

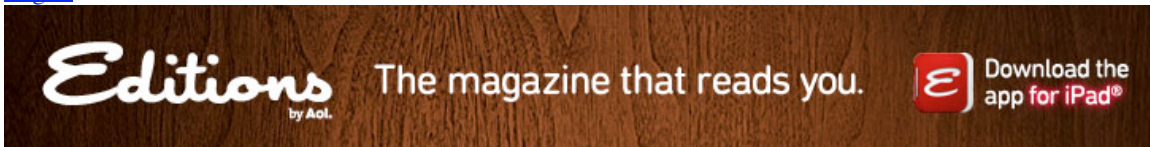
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What Gaddafi's Arrest Could Mean For The International Criminal Court



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When Luis Moreno-Ocampo, the prosecutor for the International Criminal Court in The Hague, announced on Monday morning that Saif al-Islam Gaddafi had been captured by rebel forces in Libya, it seemed as though there'd been a major breakthrough in the decades-long movement to establish an international system of justice.

Saif Gaddafi had been a target of the ICC since June 27, [when the court issued arrest warrants](#) for Saif and his father, Col. Muammar Gaddafi, as well as for his father's intelligence chief, Abdullah Senussi.

At the time, Moreno-Ocampo had said that the elder Gaddafi had had a personal hand in planning and carrying out "a policy of widespread and systematic attacks against civilians and demonstrators" and described Saif as the ruler's "de-facto prime minister."

Now the suspect was in his sites -- or so it seemed. Only hours after Moreno-Ocampo's announcement, journalists at a hotel in Tripoli were "woken during the night by a knock at the door and told to go downstairs," [the Guardian reported](#).

There they found Col. Gaddafi's 39-year-old son sitting in an armored vehicle "with a mobile phone next to him and a smile playing around his lips."

Saif had a few choice words for Moreno-Ocampo and his supposed pursuit of justice: "Screw the ICC."

It's unclear what took place in the short time between Moreno-Ocampo's announcement and Saif's appearance. On Tuesday, a spokesman for the ICC, Fadi el-Abdallah, noted that the rebels had never officially confirmed Saif's detainment and said that their story was "[a little ambiguous](#)" to begin with.

Whatever the explanation, though, Saif's dismissal of the ICC illuminates a larger story -- the court's struggle to be taken seriously as it attempts to solidify a system of justice that transcends national boundaries.

The roots of that struggle go back to the late 19th century, when a Swiss jurist named Gustav Moynier proposed the establishment of a permanent court to penalize perpetrators of crimes in the Franco-Prussian War. Although he earned four Nobel Peace Prize nominations for his work, his proposal was never adopted, and over the next 100 years similar efforts were met with similar fates. (The Nuremberg and Tokyo trials following World War II were exceptions.)

It took the atrocities in Rwanda and Bosnia in the early 1900s to give the movement the momentum it needed. That momentum culminated in a conference in Rome in 1998, where 160 nations met to discuss the establishment of a permanent, international criminal court -- the ICC. After weeks of heated negotiations the treaty was put to a vote, and in 2002, the ICC was born.

Since then, the ICC's road to legitimacy has been far from smooth, and one of its biggest stumbling blocks has been the United States. Although former President Bill Clinton [signed the ICC treaty](#) at the end of his term, the Bush administration nullified his signature shortly after taking office. In a 2002 press statement, Donald Rumsfeld, then the secretary of defense, warned that "by putting U.S. men and women in uniform at risk of politicized prosecutions, the ICC could well create [a powerful disincentive for U.S. military engagement](#) in the world."

In 2008, Moreno-Ocampo ran into another challenge when he asked the court to indict Omar al-Bashir, the president of Sudan. The African Union refused to support the warrant and said that the states in its membership didn't have to arrest him. The AU adopted a similar stance this year when the ICC issued the warrants for the arrest of Gaddafi and other Libyan suspects. Jean Ping, the chairman of the AU, called the court "discriminatory," noting that it had only gone after crimes committed in Africa and arguing that it had [turned a blind eye](#) to the activities of Western powers in places like Iraq, Afghanistan and Pakistan. The AU recommended that its member states not cooperate with the execution of the warrants.

