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## The ICC comes under attack – again

by Yasmina Gourchane

On 10 September 2018, US National Security Advisor, John Bolton, speaking at a meeting of the right-wing Federalist Society in Washington DC, publicly denounced the International Criminal Court. He called it a creation of “self-styled global governance advocates,” and went on to announce that “the United States will use any means necessary to protect our citizens and those of our allies from unjust prosecution by this illegitimate court.”

Two weeks later, in his address to the UN General Assembly, U.S. President Donald Trump reaffirmed this position, while also taking a harsh stand against multilateralism and global institutions more generally. “We reject the ideology of globalism, and we embrace the doctrine of patriotism,” he said.

Twenty years after the signing of the Rome Statute, the guiding document of the ICC, the Court is facing not only criticisms of its performance and jurisprudence during its first decades, but actual threats that could for example impede its officers from making routine visits and reports to the United Nations.

The Court is no stranger to criticism. Back in the early 2000s, John Bolton was part of President George W. Bush’s administration, serving in a different capacity, as Ambassador to the United Nations. During his tenure, he negotiated dozens of Bilateral Immunity Agreements with states, both parties and non- parties to the Rome Statute.

Under these agreements the signing state would be obliged to surrender any US nationals wanted by the ICC back to the US government, not to the Court. Bolton was also part of the administration when it effectively ‘unsigned’ the Rome Statute, thereby underscoring its intent to never become party to the Court. Now back in government as National Security Advisor, Bolton has a stronger position from which he could initiate further action against the ICC and those who cooperate with it.

In November 2017, ICC Prosecutor Fatou Bensouda requested authorization to initiate an investigation into crimes allegedly committed in Afghanistan, as well as crimes allegedly committed related to the Afghan situation on the territory of other states parties to the ICC.

The Prosecutor's request asserts that there is a reasonable basis to believe war crimes and crimes against humanity were committed by the Taliban, as well as war crimes by members of the Afghan National Security Forces, US armed forces, and the CIA.

Although the Pre-Trial Chamber has yet to grant a final decision authorizing the investigation, the US has continued to reiterate its unwillingness to cooperate with the ICC, with Secretary of State Mike Pompeo recently referring to the 'rogue international court' as an imminent threat to American sovereignty in a speech to the German Marshall Fund in early December.

These threats against the ICC extend beyond the current US administration. In late 2016, Burundi submitted its intent to withdraw as a state party to the Rome Statute, which took effect one year later. Similarly, in response to the opening of a preliminary investigation into crimes allegedly committed in the context of the Government's 'war on drugs', the Philippines announced its intent to withdraw from the ICC, slated to take effect in March 2019. This wave of anti-ICC sentiment is also felt at the United Nations, with states working to remove references to the Court and international justice from resolutions of the Security Council, General Assembly and other committees. For example, in a recent plenary session of the General Assembly on cooperation with regional institutions, Sudan called for a vote to remove references to the ICC and Rome Statute in a resolution on the Council of Europe.

Despite the persistence of these threats, support for the Court is sustained, primarily because the ICC carries out its work as an impartial international judicial body. Notably, ICC Pre-trial Chamber III ruled earlier this year that the Court maintains jurisdiction over crimes allegedly committed during the time when a state was party to the Statute, meaning that the Prosecutor can still pursue an investigation into the situation in Burundi, covering the period when Burundi was a state party. This ruling would also apply in the Philippines. And in the General Assembly, states stepped up to block Sudan's proposal, and voted to successfully retain mentions to the ICC in the above-mentioned resolution.

Many states and civil society organizations are doing their part to thwart attacks on the ICC. At the General Debate of the 73rd session of the General Assembly, mere days after Bolton's speech, nearly two dozen states referred explicitly to the Court, underscoring its absolute necessity in the rules-based global order. Weeks later, at a General Assembly session on the ICC, states again stepped up to recall the importance of the Rome Statute system in maintaining international peace and security, as well as its indispensable role in granting justice to victims when domestic systems fail.

2018 also marked the 20th anniversary of the Rome Statute. The ICC Coalition kicked off the year with a launch event at the seat of the Court in February, and with other civil society organizations, called on States, the Court, regional organizations and other NGOs to do their part in commemorating the achievement that is the ICC. This resulted in numerous conferences, seminars and other media events that were held across the globe all year long.

In many ways these threats to the Rome Statute system serve to remind us that the Court is worth defending. World leaders were once able to act with impunity, with no fear of repercussions when they committed grave international crimes. But the very existence of this institution undermines such impunity.

The Court was conceived in a more idealistic time, and today faces a challenging road ahead. Yet now more than ever the world needs institutions like the ICC to stand up for victims of the most heinous crimes, and ensure a future that includes a robust system of international justice.

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