

**The ICC**  
**A Global Political Pawn**  
**The Case of Ukraine and Africa**

**Law and Justice.**

The idea of law evolved from the compilation of regulations and rules promulgated by the government. It defines the duties of citizens and prescribes punishment for violations. Justice is an idea of morality fairness, equality and security. Law is the part of the justice system that focuses on prevention and investigation through punishment. The law itself can be unjust if the makers of the law are illegitimate or wrong because they do not give the kind of justice that humanity and morality demand. Law is the instrument to get justice and both are usually flawed. The enforcement of both domestic and international laws do not necessarily mean that justice has been rendered. There are many factors that make it so. When even good laws are manipulated like in the cases we will be discussing, International law becomes a Global Political Pawn. International society has high expectations from the International Criminal Court (ICC) in terms of addressing genocide and crimes against humanity and war crimes.

Credos like 'ending impunity' and 'delivering justice' would never be found credible in a domestic criminal law system, since all criminal law can do is strive after *reducing* impunity and *contributing* to feelings that justice is served, in close cooperation with other enforcement and support systems that aid these causes too. With the added complications that the transnational space brings, such strange and utopian promises should have no place in international criminal law.<sup>1</sup>

Politics both domestic and international, have in many cases made justice arbitrary or merely serve the interest of a particular group or groups of nations despite humanity's quest for the search for fairness and neutrality. The ordinary people of the world strive, vote, struggle and die for a fair decision-making process that is apolitical and devoid of manipulation for self-interest. But these best wishes of people ignore the social context and diversity in which law functions. It fails to account that:

...law is based on and is an outcome of political choice....It overlooks that law reflects the outcome of a political struggle and thus is the product of power, and as such may embody and reinforce structural inequalities, power relations and interests. Moreover, it ignores the constitutive or performative power of law: that by including and excluding what is recognized as legal, relevant and convincing, law *produces* reality, symbolic orders and power, which constitutes in and of itself political force.<sup>2</sup>

Justice means many things to different people. It is deeply controversial, philosophical and embodies different perspectives of ethics, equality, fairness, values, religion. How and by whom justice is defined is deeply contested. . “ ...And this fundamental disagreement cannot be resolved by merely using the language of law and treating it as an objective notion. It instead requires an acknowledgement of the inherent political nature of seeking ‘justice’ for those affected by atrocities. This therefore requires a more complex understanding of law and politics than legalism tends to portray.”<sup>3</sup>

## UKRAINE

On the 24<sup>th</sup> of February, Russia invaded Ukraine. On the 25<sup>th</sup> of February, a day after the invasion, the ICC Prosecutor General, Karim Khan “expressed his concern over the Russian invasion of Ukraine and said his court may investigate possible war crimes in the country. **He further stated:** “I have been closely following recent developments in and around Ukraine with increasing concern.”<sup>4</sup>

On the 28<sup>th</sup> of Feb (four days after the invasion) the ICC Prosecutor announced:

“ Today I wish to announce that I have decided to proceed with opening an investigation into the situation in Ukraine, as rapidly as possible," A preliminary examination can only be initiated if there is sufficient evidence of crimes to open an investigation. He therefore added that he could go to “ ICC judges to approve the inquiry, but it would be faster if an ICC member state referred the case to his office, “which would allow us to actively and immediately proceed with the office’s independent and objective. investigations.” This is contrary to his earlier statement that he has: “decided with opening an investigation”, an indication of the rush to bring the case again in the fastest period ever.

