

ICC

The warrant issued last week by the judges of the International Criminal Court (ICC) for the arrest of the Sudanese president Omar al Bashir on suspicion of war crimes and crimes against humanity in Darfur is a glimpse of what a truly global system of international justice might look like – and how difficult it will be to get there. Al Bashir is the first sitting head of state ever to be targeted in this way by the ICC, and the charges against him (while falling short of genocide) do not mince their words: al Bashir is said to have been an indirect co-perpetrator in ‘intentionally directing attacks against an important part of the civilian population of Darfur, Sudan, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property.’ The court is now preparing a request for co-operation in bringing al Bashir before it and this will in due course be sent not only to Sudan and all the state parties to the ICC system but also to other states as necessary – which means that even those outside the system entirely are being urged to assist in apprehending the president.

There is, however, no immediate likelihood of al Bashir being surrendered to the court. The Sudanese authorities have responded by dismissing the charges as a ‘neo-colonialist’ move to destabilise the government and have gone on to expel ten foreign aid agencies, presumably because they suspect them of involvement in evidence-gathering against their president. It is not only the Sudanese who are concerned. Egypt has described itself as ‘greatly disturbed’ by the development and China has called on the ICC to pull back. Though committed to ‘the fight against impunity’ the African Union Commission’s chair Jean Ping responding to the warrant by telling the AFP news agency that ‘the need for justice should not override the need for peace.’ The reference here is to the belief that the warrant will cut across delicate and ongoing efforts to secure a durable peace in the region. It was for this reason that the African Union meeting shortly before it was issued backed al Bashir at its meeting in Addis Ababa.

The issue of double standards is never far from the surface in any discussion of the court’s role. This is how Jean Ping put it in February: ‘There is a problem with [the] ICC targeting only Africans. But if [the] ICC targets only the Africans, does it mean that you have nothing in Gaza? Does it mean you have nothing [in the] Caucasus? Does it mean you have nothing in the militants in Colombia? There is nothing in Iraq? We are raising this type of question because we don’t want the double standard.’ At the superficial level of personnel the assertion of neo-colonialism is hard to stand up: the warrant that has set all this activity in train was issued by three judges from Ghana (Akua Kuenyehia), Latvia (Anita Ušacka) and Brazil (Sylvia Steiner) sitting on an application from the court’s prosecutor Luis Moreno Ocampo (who is himself Argentinian). As for targeting, the responsibility rests squarely not with Moreno Ocampo and the ICC judges but rather the UN security council which in resolution 1593 quite deliberately referred only ‘the situation in Darfur’ to the ICC prosecutor notwithstanding its acknowledgement (set out in the preamble) that it was ‘the situation in Sudan’ as a whole that ‘continue[d] to constitute a threat to international peace and security.’ The ICC cannot re-imagine its mandate to encompass a wider set of wrongdoings than those it has been commissioned to investigate. Nor can it roam the world taxing this or that government with war crimes without regard to whether the state concerned has accepted the jurisdiction of the court or (where it has) without taking into account any action that state might itself be taking to act against wrongdoers

within its borders. It is a court not some current affairs television programme or a crusading journalist.

The problem with the al Bashir warrant lies in the way the Security Council has isolated one aspect of an ongoing politico-military struggle between various factions and groups (including the government) and declared that this segment of the conflict – and this one alone – is to be scrutinised for evidence of grievous wrongdoing. An early UN report, published in January 2005, had been more nuanced, asserting the potential responsibility of various parties to the conflict for the undoubtedly high levels of violence that it surveyed. But the Darfur campaign in the US has always been a very strong and well-organised one, determined to establish that what is happening there amounts to an ongoing genocide. They have failed in that but they have succeeded in putting the ICC into the front-line of their campaign against al Bashir.

The spectre of past genocide, and in particular Rwanda, hangs over these proceedings. The inactivity of the international community in the face of events there in 1994 is now thought to have been inexcusable. But after the debacle of Iraq, muscular intervention – sending in the troops – is now also considered unthinkable, even in situations of appalling disorder. The ICC is a kind of half-way house: action but inaction; anger channelled, and guilt thereby assuaged, but without any immediate (or even medium term) military commitment. So will the ICC become simply the latest fig-leaf for inactivity in the face of evil? Its supporters and its energetic prosecutor have a different vision, one which sees the tentacles of international justice gradually reaching more and more countries, with double-standards gradually fading away as impunity on the global stage becomes as unthinkable as it presently is in states that are today governed by the rule of law. Such visionaries are prepared to suffer some short term disruption en route to their strategic goal. Sudan may react badly; local peace may be delayed – but allowing this to matter would be like permitting a gangster to continue to rule his patch of a city merely because bringing him to justice would be likely to provoke him to even higher levels of violence. This is a reason for it being right to arrest him, not a reason to decline to do so. Believers in global justice, in the enforcement of human rights standards via international criminal proceedings, are more hard-nosed than they seem, more willing than is commonly assumed to contemplate upsurges of violence en route to the realisation of their vision. With the security council and now the momentum of the law behind them, they might even be less easy to dislodge than President al Bashir himself.

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