



COMMITMENT TO THE INTERNATIONAL CRIMINAL COURT AMONG SUB-SAHARAN AFRICAN STATES

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African states have played a vital role in the development of the world's first permanent international criminal tribunal. The continent has experienced some of the most egregious episodes of violence, and, as of December 2008, all cases being considered by the International Criminal Court (ICC) involve African conflicts. The governments of the Central African Republic, Uganda, and the Democratic Republic of the Congo have each initiated one of the four investigations currently in the Court hearings. The Prosecutor's unprecedented decision to seek an arrest warrant for the sitting President of Sudan pursuant to the Security Council mandated investigation of crimes against humanity and genocide in Darfur has sparked a whirlwind of speculation among both proponents and detractors of the Court regarding how the ICC might shape and be shaped by the domestic politics of Africa. African states are likely to be what Finnemore and Sikkink term "critical states" to the evolution of the ICC.¹

Yet the Court's relationship with modern Africa contains a fundamental tension. While accused of "targeting" only African politicians for special condemnation, the ICC has also been positively welcomed among African human rights groups as legitimizing their domestic attempts to seek redress for crimes. Max Du Plessis, a South African international lawyer, argues that intolerance of crimes against humanity is being "internalized as part of the fabric of the African continent."² In what he terms a "public demonstration of justice," all but six sub-Saharan African states have signed the Rome Statute of 1998.³ Yet only thirty states, slightly over two-thirds of the total number of states in sub-Saharan Africa, have ratified the treaty, thereby formally consenting to be bound by the treaty's obligations. Why do African states accede

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¹ Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887(1998).

² Max Du Plessis, *Africa and the International Criminal Court*, available at <http://www.csvr.org.za/wits/confpaps/duplessis.htm>.

³ This study examines the following sub-Saharan African states: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo-Brazzaville, Côte d'Ivoire, the Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe. Somalia is excluded specifically for two reasons. Somalia's internationally recognized state collapse is a unique situation that prohibits fruitful comparison. Furthermore, Somalia was one of two sub-Saharan states not represented at the 1998 Diplomatic Conference at which the ICC treaty was signed in 1998. (The other, Equatorial Guinea, is still included because though it has not signed the ICC treaty, it has committed to a Bilateral Immunity Agreement with the U.S., demonstrating that the state leadership is engaging the ICC regime.)

to the Rome Statute, thereby accepting the jurisdiction of the International Criminal Court to hear cases concerning events occurring on or after July 1, 2002.⁴ States appear to derive no direct benefit from this action. Ratifying the Rome Statute signals a permanent commitment that empowers the Court to investigate and prosecute human rights abuses occurring within a domestic context, specifically four categories of crimes—genocide, war crimes, crimes against humanity, and the crime of aggression. Jurisdiction extends to crimes involving the state party’s citizens (as either aggressors or victims) and crimes occurring on the state’s territory.⁵ Why then have many African states—often with acute histories of violence—enthusiastically accepted the Court and opened their domestic political systems to the possibility of international scrutiny? And why do others vociferously refuse its jurisdiction, even at the risk of being international pariahs?

Given the significant variation in the pattern of ratification of the Rome Statute by states within the sub-Saharan African region, a more nuanced analysis of accession to the ICC needs to consider the domestic political dynamics of the acceding states. Furthermore, several alternate models for dealing with grave human rights abuses—UN-mandated tribunals, truth and reconciliation commissions, and domestic trials for war crimes, for example—have already been enacted in response to African conflicts. The decision to accept the jurisdiction of the International Criminal Court is an empirical puzzle, with theoretical and practical implications for our understanding of the preferences states bring in to their interactions with international institutions. This study uses logistic regression analysis of party and non-party states to examine factors affecting the decisions of sub-Saharan African states to ratify or refrain from ratifying the Rome Statute. This decision, I argue, defines the stance of states towards an institution that is revolutionizing African politics. Following preliminary statistical findings, I trace the political trajectories of six African states as case studies of accession and non-accession. Among sub-Saharan African states, accession to the International Criminal Court appears linked to domestic agendas of political reform.

⁴ Because states may merely sign the treaty without intending to ratify it in order to relieve international pressure to actually amend human rights practices, I distinguish between acceding to the ICC and merely signing the Rome Statute, which is a type of “thin commitment” to the human rights regime. See Oona Hathaway, *Do Human Rights Treaties Make a Difference?* 111 *YALE L. J.* 1870, 1935 (2002).

⁵ Rome Statute of the International Criminal Court, 1 July 2002 [hereinafter Rome Statute], at Art. 5.

Table 1: Sub-Saharan African States by Commitment to the Rome Statute*

<i>Signed and Ratified</i> (date of ratification)	<i>Signed Only</i> (date of signature)	<i>Not Signed</i>
Benin (22 Jan. 2002)	Angola (7 Oct. 1998)	Equatorial Guinea
Botswana (8 Sept. 2000)	Cameroon (17 July 1998)	Ethiopia
Burkina Faso (16 Apr. 2004)	Côte d'Ivoire (30 Nov. 1998)	Mauritania
Burundi (21 Sept. 2004)	Eritrea (7 Oct. 1998)	Rwanda
Central African Rep. (3 Oct. 2001)	Guinea Bissau (12 Sept. 2000)	Swaziland
Chad (1 Nov. 2006)	Mozambique (28 Dec. 2000)	Togo
Comoros (18 Aug. 2006)	Sudan (8 Sept. 2000)	
Congo-Brazzaville (3 May 2004)	Zimbabwe (17 July 1998)	
Dem. Rep. Congo (11 Apr. 2002)		
Djibouti (5 Nov. 2002)		
Gabon (20 Sept. 2000)		
Gambia (28 June 2002)		
Ghana (20 Dec. 1999)		
Guinea (14 July 2003)		
Kenya (15 Mar. 2005)		
Lesotho (6 Sept. 2000)		
Liberia (22 Sept. 2004)		
Madagascar (14 Mar. 2008)		
Malawi (19 Sept. 2002)		
Mali (16 Aug. 2000)		
Mauritius (5 Mar. 2002)		
Namibia (25 June 2002)		
Niger (11 Apr. 2002)		
Nigeria (27 Sept. 2001)		
Senegal (2 Feb. 1999)		
Sierra Leone (15 Sept. 2000)		
South Africa (27 Nov. 2000)		
Tanzania (20 Aug. 2002)		
Uganda (14 June 2002)		
Zambia (13 Nov. 2002)		

* As of April 2008.

I. AFRICA ON TRIAL?

Despite the optimism over the supposed enthusiasm for the ICC among many of the region's governments, Africa remains the world's bloodiest continent—in many ways, “impunity's last stand.”⁶ Most African conflicts arise from domestic and not international crises. According to international relations scholar Robert Jackson, in 2002, half of Africa's states were engaged in some form of armed conflict, affecting twenty percent of the continent's population, with most conflicts arising in the post-1980 period.⁷ Africanist political scientists frequently characterize this violence as prevalent because most

⁶ Paul Ocheje, *Refocusing International Law on the Quest for Accountability in Africa: The Case Against the “Other” Impunity*, 15 LEIDEN J. INT'L L. 749, 762 (2002).

⁷ Robert Jackson, *Violent Internal Conflict and the African State: Towards a Framework of Analysis*, 20 J. CONTEMP. AFRICAN STUDIES 29, 30 (2002).