Netherlands**



2) Taylor precedent: key Issues:

- **Un-diplomatic arrest attempt of a sitting president**
- **[Unfounded] fears of national / regional instability**
- **Fault line in regional policy of RoL and good governance (APRM)**
- **Conspiracy theories of double standards**

Bashir: Catalyst for International Justice Collision in Africa...

1) The Sudan-ICC saga:

- **SCR 1590 (2005):** commended AU & encouraged international community support to AMIS
- **SCR 1593 (2005):** referral to ICC and jurisdiction to: bring to justice persons accused of committing war crimes in Darfur
- **DSC (2005)** GoS seeks gain complementarity
- **SCR 1672 (2006):** Chapter VII sanctions against: Janjaweed leader, GoS Darfur military commander, SLA and NMRD leaders
- **2008:** ICC arrest warrant
- **2009:** ICC indictment
- **2009:** URF leader hands himself over to ICC



Bashir: Catalyst for International Justice Collision in Africa...

1) The Sudan-ICC drama:

- **Diplomatic spat with ICC: double standards & targeting**
- Immediate expulsion of humanitarian agencies
- **Disregard by LAS: visits Egypt in March**
- Disregard by Eritrea and Libya (May)
- **Ghana falling in line with AU position**
- Senegal cautioned about 'de-ratification'
- **South Africa's dilemma over Bashir's presence in the country**
- AU request to UNSC for 1 year deferment
- **Immediate expulsion of humanitarian agencies**



The AU Stance: Objectivity or Contradiction...

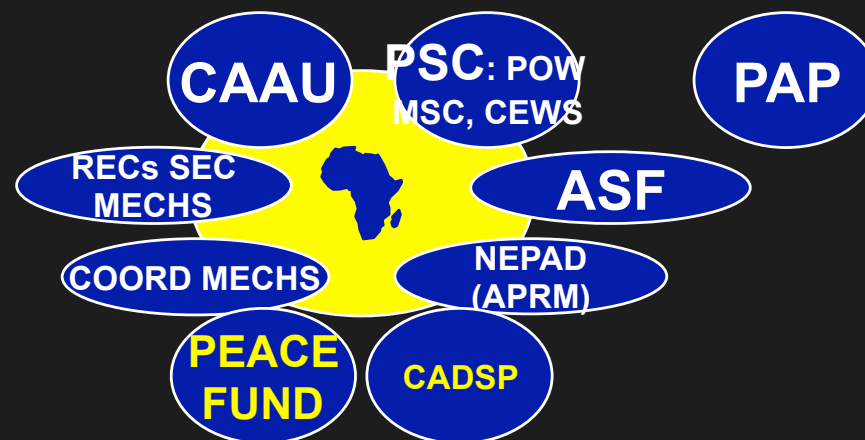
3. **RECOGNISING** that universal jurisdiction is a principle of International Law whose purpose is to ensure that individuals who commit grave offences such as war crimes and crimes against humanity do not do so with impunity and are brought to justice, which is in line with Article 4(h) of the Constitutive Act of the African Union
- 5) **Resolve as follows...**

(iv) Those warrants shall not be executed in African Union Member States...

AU request to UNSC for 1 year deferment

The APSA & Regional Justice Architecture Pillar: a Weak Link...?

- 1) Motivations
- 2) 1990: Marginalisation & grave situation
- 3) 2002:
 - Political, policy transformation
 - CAAU: Right of intervention
 - CADSP: Wider definition of security focusing on human security
 - Range of Threats:
 - **A Renaissance vision:**
from 'non interference' to 'non indifference'



“Motivated by a common political will to strengthen collective efforts to contribute to PEACE, SECURITY, STABILITY, JUSTICE and DEVELOPMENT in Africa...”

“...ensure collective responses to both internal and external threats to Africa... in conformity with the principles enshrined in the Constitutive Act.”

African Justice Architecture: a limping Organ...?

