

# *Justice on Trial*

## **Ten years of International Criminal Court justice prompts suspicion that it is merely just another tool of the West to maintain its supremacy**

***Richard Piper***

**T**his year has marked 10 years since the July 2002 Rome Conference that enthusiastically created the International Criminal Court (ICC). Since then it has cost more than \$100 million a year in public money for good Western salaries and travelling expenses for more than 600 officers and employees.

The ICC has accused a number of African warlords and ex-politicians and two African presidents, one now dead, the other still in office with support from many African heads of state, and finally has tried a Congo warlord and has an Ivory Coast ex-president on trial as well as four Kenyans, losers in the recent electoral strife in that country. Is this really “International justice”?

Democratically and legally, the Court’s claim to internationality and legitimacy is weak. Major non-Western countries like China, India and Russia are not among the signatories. Nor is the government of the United States. Their eventual adherence seems very unlikely.

The ICC’s activity is almost exclusively concentrated in Africa, victim of two centuries of colonialism and neo-colonialism. Apparently there are no “war crimes against humanity” on other continents. Its expensive new headquarters are in Europe, in Holland. Imagine a court here in Ottawa that was partly financed by wealthy philanthropists like George Soros and prosecuted crime only in the poorest Toronto ghettos? What legitimacy would it have?

Moreover the corporations who exploit the resources of Africa and help fuel its civil wars have no fear of the ICC because their activities don’t come under the Court’s narrow definition of crime.



We are reminded by the global legalists, sincere promoters of so-called “international justice” like Canada’s Philippe Kirsch, the ICC’s first president, noted-author Erna Paris or Argentina’s Luis Moreno-Ocampo, the first Chief Prosecutor, that we must be patient and that someday the court will gain universality and legitimacy. Would we accept such arguments to legitimize a Canadian Supreme Court that had only been accepted by the smaller provinces?

Notably, unlike the ICC, our Canadian courts, judges and judicial system, however imperfect, do have an essential democratic legitimacy. They are under the control of our government, its executive and legislative bodies and ultimately the citizens.

The UN Security Council and General Assembly, created largely by the USA and other powers after WWII, are not a democratic world legislature or government. Lacking a democratic legislature, the ICC is much more totalitarian than democratic and its “justice” is selective to a degree that certainly no normal jurisdiction would ever accept.

And could the governments of France and Britain have accepted a court that could actually

put their own leaders on trial? Their veto power in the Security Council prevents this. A former UK foreign secretary, Robin Cook said that the ICC was “not a court set up to bring to book prime ministers of the UK or presidents of the US.” The Court is independent of the United Nations but the Security Council can refer situations and prevent indictments.

### **The Nuremberg Model**

The ardent founders of the ICC took much of their inspiration from the 1945/46 Nuremberg and Tokyo Tribunals, usually seen as a triumph of justice, and a welcome precedent. At the time this was far from the opinion of some observers. One was the award-winning journalist Paul Sauriol writing in the *Devoir* (Montreal) on October 1, 1946. Under the headline “A Dangerous Jurisprudence for Civilization” he states that “a tribunal created by the victors is radically unacceptable.”

Sauriol recalls that the “Allies’ position of unconditional surrender, the direct cause of the unnecessary extension of the war, places on the Allies, the responsibility for the last year of the war, the most violent and the most destructive.” The deadly years of 1944/45 saw the firebombing of German and Japanese cities, their civilians and children and Hiroshima and Nagasaki. Unconditional surrender meant no impunity, but only for the vanquished.

### **No more impunity**

The ICC project was, from its beginning in the 90s, the dream of western non-governmental organizations, (NGOs), especially the World Federalists of the USA and their President William Pace. Officials in Canada’s Foreign Affairs department, open to an important role in a new Western middle-powers initiative, eagerly joined in.