Prosecutor Karim Khan also declared that the investigation will look at alleged crimes committed before the Russian invasion, but added that “given the expansion of the conflict in recent days, it is my intention that this investigation will also encompass any new alleged crimes falling within the jurisdiction of my office that are committed by any party to the conflict on any part of the territory of Ukraine”<sup>6</sup>

“I have already tasked my team to explore all evidence preservation opportunities. The next step is to proceed with the process of seeking and obtaining authorization from the Pre-Trial Chamber of the Court to open an investigation. An alternative route set out in the Statute that could further expedite matters would be for an ICC State Party to refer the situation to my Office, which would allow us to actively and immediately proceed with the Office's independent and objective investigations.”<sup>7</sup> All the above actions of the Prosecutor general may look good, well done extremely and expedient and portray him as a man of passion for justice who sincerely believed “justice delayed is justice denied?” If judicial processes can be so easily avoided, and overridden, and if it were possible to look into other possible openings in the procedure that could make the machinery of justice work faster, why was it not possible to show a fraction of these concerns in the case of Ethiopia where the Prosecutor to date did not even express that he was aware of crimes against humanity going on Ethiopia particularly Ethiopia. IN the case of Ethiopia it was not even about procedures it is just none of the members of the ICC accepted that there

was genocide and crimes against humanity going on in Ethiopia as I write this. The war in the North did happen and many many needlessly sacrificed their lives and some particularly Amharas, were selectively killed displaced and subjugated to the excesses of human brutality.

The established ICC procedure: [“Preliminary examinations:](#)

The Office of the Prosecutor must determine whether there is sufficient evidence of crimes of sufficient gravity falling within the ICC’s jurisdiction, whether there are genuine national proceedings, and whether opening an investigation would serve the interests of justice and of the victims. If the requirements are not met for initiating an investigation, or if the situation or crimes are not under the ICC’s jurisdiction, the ICC’s Prosecutor cannot investigate 8

On April 13 the Prosecutor general visited Ukraine, the town of Butcha near Kiyev and declared that Butcha is a crime scene where AFP reporters saw 20 bodies lying in the streets after Russian forces withdrew in late March. Since then the ICC prosecutor stated that he has visited Ukraine three times ( CNN interview, Sept 9) 9

The speed and extraordinary length the ICC Prosecutor General went is unprecedented in the history of the ICC. History and students of law will one day compare this extraordinary rush to prosecute the criminals in Ukraine with the more heinous crimes taking place at the same period in Ethiopia, and give their judgement on how international justice is flawed and usually prioritizes global politics over the death and suffering of millions of poor Africans. It is stunning to think how such an international institution with great expectations would dehumanize all other people crying for justice and focus with an alarming speed and enormous resources, using all his discretions, to find a short cut to court procedures for one particular crime which emerged just a day before the Prosecutor General intervened.

On May 17 the International Criminal Court sent a 42-member team to Ukraine to probe alleged war crimes since the Russian invasion in what has been dubbed as the largest such deployment in its history. "This represents the largest-ever single field deployment by my office since its establishment," Khan said in a statement." 10

Neither Ukraine or Russia or the USA are state parties to the Rome Statute. Khan stated "Ukraine is not a State Party to the Rome Statute of the International Criminal Court ("ICC" or the "Court"), so it cannot itself refer the situation to my Office. But it has twice exercised its prerogatives to legally accept the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, should the Court choose to exercise it. The [first declaration](#) lodged by the Government of Ukraine accepted ICC jurisdiction with respect to alleged crimes committed on Ukrainian territory from 21 November 2013 to 22 February 2014. The [second declaration](#) extended this time period on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20 February 2014 onwards."

This obviously can open up a legal or procedural argument as to how the ICC can justify a preliminary examination of current crimes based on Ukraine’s declaration; lodged to accept ICC jurisdiction with respect to alleged crimes committed on

Ukrainian territory from 21 November 2013 to 22 February 2014 **onwards**. If the decision was based on the word the interpretation of the word: “ONWARDS”, then why did the prosecutor say at the beginning of his statement: “Ukraine is not a State Party to the Rome Statute of the International Criminal Court , so it cannot itself refer the situation to my Office.” The two scenarios are clearly contradictory.

