

Al Bashir and the International Criminal Court*

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Following the war in Kosovo, I was and I still am an admirer of the International Criminal Court (ICC). The ICC is part of an ideal dream of a world government that does not distinguish between human individuals, regardless of any considerations. It is also inspired by a set of ideas that emerged at the end of World War II when human consciousness was appalled by the extent of the war's horrors, where more than 50,000,000 died and more than a double were wounded and displaced because of the world's inability to find adequate solutions. At that time, the United Nations saw a small chink of light in amongst the horrors of the war's holocaust, telling the world that war and peace are the fruit of the human mind, and so just as we have a tendency to fight, so too do we love peace, building and creativity. In the end, the issue is a matter of choice and responsibility. Setting up the UN was not perceived as good news by governments. For the first time, they had to face an international organisation whose writ went beyond state sovereign rights, rights that most of them considered sacred. On several occasions, these states had committed human rights abuses, violating the basic rights of their population and even engaging in total ethnic cleansing. History is full of these horrific deeds, to the extent that some had come to believe that such actions were an inescapable part of human life and destiny. Today, there are those who say that the UN is a mere toy in the hands of the great powers and a means to achieve their avid aims. Nonetheless, time has chosen to preserve the UN as a necessity for the world's evolution. This has taken place - despite the lack of consensus following its creation - because the UN stood with states yearning to end the colonial era; because it did not grant the omnipotent U.S.A. the right to invade Iraq; and because its Secretary General stated that the Iraq war was illegitimate.

Thankfully, for many the ICC has become a familiar and powerful "invasive" institution despite the fact that its powers to arrest and prosecute are still in the early stages. In my opinion, this plays in the ICC's and people's interests because it is through critiques and counter-critiques that institutions evolve and mature. Some have accused the UN of supporting the interests of the U.S. and Israel. The truth is that these two countries are the first to fear it. If you were to ask me to name the most powerful country that hates the UN, I would say America, even if it contributes the lion's share of the UN's budget. The U.S. is also aware that, despite its pre-eminent leadership, the international system could not survive without the UN's presence. In anger, America withdrew its membership from some of the UN organisations, only to rescind its decision later. This is further proof that the international legal system will evolve because the world community has made many achievements and will not allow governments, especially undemocratic ones, to impose their own way to change history's course.

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The problem with the ICC is that, rather than targeting governments, it focuses on “individuals”. This step has unveiled the lie surrounding sovereignty. Several dictatorial regimes were ready to accept UN sanctions such as economic and political blockades, since a country’s leader does not go hungry. The issue today is that the ICC is focusing on the “individual” rather than the state. This is why we hear protests mixed with fear because the international community has decided to bring to justice the real culprits and restore the people’s rights. In Africa, for instance, there are several great and edifying examples whereby the government and its people (who also sometimes make mistakes) decided to initiate a revision of history and acknowledge errors made. Processes of acknowledging guilt outside the judiciary were created because of the collective nature of the crimes committed. This process led to a human way to heal wounds, set up reparations, repair and restore social divisions and create peace for the future. Mention ought to be made here of reconciliation attempts in South Africa and Morocco as well as what occurred in the Balkans. The Balkans, which became a theatre where war and killing became an art, are now part of the peaceful European landscape.

Let us now turn to the Arab region, where the news came last year that ICC Prosecutor Luis Moreno-Ocampo had presented evidence to arrest Sudanese President Al Bashir for war crimes he committed in Darfur. The general reaction was against the ICC’s decision as people accused the West - and mostly the U.S. - of fabricating the accusations against Al Bashir. Public opinion accused Israel and the U.S. of aiming at the partition of Sudan and the Arab world as they did before with Afghanistan and Iraq. It could be that the accusations against Al Bashir are indeed fabricated. However, the correct reaction in such a case is for the Arab League to constitute a fact-finding mission to present the truth to Arab and world public opinion. World opinion, regardless of the U.S. and Israel, does not approve of Al Bashir’s way of governing Sudan. International civil society has done what it is supposed to do. In fact, several non-governmental organisations have published dozens of reports on the situation in Darfur focusing on the collective acts of revenge taking place there which have resulted in the death of thousands and the displacement of 1,000,000 people. It is possible that ICC’s Prosecutor Ocampo relied on these reports to indict Al Bashir.

Al Bashir has governed Sudan for more than twenty years and succeeded in fragmenting the country with his extreme ethnic and radical Muslim policies. He is currently celebrating the new electoral law, which I believe will allow him to stay in power. As some observers think, the idea for a ruler to stay in power for a long time was believed to bring stability and prosperity. Nevertheless, the experience in Sudan shows that dictatorship is used to dismantle the nation and plant the seeds for polarisation, suspicion and hatred between the people of Sudan. President Al Bashir keeps on repeating “Allahu Akbar”, as did Saddam Hussein when he used these words on Iraq’s flag mixing religion with politics. Saddam was not moved by the news he received of the massacres he ordered which, according to him, were the shortest road to consolidate security and unity. Unfortunately, the results totally contradicted Saddam’s aims.

In principle, the story of President Al Bashir and the ICC’s indictment has nothing to do with “politics” but is mostly an issue related to “justice”, which makes a big difference. There is a crime that needs to be punished if the prosecuted is proven guilty. However, people look at what is happening in Darfur as a “national security” issue, i.e. getting rid of opponents even if illegally. This is a backward way of political thinking for which several heads of state paid the price, including U.S. President Nixon when he illegally spied on his election opponents. But the policy of playing with what makes you win failed because it is illegal. A similar situation occurred in Lebanon when open assassinations and killings were used in the name of the state’s or its president’s security; this if we assume that a president’s security is the same as the state’s.

What is left in this exciting story is an important figure: Prosecutor Ocampo who is from Argentina. Since its establishment five years ago, Ocampo worked as prosecutor for the ICC based in The Hague, Holland. Change in the world does not only happen with ideas but it also depends on the individual. Ideas could remain without implementation until an individual makes them a reality among people and takes humanity towards a new horizon. It is said that Ocampo is a stubborn prosecutor nominated for a Nobel Prize and I do not exclude this notion. The difference between him and others is that he has an active awareness of things that make him suffer while others consider human rights violations as a normal occurrence. Ocampo once said: "I am surprised how the world allows people to kill at will." He is from a country, Argentina, that suffered a lot under the military who believed, before the current era of democratisation, that they were above the law. Under military rule, thousands of people "disappeared" and Argentina was forced into a war it lost. But as a determined judge, Ocampo called up military officers, both those living outside the country and those residing in Argentina, prosecuted them and placed the guilty ones in jail.

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