



**American NGO Coalition  
for the International Criminal Court  
Convener's Report 2017 – June 2018**

This report arrives at the beginning of the summer of 2018. There lies ahead the July celebration of the Court's twentieth birthday, the very likely beginning of a formal investigation in Afghanistan, and a quite possible later one in the Palestine/Israel situation. Meanwhile, the text below covers highlights and general developments during this time. An appendix contains lists, as complete as we can make them, of specific noteworthy AMICC activities in this period.

This was the first 18 months of the Trump administration. During this time, it began to slowly take note that the ICC prosecutor's preliminary examination of the situation in Afghanistan was moving toward a request to the Pre-Trial Chamber for authorization of a formal investigation. This request occurred in November 2017 and the Pre-Trial Chamber has it under advisement. Statements by administration representatives now frequently combine praise for the Court's work in particular situations such as Sudan with declarations that the Court can have no jurisdiction over activities by Americans in or connected with Afghanistan. If, as appears likely, the Chamber authorizes a formal investigation in Afghanistan and into the treatment of Afghans and other persons in CIA detention sites in Poland, Lithuania, and Romania, the U.S. government will become much more hostile and heated about the Court.

During this time the Trump government displayed the attitudes and positions that will support this reaction. They were, and continue to be, disdain for multilateral practices and institutions, a purely pragmatic and otherwise indifferent attitude toward international law, and an intense nationalism justifying whatever the United States decides to do internationally. Our current strategy must therefore take into account our specific expectations for the near future as well as our experience of the past eighteen months.

In the United States outside of Washington, attention to the ICC has grown and support for it appears substantial. We have previously reported that in the 2016 poll sponsored by the Chicago Council on Global Affairs, 72% of respondents agreed that the United States should participate in the ICC's Rome Statute. Our experience since is that this level of support continues, but unfortunately also remains mostly passive. AMICC and all American proponents of the Court have the task of turning this attitude into the kind of aroused public opinion that can influence politics and policy.

There are recent developments that will assist with this task. Major newspapers and other media have modestly but clearly increased their coverage of the Court. Local media increasingly pick up the more

numerous Associated Press stories on the ICC. There are now blogs dedicated to the Court and others that frequently write about it. Many of these continue to be by academics. However, more others are personal opinion, or by lawyers, journalists, and experts in think tanks.

Much of this has come from the Court's success or failure in dealing with specific situations that have attracted American attention, for example: inability to act on Syria, convictions for rape, murder, destruction of cultural and historic sites, and for crimes against women and children. In an important development, increased stories about the ICC by the Associated Press are being more frequently used by local newspapers, radio, and TV in such locations as Chattanooga, San Jose, and Portland, Maine.

In the period under review there have been two trade novels about the ICC, *Testimony* and *The Trial of Prisoner 043*, and an action movie, *The Hitman's Bodyguard*. The latter two were grossly inaccurate about the Court, but at least they reflected beliefs by the author and scriptwriter that a general audience would have some idea of what the ICC is and accept a favorable presentation of it. *Testimony* by Scott Turow, based on considerable research at the Court, was quite accurate including in detail. Turow declares in an Author's Note that "... the ICC is indispensable in making the world more just." This novel is currently one of three nominees for the Harper Lee Award for Legal Fiction sponsored by the University of Alabama and the American Society of International Law Journal.

Most of this increased attention to the Court comes from interest in particular situations before it. Reporting or discussion about atrocities, such as in the Congo, Uganda and Myanmar, now quite often recognize and praise the ICC's investigations or prosecutions about them. They also often cite the Court as the authority on various legal aspects of the crimes in its jurisprudence. Except in academia, there is still very limited coverage of the Court as an institution.

None of these positive factors will change the minds of those who are ideologically or emotionally hostile to the Court. What they do suggest is that there is more awareness of the Court in the United States and that a part of the American public, whatever their feelings about the Court, accepts it as permanent. Moreover, there is a substantial number of these who see value in what it does.

We decided accordingly that our strategy must be to take advantage of this greater public openness to the Court. We would have to be prepared to cope with, or take advantage of, the various effects on the ICC if the Prosecutor pursues formal investigations in Palestine/Israel, in Afghanistan and the black sites in Eastern Europe, and is authorized to address the Rohingya tragedy.

This does not mean turning away from Washington. We need to be able to respond at once and at the source to the likely violent and lying responses of the administration to ICC actions on Afghanistan and Israel. These responses must not be the only immediate ones the public hears.

Moreover, we must continue and, if possible, expand our work with Congress. Some of its legislation and members' opinions also give attention to what the Court does rather than what it is. Our advocacy (carefully, not lobbying) there must build back from the ICC's cases to what this means about its nature and value. As this is written, members of our Washington Working Group are organizing a Congressional briefing on the occasion of the Court's twentieth birthday.