There was hardly any time for referrals, as he himself implied in his statement. By March 2, 2022, referrals had been made by Ukraine and other countries. Human Rights Watch stated:

On March 2, 2022, a [group of ICC member countries](#) [referred the situation](#) in Ukraine to the court’s prosecutor for investigation. Lithuania [made a separate](#) referral to the [ICC prosecutor’s office](#) on February 28. The complete list of countries is below.<sup>12</sup> There was indeed one country that made the referral but only three days after the ICC prosecutor had already made a decision to begin investigation .

In December 2020, the then-ICC Prosecutor, Fatou Bensouda, [concluded her preliminary examination](#) of the situation and [announced](#) that the criteria under the ICC’s founding treaty, the Rome Statute, had been met to open an investigation. But the prosecutor’s office did not subsequently seek judicial approval to open an investigation as required by the court’s procedure, citing “operational challenges,” including limited resources and the impact of the Covid-19 pandemic.

The new Prosecutor General was appointed on February 12 for a 9 year term and started his work on June 16. Why did the Prosecutor General have to wait for over a year to begin the investigation up to this moment when Ukraine became of greater concern to the big powers and in many ways to the world? In the meantime, people were killed in dozens sometimes every day sometimes every week in Ethiopia over the last four years outside the war area for who they are :(Amharas).

The ICC response to the Ukraine was the fastest ever response to alleged criminal acts. The Ukraine war is not about Ukraine. It has more to do with big-power politics and to a certain degree it is a matter of concern to the rest of the world: (because of economics and not politics) It was not about human beings or about the destruction of a country. It was the need to use the ICC as a political tool to achieve a strategic goal including the USA which has not ratified the Statute but is the country that will benefit the most from the outcome. That was the context the Chief Prosecutor was working on and the pressures must have been enormous.

## **ETHIOPIA**

The reverse happened in Ethiopia. Throughout the episode since Feb 24 ( Russian Invasion) or November 3, 2021 ( the War In Northern Ethiopia) there was genocide (in its strictest definition) being committed in Ethiopia particularly in the region of Metekel, Wellega and Ataye and humanly far more serious than the crimes committed in Ukraine on Feb 24. It is understood that in cases of genocide the intent is usually the most difficult element to prove. To constitute genocide, “there must be a proven intent on the part of perpetrators to physically destroy a national, ethnical, racial or religious group. Cultural destruction does not suffice, nor does an intention

to simply disperse a group. It is this special intent, or *dolus specialis*, that makes the crime of genocide so unique.”<sup>13</sup>

Genocide has therefore two major elements: Physical (the actual commission of crimes) and Mental which establishes the intent of the crimes. Importantly, the evidence must show that the victims of a crime have been deliberately targeted - not randomly – because of their real or perceived membership of one of the four groups (national, ethnic, racial and religious) protected under the Convention. “This means that the target of destruction must be the group, as such, and not its members as individuals. Genocide can also be committed against only a part of the group, as long as that part is identifiable (including within a geographically limited area)”<sup>14</sup>. The evidence collected so far show exactly this. Intent was the easier part of the whole process of seeking justice for genocide. The most challenging was getting the attention of the ICC.

It is the opinion of every legal expert involved in studying the crimes against the Amharas in Ethiopia that this is genocide, crimes against humanity and war crimes. The genocide and the crimes against humanity has been taking place in Ethiopia more intensely during the last four years though it began 27 years earlier: “The Creeping Genocide”<sup>15</sup>

Any global humanitarian organization, including the United Nations Human Rights Council (UNHRC), Human Rights Watch (HRW), Amnesty International (AI) and the ICC which claim they have not heard read or seen the painful videos of the ongoing crimes in Ethiopia ( particularly in the Oromia region) is not worth the title it wears. It was there for the whole world to see read and listen. Even the perpetrators were not able to hide it.

The earlier Prosecutor General Fatou Bensuda promptly responded to my letter through her Director of preliminary examination, Rod Rastan, a legal scholar and author of several research works, with whom I had a series of correspondences following the Prosecutor general’s reference, and guided us on our options. It is complex but this one brief of his generalizes our options.