With the 1991 fall of the Soviet Union, and the apparent triumph of the Western democratic free market “End of History”, many in the West were imbued with a certain enthusiasm and a confidence in such a new “universal” institution that would somehow “put an end to impunity”. The rallying call of the CICC, the NGO Coalition for the ICC is “No more impunity”. (Strangely one hears a somewhat similar appeal now, from the Canadian government, for more arrests and longer sentences.)

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Eventually many Western and NATO governments and Japan signed on. Western governments certainly did not see themselves threatened by this court. Their colonial past, with all its atrocities, was far behind them. It was time for a New World Order.

In 1998 the Rome Protocol (to establish the ICC) reached a certain critical mass of signatories and it became more difficult for governments, unless they were major powers, to say no. Refusal can be seen

as a sanction for criminality and only powerful or non-aligned or anti-Western governments can resist.

### **What is justice?**

Several major Canadian peace organizations were very enthusiastic about the ICC from the start. “No Peace Without Justice” was their invocation. But isn’t peace usually the result of conflict resolution requiring compromise, diplomacy and a rejection of punitive attitudes and victor’s justice?

For example, in Uganda in 1995, the ICC’s very first arrest warrant was for the (now famous) Kony, leader of the rebel Lord’s Resistance Army. This put an end to promising peace negotiations with the central government and the bloodshed continues. Many countries in Africa, with borders created by Europe, have diverse ethnic groups and languages, and a complex history that the Western-educated ICC judiciary and its zealous prosecutor

(a modern Robespierre?) cannot always understand.

“Justice” is, at times, a mask for ideological crusades. And the economic injustice of mass inequality and neo-colonialism can be a greater cause of conflict than some unpunished mass murderer.

There is even a sentiment among some Western international justice enthusiasts, that Africa and other former colonies need exemplary judicial condemnations (like the very costly trial of Liberian dictator Charles Taylor) to end crimes against humanity and to teach them that cutting off children’s hands is wrong. Somehow the Europeans from Belgium who followed such practices in their 60-year stay in their Belgian Congo learned this on their own.

Centuries ago, the Holy Inquisition, founded by the Dominican Order, in the perceived global domain of Roman Christendom, seemed to its elites, a solution to that day’s gravest problem, heresy.

There is slight evidence that fear of arrest, a long costly trial, and imprisonment in The Hague is impeding potential perpetrators of war crimes caught up in the rage of conflict. The immunity of former colonial powers can however provoke resentment and instability. And are we to expect that legal solutions will take priority over politics and political change?

The ICC indictment of Libya’s Gaddafi, as Diana Johnstone observed on Counterpunch.org, helped to turn a civil war which could have ended with negotiations (as proposed by South Africa

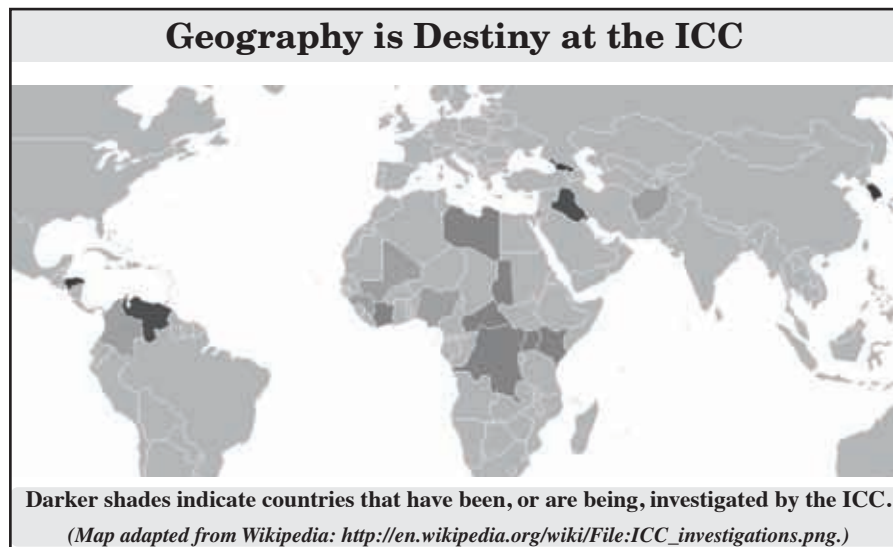
and the African Union) and far less killing and environmental and material destruction, into a precedence-setting NATO “humanitarian intervention” ending with total victory over the former regime.