Among the AMICC activities listed in the appendix, among the most important are the work of the AMICC delegation at the 2017 Assembly of States Parties (ASP) meeting, the founding of the ICC Scholars Forum, the advocacy in the capital of the Washington Working Group on the ICC (WICC) through its bi-

monthly meetings, and an extensive comparative analysis of the war crimes provisions of the Department of Defense Law of War Manual. These events also demonstrate the range of AMICC's work.

We sent an extensive report on the ASP session shortly after it ended. Several aspects were important to our advocacy. The debates, materials, and interactions with our colleague NGOs provided important understanding of the current status of the Court and important information on issues likely to be raised by critics of the ICC in the United States. Several productive conversations with the American delegation as well as its statements helped inform us and others about the current US position on the Court – or lack of it. In particular, it was evident that the Administration was slowly beginning to wake up to the possibility that the ICC might assert jurisdiction over senior military and civilian officials in Afghanistan. In a practice that is now routine, the delegation briefly rejected that jurisdiction in a few sentences at the end of statements discussing, sometimes favorably, the Court's role in particular situations.

The AMICC delegates were students from several institutions as well as academics who served as sources of expertise. This experience turned most of the students into informed proponents of the Court with a lasting commitment to it.

AMICC proposed what became the ICC Scholars Forum to Professor Leila Sadat at the Washington School of Law in St. Louis. She developed the concept and hosted an organizational meeting at her Whitney Harris Institute in which AMICC participated. The Forum brings together mostly American academic specialists about the ICC on the Internet and in periodic meetings. It allows AMICC to reach scholars with information and ways to address the public outside their institutions and beyond their scholarly activities but drawing on the standing given them by their scholarship and expertise.

Through the WICC, NGO offices in Washington coordinate their contacts and advocacy in Washington. Congressional briefings allow them to meet staffers and consultants and use a slowly- but continually-growing demand from them for information and explanations about the Court and developments there. This does not necessarily indicate their approval of the ICC, but rather a recognition that the Court is playing a long-term role in situations where, for various reasons, senators and representatives have an interest. Some of the WICC's members have been able to maintain contacts within the Administration. Both these and the spade work in Congress will be useful in coping with the violent reactions to be expected in both places if the ICC proceeds with cases in Afghanistan and especially in Palestine/Israel.

The law firm DebevoisePlympton accepted an AMICC proposal to draft an extensive textual comparison and legal analysis of the war crimes provisions of the Rome Statute and the recently revised Department of Defense Law of War Manual. The firm and AMICC created together the final concept of this project. Debevoise devoted two teams to this *pro bono* project which produced a comprehensive and very professional document. It found that the statute and the manual were generally closely similar with a few significant differences.

The pattern of activities reported here will continue and, we hope, expand. A follow-up report on the prospects for the rest of 2018, and the beginning of 2019, will follow at the beginning of autumn.



## **Addendum**

### **AMICC Convener's Report, 2017-2018**

#### AMICC Activities

#### ***Panels and Presentations***

Columbia School of International and Public Affairs – Ongwen trial  
 New York Center for Global Affairs – ICC briefing  
 Mitchell Hamline Law School Students – Current developments at the ICC  
 Georgetown University Law School Class – Scholarship and the ICC  
 Seton Hall University Student Club – Briefing on the ICC  
 Arizona State Bar – U.S. lawyers and the ICC  
 Gratz College (Philadelphia) – Dialogue with ICC prosecutor Bensouda before a public and student event  
 New York University Gathering of Student Clubs – The ICC and the United States  
 Association of the Bar of the City of New York – current developments at the ICC  
 Columbia University School of International and Public Affairs – The ICC on its 20<sup>th</sup> birthday  
 Presentation to a Side Event at the 2017 Annual Meeting of the American Society of International Law

#### ***Subjects of Blogs and Messages***

Crime of Aggression  
 Situation in Palestine and Israel  
 Threat of withdrawal of African countries  
 Iraq and the ICC  
 The Trump Administration and the ICC  
 Novels: “The Hitman’s Bodyguard,” “Testimony.”

#### ***Events and Meetings***

Co-chairing Eight Sessions of the Washington Working Group on the ICC, Washington, D.C.  
 Forming and Leading AMICC Delegations to two Meetings of the ICC Assembly of States Parties  
*Events and Meetings continued*  
 Co-sponsor, Founding of the ICC Scholars Forum  
 Consultations on Strategy and Recent Events with the (international) Coalition on the ICC  
 Four Consultations with the ICC Prosecutor  
 NGO Observer at UN Security Council Meetings with the ICC President and the Prosecutor

***Papers and Materials***

Comprehensive Comparative Analysis of the Rome Statute and DOD Law of War Manual.

Syria

Kenya

ICC 20<sup>th</sup> Birthday

Reports on the Assembly of States Parties (ASP)

International Days Relevant to the ICC

Manual for AMICC delegates to ASP sessions

List of US Lawyers Enrolled as ICC Counsel

***Other***

Member, Open Society Advisory Group on the ICC

Complete Revision of AMICC Website

Member, Board of Directors, Global Justice Center