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*“Although the Office is always concerned when it receives information on alleged crimes committed in any part of the world, the ICC at present does not enjoy universal adherence by all States – meaning that the ICC cannot act or exercise its jurisdiction everywhere. As an institution set up by a treaty, which over 120 States have joined to date, the ICC is still limited in its reach.*

*Specifically, as you may know, under the ICC’s treaty framework, the Court can only exercise its jurisdiction in relation to crimes allegedly committed on the territory or by the nationals of States Parties. This limitation can only be extended in two scenarios where either (i) a State that is not a Party to the ICC nonetheless lodges a declaration accepting the exercise of jurisdiction by the Court on an ad hoc basis, meaning that it accepts the Court exercising its jurisdiction with respect to crimes committed on its territory and by its nationals, or (ii) where the United Nations Security Council refers a situation to the Prosecutor acting under Chapter VII of the UN Charter, in which case any UN Member State may be bound to accept the Court’s jurisdiction.*

*As you may know, Ethiopia is currently not a State Party. This means that the ICC could not examine alleged crimes occurring on the territory of Ethiopia unless Ethiopia itself accepted the jurisdiction of the Court or the UN Security Council referred a situation.*

*This means that, at this time, there may be limited assistance that the ICC Prosecutor's office can give you with respect to the allegations accompanying your email.*

*I don't know if this clarifies how our current jurisdiction regime works. I would be happy to answer any other questions.” 16*

\*Please read his research work “Can the ICC Function Without State Compliance?” It explains in detail the complexity of the situation based on precedence established this year

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r the following can be done and the Prosecutor is as passionate for justice in Ukraine then the world will challenge him on what he did when the crimes committed in Ethiopia' during and prior to his tenure.

With the cooperation of the Prosecutor General and the UNHRC, there are certainly options to bring the perpetrators of the crime to international court.

- 1 The Prosecutor General may open an investigation on his own initiative after the authorization of the judges .
- 2 The Prosecutor General used his discretions to speed up the Ukraine situation. He can do that if he really wanted in the case of Ethiopia. He used methods unknown to me to coerce (using big powers) or influence the cooperation of so many countries to act as referrals to the case of Ukraine. Why not in the case of Ethiopia? There are compelling reasons for many countries particularly neighboring countries to cooperate and act as referrals if the Prosecutor had decided to pursue that avenue.
- 3 The Human Rights Council can refer the case to the United Nations Security Council. The government of Ethiopia can be pressured by the Security Council to cooperate on investigations if not completely at least partially under the threat of sanctions. The UNSC handles all peace and security matters. The Ethiopian civil war should be a matter of great security concern to the region and beyond. Prosecutor Kharim eloquently expressed his concern regarding the war in Ukraine. Couldn't he have done the same in the case of Ethiopia? It was possible the UNSC can pass a resolution of some kind adding pressure on the Ethiopian government.
- 4 The UNHRC could have extended the mandate of the commissioners from the war in the North which began in November of last year to the entire country which would have enabled them to see the extent of the crimes being committed in other parts of Ethiopia.
- 5 The United Nations Security Council (UNSC) on its own, may also refer a situation to the Prosecutor. To date, this possibility has materialized with respect to the situations of [Darfur](#) and [Libya](#). UNSC referrals include the Court jurisdiction over States not Party to the Rome Statute .

- 6 The Prosecutor may open an investigation on his own initiative after the authorization of the judges
- 7 In the meantime, all accused perpetrators could get notice that they could be detained by any State Party upon arrival in any country which is state party based on Universal Jurisdiction.

## The Politics

At the beginning of the Russian-Ukraine war, the Western allies argued that they were for defending the territorial integrity of member states. A few weeks later it was clear that strategic goal was the weakening of Russia and not about justice for the people of Ukraine. From the start the USA never wanted the ICC to be established in a way that it has eventually happened.