One expert who has spent a lot of time thinking about these issues is Kamari Maxine Clarke, a professor of anthropology at Yale and the author of "Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa."

Clarke said that several African leaders, including Olusegun Obasanjo, the former president of Nigeria, had directly told her that they were "initially enthusiastic" about the ICC but that their enthusiasm had since dried up. She attributed their pessimism, in part, to a sense that Western powers are using the institution to deprive African countries of their autonomy.

"The countries that are now part of the global south have historical relations to Western nations, relations that are fraught with questions of colonial power and imperialism and formal agreements that may or may not have served the countries' long-term needs," she said.

Others argue that African countries have brought the glare of the ICC upon themselves. Richard Dicker, the director of the international justice program at Human Rights Watch, pointed out that no fewer than 31 African states are party to the ICC treaty (Libya is not among them). Of the seven cases currently being investigated by the ICC, he said, four were referred to the court by the governments of the states where the alleged crimes took place.

The real problem, he suggested, was that more governments outside of Africa haven't followed Africa's example. "It may be obvious," he said, "but neither the United States, Russia, or the People's Republic of China is a party to the ICC treaty. The fact that leaders from smaller, weaker governments are more likely to find themselves facing an arrest warrant than the leaders of the most powerful governments is a reflection of the disparity in power and wealth that's so profound in the world."

Dicker pointed to several specific situations where, according to him, these powerful governments may have played a role in preventing the court from pursuing cases in countries they protect. "I'm thinking of the Chinese protecting the military junta in Burma, I'm thinking of the United States protecting those in Israel who may be responsible for war crimes in Gaza, and the Russians for example having protected Bashir Al-Assad up until now," he said.

Given the abstention of the U.S., Russia and China from the ICC treaty, some may suggest that it was hypocritical for them to use their positions on the Security Council to urge the ICC to investigate the Libya crisis. "It does speak to a double standard," Dicker said. "At the same time, simply because it's not possible to bring justice to victims everywhere, that's no excuse for denying justice to victims of egregious crimes where it is possible."

Clarke suggested looking at this problem from a different angle. Rather than limit one's analysis to scrutinizing why the U.S. and other world powers have refused to submit to the authority of the ICC, she

said it was worth thinking about why those 31 African countries did not.

"The answer has to do with this new system of economic linkage," she said. "To sign and be party to international treaties in general is to demonstrate to the world that you have submitted to the rule of law and democracy and certain forms of justice, and to demonstrate this means your ratings go up in the world of economic loans."

"The U.S. in many ways stands outside of that," she added, "but for a country in Africa, among the poorest in the world, it's critical to demonstrate this alliance."

If the rebel forces in Libya succeed in capturing Gaddafi, Saif, or Senussi, they will have an opportunity to do just that. As of now, though, the National Transitional Council appears to be divided on the question of what to do with the suspects. "One side is calling for their eventual transfer and one side is calling for a national prosecution," said Stephen Lamony, an officer for the Coalition for the ICC, a nonprofit organization that works to promote the court's activities.

Under the ICC treaty, he explained, "states are given the jurisdiction to prosecute subjects on their territory if they can. If they cannot, that's when they are sent to the ICC, so the question is whether the new administration in Libya will have the capability to prosecute them." That decision will ultimately fall to the ICC, he said.

Dicker, the Human Rights Watch director, said he felt it was imperative that the NTC and its forces "make every effort to apprehend Muammar Gaddafi, treat him humanely in custody and make arrangements as quickly as possible to surrender him to the custody of the International Criminal Court."

He added that doing so will be "crucial in setting the tone for a post-Gaddafi Libya," in which "the rule of law for the most powerful, rather than vengeance, takes precedence."

[PHOTO GALLERIES](#)



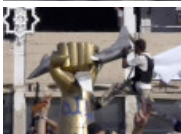
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