Zaya Yeebo of Amkeni wa Kenya, also at Counterpunch, sees ambitious elites in Africa, subservient to Western interests, using The Hague to further their careers by exiling their enemies. (four Kenyans sent to the ICC). Should Africa not judge its own criminals?

Now we have the first ICC conviction, the Congolese warlord Lubango. Does this not mask the real causes of the terrible conflict in the DR Congo, the pursuit of its resources, and the interventions of its neighbours, particularly Rwanda?

Canadian ardour for the ICC was largely under a Liberal Party government inspired by Lloyd Axworthy, Louise Arbour, Romeo Dallaire and the works of Michael Ignatieff.

Perhaps the present government will reduce Canada’s financing of ICC’s good salaries and costly expenses and contribute more to other African projects, like the expensive retroviral treatments which mean new life for the millions still untreated for AIDS or badly-needed health-



(“No more impunity” was also the call of frustrated white Southerners who created “citizen tribunals” after the US Civil War to judge the lawless former African slaves. “No more impunity” often applies only to a small selection of the guilty.)

### The allure of globalism

Global legalism, like world government, is a fascinating and captivating idea especially for some zealous Western-trained activists. Today’s international politics and diplomacy are often indecisive and even immoral and state sovereignty can seem a narrow outdated concept to be replaced by global institutions like a World Criminal Court.

care for new mothers. (Maternal deaths 300X that of Canada.)

In spite of its founders' good intentions, the ICC increasingly appears to many in Africa, China, Russia and India as another tool of the West to maintain its moral, military and economic supremacy.

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## On the International Scene

### Castration of minors by the Catholic church as thousands of Dutch kids sexually abused

According to a report (18 March 2012) in the Dutch newspaper, *NRC Handelsblad*, the Catholic Church ordered the castration of several minors in the 1950s. There are at least ten documented cases. They have come to light only now because victims have only now spoken up. More cases may be forthcoming.

Last year, an official Dutch government Commission investigated reports of the sexual abuse of minors in Catholic boarding schools. After examining numerous statements by victims, medical reports, private correspondence and legal documents, the Commission concluded in December 2011 that since 1945 tens of thousands of children have been sexually abused in Catholic institutions in the Netherlands.

Although there were rumours that some of the abused boys subsequently had been castrated, these suspicions were excluded from the report. But since then, victims have testified to cases of castration. It appears that the surgical procedures were conducted, on the order of Church officials, at psychiatric clinics run by the Catholic Church. The declared object was "to cure the children of their homosexual disease". This monstrous victimization is especially heinous because

the boys were first sexually abused by Catholic clergy and then castrated for allowing themselves to be raped. Can hypocrisy celebrate greater triumphs?

Dutch Catholic authorities have not denied the allegations published in the *NRC Handelsblad*. The Archbishop of Utrecht, Wim Eijk, has asked all the victims of abuse for forgiveness. *I want to apologize sincerely in the name of the Catholic Church in the Netherlands*, he declared in response to the publication of the December report by the government Commission. *These events fill us with shame and pain*. Because they have finally come to the attention of the public?

How is one to believe in the sincerity of such apologies when, in fact, the Catholic Church has gone to great length for centuries to protect the perpetrators and suppress any attempt to put a stop to them by bringing the abusers to justice? In view of the well-documented cases of millions of children sexually abused globally by Catholic clergy or lay brothers, it is difficult to conceive how anyone can possibly argue rationally that Christian teaching is a force promoting ethical conduct. — *HP*