The USA has always opposed the establishment of the ICC. A few powerful states, with the US in the lead, sought comprehensive control over the future of the ICC and lobbied for a weak and merely symbolic Court (Kaul, at 126). They were skeptical of *proprio motu* investigations by the Prosecutor and felt that the Court's exercise of jurisdiction should mainly depend on referrals by the Security Council (SC) where the USA has veto power. They also believed the SC should have the power to stop ICC proceedings. In this vein, Article 23(3) of the ILC Draft Statute provided that the SC could block the commencement of prosecutions in situations which were being dealt with by the SC acting under Chapter VII of the UN Charter, "unless the Security Council otherwise decides". This would have allowed a member of the SC to obstruct ICC prosecutions by simply placing a situation on the SC's agenda (Schabas, at 164). 18

Marc Grossman, Under-Secretary for Political Affairs: Remarks to the Center for Strategic and International Studies in May 6, 2002, at the time the a few months before ICC began its operations :

"We have concluded that the International Criminal Court does not advance these principles. Here is why:

- We believe the ICC undermines the role of the United Nations Security Council in maintaining international peace and security.
- We believe in checks and balances. The Rome Statute creates a prosecutorial system that is an unchecked power.
- We believe that in order to be bound by a treaty, a state must be party to that treaty. The ICC asserts jurisdiction over citizens of states that have not ratified the treaty. This threatens US sovereignty.
- We believe that the ICC is built on a flawed foundation. These flaws leave it open for exploitation and politically motivated prosecutions." 19

President Bush came to the conclusion that the United States could no longer be a party to this process. His spokesperson said: In order to make our objections clear, both in principle and philosophy, and so as not to create unwarranted expectations of U.S. involvement in the Court, the President believes that he has no choice but to inform the United Nations, as depository of the treaty, of our intention not to become a party to the Rome Statute of the International Criminal Court. 20.

The International Criminal Court (ICC) authorized an investigation of alleged war crimes and crimes against humanity by U.S., Afghan, and Taliban troops in Afghanistan, as well as alleged crimes committed at CIA black sites operated in Poland, Lithuania, and Romania.

Chairing a subcommittee hearing on the ICC in 1998, former Senator Rod Grams observed, "Now, while I am relieved that the administration voted against the treaty of Rome, I am convinced that it is not in itself sufficient to safeguard our nation's interests. The United States must aggressively oppose this court each step of the way because the treaty establishing an International Criminal Court is not just bad, but I believe it is also dangerous".<sup>21</sup>

Contributing to the same hearing in 1998, Senator Dianne Feinstein noted, "I share the concerns which ultimately led United States to determine that it could not support the draft statute that emerged from Rome. None of us would like to see a court that frivolously prosecutes Americans or which acts with politics, not justice, as its motivating force." This observation clearly points to the fact that the court can be subject to political manipulation. Senator Grams specifically observed that the ICC process would not provide an "effective screen against politically motivated prosecution from being brought forward."<sup>22</sup>

Since its inception in 2002, the Court has endured significant criticism relating to its susceptibility to Great Power interests. Given the lack of executive powers of its own, the consequent reliance on State participation and the role of UNSC referrals and deferrals of possible situations, many have situated the ICC within the structures of a global politics of hegemony. Specifically, the fact that only two of the total number of situations under investigation since 2002 concern locations outside of the African continent, has triggered a proliferation of literature viewing the Court as yet another piece in the contemporary machinery of neo-colonialism (Clark 2018, 51). Before problematizing the presentation of major powers as somehow omnipotent wielders of the Court, the following section explores the relationship between the ICC and 'states with global interests and influence' (Bosco 2014, 1) – with a notable emphasis on the US. <sup>23</sup>

Before long, the Trump administration made sure it would not cooperate in facilitating investigations into the Afghan Situation (Evenson 2018). The administration further sought active strategies to hinder inspection into either US or US' allied nationals, including visa bans for ICC staff, threatening with prosecutions and financial sanctions against ICC personnel or any State Party involved in potential investigations of US or allied citizens, as well as potentially reopening bilateral immunity agreements' lobbying (HRW 2019).