1) African Court of Justice

- **‘Principal juridical organ’**
- Jurisdiction on ‘disputes over interpretation of AU treaties’
- **Protocol adopted in 2003**
- Still not entered into force

2) African Court on Human and Peoples’ Rights

- 11 Judges appointed 2006
- **No infrastructure**
- No Rules of Procedure
- **No cases on roll; no budget**

1) Proposed Merger:

- A new ‘Court of Justice and Human Rights’
- **Two chambers:**
 - a) general legal matters and
 - b) rulings on human rights treaties
- **Protocol approved 2008**
- Subsequent developments around new mandate/ jurisdiction
- **Political expediency**
- Same OAU paranoia?

The Alternative View: a 'New Deal' ...

- The African view is unproven
- **To the contrary:**
 - A new deal for Liberia
 - **An avalanche of referrals:**
 - ✓ CAR (2004) leading to Jean Pierre-Bemba's arrest (2007)
 - ✓ **Uganda (2004) leading to arrest warrant for LRA leaders (2005)**
 - An avalanche of potential referrals:
 - ✓ **Rwanda (RPF)**
 - ✓ Chad
 - ✓ **Kenya**
 - ICC decision on liability of Uganda (2005)

Emerging ICC Role: a Synopsis of Dividends & Synergies...

- Preventive diplomacy
(Conflict prevention)
- Peace making
- **Peace keeping**
- **Peace enforcement**
- **Peace building**
- Humanitarian operations

- **Objective rationale for ICC role in Africa:**
 - Informed by complexity of Africa's humanitarian emergencies
 - **Speaks to discordance between political rhetoric and policy implementation**
 - Adds synergy to regional RoL architecture
 - **Obviates problems around UN Charter Use of Force Principles (Chapter VII)**
 - Serves as an inhibitor of gross violations
 - **In time, would obviate large deployments and costs of PSO, vis-à-vis Western minimalist engagement policies in Africa**

Key Issues in Approach...

1. Diversity of continent, sub-regionalism / external influences
2. **Regional weight: 30 out of 53/54 member states**
3. Relative perception of lack of respect for human rights / RoL
4. **Perceptions of urgent international intervention**
5. Argument about regional complementarity courts
6. **Creeping influence of international justice architecture**
7. **Wrong timing of international justice interventions**
8. Slow institutionalisation of continental justice architecture
9. **Continental chasm between national / international justice architectures**
10. Necessity and appropriateness of international justice interventions
11. **Threat to ownership: African solutions to African problems**

A Considered View...

- If it is arguable that the ICC critically addresses the obvious Post Cold War Justice Lacuna arising from the incidence of intra-state conflicts in Africa...
- **Is it not arguable then that given the difficulties around the ‘use of force’ the ICC offers a soft, but powerful synergy for the maintenance of global security?**
- In this context, is the ICC perhaps also not serving as a lever, or compensation, for the lack of western military presence in Africa, and as a cost-effective intervention tool?

Some Key Lessons...

1. **ICC a victim of international conspiracy theories?**
2. **ICC is a potential force for good in the continent**
3. **The AU system should see the ICC as a partner in upholding RoL and protection of human rights**
4. **Tensions between technical and political approaches need to be addressed**
5. **There is need for institutionalised mechanisms for consultations**
6. **ICC should consider setting up a liaison office in Africa**

Summarising y of the New Paradigm...

‘Many of today’s conflicts are within states rather than the result of external threats. The end of the Cold War removed constraints that had inhibited conflict in spite of dictatorial rule...there has been a rash of violent armed conflicts within newly independent states, largely as a result of bad governance, absence of rule of law, and lack of respect for human rights’

Adapted from Boutros Boutros-Ghali, Agenda for Peace, 1995

‘Traditional diplomacy of the kind pursued during the Cold War is unlikely to be repeated. Diplomacy today is evolutionary and requires a range of unprecedented, pragmatic tools that requires rethinking the continental RoL architecture in sync with increasing need for human security in Africa’

Adapted from Kofi Annan on Modern Peacekeeping, 1998

Concluding Remarks...

Global security is and should be a global responsibility

African security is indivisible from global security

African security requires synergy with global intervention tools

And this includes the tools being employed by the ICC