"If we oppose investigations into countries, like our own, that haven't joined the ICC, how can we support an investigation into Russia, another country that hasn't joined the court?.....Unfortunately, a glaring asterisk hangs over any calls for justice made by the United States "Congresswoman Ilhan Omar .....

"Our absence also allows regimes to commit human rights abuses with impunity," Congresswoman Ilhan Omar said. She continued: "If the most powerful country won't hold itself accountable to the rule of law, other countries feel emboldened to

violate it. And indeed, we have turned a blind eye to wanton human rights violations by regimes in countries such as Saudi Arabia, Egypt, El Salvador, and even India, in the name of political convenience". 24

## **Discriminations on Humanitarian Assistance**

One anthropologist who was working on Ukrainian refugees at the time wrote:

"But long before Ukraine took center stage, refugee crises have been ongoing in many parts of the world. As of 2021, UNHCR reported 6.6 million Syrians had fled the ongoing Syrian Civil War. Around 3.4 million Afghans are currently displaced—including hundreds of thousands following the U.S. military's sudden withdrawal from the country last summer. And according to the Africa Center for Strategic Studies, an estimated 32 million people across the African continent are displaced. The nongovernmental organization Caminando Fronteras reported 4,404 African and Middle Eastern refugees died in 2021 alone while attempting to cross the Mediterranean Sea on their way to Spain—a harrowing average of 12 people per day.

How can we make sense of this double standard: the sympathy authorities and ordinary citizens have extended to Ukrainian refugees compared to the harsh treatment given to those fleeing conflict in other parts of the world? "30

As I write this, millions of my people in Ethiopia are being displaced, tortured killed in the most heinous way while Ukrainians who have been victims of war are being treated in an unprecedented manner. Nothing that I have seen in my 40 years of professional life in Africa resembles the way the refugees and victims of war of Ukraine are treated. Ethiopians are a forgotten people who are paying the price for a international injustice based on the misplaced priorities of global politics, not only in Ethiopia only but across the continent.

The contrast between the warm welcome that Ukrainians have so far received in Poland, Germany and other EU countries, and the treatment of Africans caught in the conflict, has once again opened the box of uncomfortable questions of racism and xenophobia in Europe. Let us look at two examples:

"Airbnb [announced Monday](#) that the homestay and rental company, along with the nonprofit Airbnb.org, will offer free short-term housing for up to 100,000 refugees fleeing Ukraine in the wake of [Russia's attacks on the country](#)..... While Airbnb.org is committing to facilitate short-term housing for up to 100,000 refugees fleeing Ukraine, it will work closely with governments to best support the specific needs in each country, including by providing longer-term stays," 25

That's why famed chef José Andrés, through his nonprofit World Central Kitchen, quickly set up facilities across the country to provide meals for people fleeing the war. They were on the ground in Ukraine [one day after the Russian invasion](#). "Why we are so quick? Because we don't plan. We don't meet. We come, and we begin cooking," Andrés told NPR's Michel Martin the nonprofit, which partnered with

restaurants in the country, is serving food at hundreds of locations in 12 Ukrainian cities, he said. It also has sites in Poland. 26

Ukrainians are no better, or worse, than Syrians, Yemenis, Eritreans, Ethiopians, Somalis, Yemenis, Malians or Iraqis in their humanity. These countries have become the victims of proxy wars, dying and fleeing for causes that have nothing to do with their poverty and deprivation of freedom and bread. The inhumanity and hypocrisy of the Western governments are self-evident. In Calais, Southern France, Ukrainians are put up in hotels for free while Sudanese, Eritrean, Ethiopians and other Africans are evicted from the shanty camps they have built for themselves at strategic places that would give them an opportunity to cross the border, with the hope that they will be successful in crossing the borders with the next opportunity. Many perish in containers.

But suddenly compassion by western governments has become a rare currency benefiting only those who look, or worship, like most Europeans. It was not exactly like this during the 1983-85 famine crisis in Ethiopia. I was heading the famine relief operations then. Addressing the UN General assembly in 1984 I had this to say. A Republican President in America, A Conservative Republican President Reagan, in the USA, a Conservative PM Margaret Thatcher in the UK allied their ardent enemies, the communist block of Eastern to established one of the most successful international humanitarian operation since the Second World War. Millions were saved in their own homes and those who fled the country were welcome though not in the way Ukrainians were received. But they were protected and hosted humanly. :

“ Yes Mr. Chairman, one cannot help being moved by the sight of human suffering depicted in those pictures ( referring to the film internationally shown) . Even governments which were hitherto less forthcoming are now following the humanitarian examples of their public. We in Ethiopia are particularly touched by the good will and generosity shown by ordinary men and women. All this renews our faith in humanity, reinforces our confidence in international solidarity, and indeed encourages us to try to even do the impossible to save the lives of our unfortunate brothers and sisters.” 27

There is still pressure from the public to do more but in some cases this demand for better treatment of migrants, is coming from those who were previously heartless: “The *Daily Mail*, whose cartoonist portrayed vermin entering the country alongside refugees during the Syrian crisis and only a few months ago lambasted Priti Patel’s “lack of grip” on refugees crossing the Channel in rickety boats, now calls on the “human spirit” and “immense generosity” of its readers “at times of crisis,” while its sister Sunday paper asks people to “give until it hurts.” 28

As an anthropologist and filmmaker who focuses on human rights and global migration, these images of humans in desperate need of asylum are intimately familiar to me.

After working for over 30 years in the troubled spots of Africa and witnessing the migration of people across the Sahara to the Mediterranean and their harrowing experience to reach the borders of Europe and how a whole fleet of boats and armed personnel waited to chase them back, the Ukrainian people’s pain is

certainly familiar to me. What is not familiar is the heart-warming reception of the Polish people and donation of enormous amount of needed food, shelter medical cloth sometimes beyond the emergency needs of the refugees. It is heart-warming but at the same confusing, that Poland which has consistently mishandled refugees from Syria and other countries was so generous for the Ukrainians. It was less of humanity and more of race and politics.

In November 2021 The BBC reported on a crisis at the Polish border as Asian and Middle Eastern migrants and refugees tried to enter:

“Poland says it has repelled attempts by migrants to enter the country at its eastern border with Belarus, warning that thousands more were on the way. Video footage showed hundreds of people near a barbed-wire border fence, which some tried to force their way through. The Polish government called a crisis meeting on Monday and deployed 12,000 troops to the region”<sup>29</sup>

## **Conclusion**

The best arrangement for Africa at this juncture of its history where corruption, greed, and ethnic fighting is gripping the continent with frightening consequences, is to have an African Criminal Court independent from the rest of the world. With the human resources and other resources that the continent certainly has this Court could be managed and funded by Africans. It is not going to be that easy, but the idea should be circulated and perhaps it could be realized.

Whether the ICC is guilty of a neo-colonial ‘African bias’ has to be determined based on the facts that we have observed so far. The usefulness of the ICC for Africa has to be determined based on the benefits that Africa has gotten from the judicial exercises that we have seen so far. The *Middle East Monitor* Writes “One of the reasons for [the ICC’s failure] is simply because it has allowed itself to be used by the arrogant, imperialist West as a tool to punish those — usually in the Global South — who refuse to toe the Western line. There is clearly a racist agenda at play.

Why are those countries which talk a lot about taking other countries or their leaders to the ICC not members of this sadly discredited body? Why is it that the ICC is only called upon to clean up when and where the big boys in the Western club have messed up? 31

*African Argument* writes: “.... the ICC has prosecuted only Africans. This decision has been a function of international power relations which make Africa the only region weak enough so that Western intervention and experimentation can take place there without accountability, and unimportant enough so that the West will allow the ICC to act as its sub-contractor there in place of more direct forms of intervention. 32

It can be easily understood that many who could be affected by the Statute, have resisted the ICC in more than one ways, most importantly sovereignty which includes the sovereignty of state (including the head of state) and immunity of sovereign diplomats. African states have used these strategic means of sovereignty by invoking these norms as justifications to fighting against impunity, but they have also argued against the resistance of the big powers who have been directly and indirectly involved in the conflicts that have resulted in the violations of the laws established by the ICC. "Specifically, they invoked anti-imperialism and Afrocentrism (or 'African solidarity' or 'Pan-Africanism'), the idea of 'African solutions for African problems' and the 'African Renaissance' agenda, as well as a norm which privileges peace over justice." 33

Due to the conflict and the contradiction of the diverse perspectives and laws of nations in the international society, the ICC has limited ability to exercise enforceable jurisdiction. This may mean that many of the most heinous crimes will possibly elude the ICC's jurisdiction. With fundamental reform the ICC has the potential to change interstate power relations. The "weaker" states in the international scene have for the first time a direct connection to the ICC as a member for legal settlements or charges against more powerful states.

Many are convinced the ICC is a court that avoids the rich and the powerful and prides itself on international justice by catching the small fishes of Africa and ignoring the big that have engaged in all or some of the crimes outlined in the Statute. Ethiopia has not benefited from any of this, neither the big or the small as impunity reigns, reverberating across the region and acting as a harbinger for a regional or continental destabilization.

Common sense informs us that it is not in the best interest of any country in the region, Europe, or America to have unrest and war in eastern Africa. It might serve drug and arms traffickers and manufacturers of arms or violent extremists. It is difficult to understand what the US and Europe will benefit from a destabilized strategic and most complex and militarized zone in the world known as the Horn of Africa. The causes of the war in Ukraine are clear. The civil war raging in Ethiopia and heinous crimes committed can simply be defined as collective madness. The *raison d'être* for the UN, ICJ and the ICC was to prevent wars started by madmen and their followers. But the global forums created after the 2<sup>nd</sup> World War have failed Ethiopia once again, as it did when Italy invaded Ethiopia during the world war.

Those who know Ethiopia and Ethiopian history understand well that this country cannot be divided in a viable way. The choice is to either negotiate for peaceful transition (through transitional justice) or bring perpetrators of crimes to international court or accept a permanent war in the region which has the capacity to go beyond Africa to the Red Sea or the Gulf of Aden. It is too much a price to pay. Let Big Powers gain wisdom. Bring the case of Ethiopia to the ICC and let domestic transitional justice determine the future of Ethiopia. **Transitional Justice in Ethiopia.** 34

Another common concern relating to the ICC is that the few states that dominate the funding of the ICC may also seek to influence its activities. Recent data show that

about 60 percent of ICC funding comes from the European Union. ICC staff is paid in euros. Like other international organizations, it is claimed that there is a close relationship between funding and influence over the activities undertaken by the Court. For example, Ugandan Professor Mahamood Mamdani has observed that “ICC is dancing to the tune of Western States. Given Africa’s traumatic experience with the very same colonial powers that now, in effect, direct the ICC, it is an unfortunate case of déjà vu.” 35

A related concern is that the West also holds influence in that most of the substantive appointments—the key positions that are responsible for investigations and the preparation of cases—are overwhelmingly staffed by members of the European Union. For the ICC, there is a tight relationship between funding and staffing. This close relationship has raised justified concerns that the court is a tool of the EU, which, unfortunately, reinforces the “new colonialism” or neo-colonial bias towards Africa.

The choice is either reform the ICC and ensure that every state is a member or go towards establishing the African Criminal Court with lessons learnt from the ICC.

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