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→ Purposefully annotate the article (1-2 mature, thoughtful responses per page to what the author is saying)

→ Write a 250+ word response to the article.

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Is International Justice Doomed?

by *The Week* Staff on November 27, 2016

Russia just announced it's joining South Africa in withdrawing from the ICC. Is international justice doomed? Here's everything you need to know:

What is the ICC?

It's the one place in the world where **genocide** can be **prosecuted**. Headquartered in The Hague, Netherlands, the International Criminal Court weighs evidence of the worst crimes on the planet: crimes against humanity, including genocide and systematic torture. The ICC is a court of last resort to bring the world's monsters to justice, and it hears a case only if the state where the **atrocities** occurred is unable or unwilling to convene a fair trial — either because a conflict has **decimated** the justice system or because the accused is in power. There is no jury; instead, a panel of judges decides each case. Over 14 years, just four people have been convicted: three Congolese warlords and one Malian extremist.

How did it come to be?

The court began operating in 2002, but its roots go back to the end of World War II. After the Nazi concentration camps were liberated and the Allies held war-crimes trials in Nuremberg and Japan, international leaders began discussing ways to ensure that such hideous crimes could not happen again. In 1948, the newly formed United Nations adopted the Genocide Convention and the year after that the Geneva Conventions, which lay out wartime rules for the treatment of wounded soldiers, prisoners of war, and civilians. But there was no court that could prosecute offenders, and many atrocities went unpunished. Then, in the 1990s, two horrifying events rekindled calls for an international court: the Yugoslav civil wars, which brought concentration camps back to Europe, and the Rwandan genocide, in which 800,000 people were slaughtered in just 100 days. An appalled U.N. set up special **tribunals** to try war crimes for both those conflicts, and the Rome Statute, the treaty that created the court, was signed in 1998. From the beginning, though, the court suffered a crisis of **legitimacy**.

What hampered it?

At its **inception**, the court was seen as a **godsend** for Africa. "Our own continent has suffered enough horrors emanating from the inhumanity of human beings towards human beings," said Nelson Mandela when he signed the treaty. "Many of these might not have occurred, or at least been minimized, had there been an effectively functioning International Criminal Court." But the largest world powers, including the U.S., did not join. The Clinton administration signed the treaty, but by the time it came into force in 2002 with 60 **ratifications**, the Bush administration decided to unsign it, saying it could put U.S. soldiers at risk of prosecution. Russia signed but did not ratify, and China and India didn't sign at all. Most of Africa, South America, and Europe did join, but after a few years many African countries said the court was biased against Africans.

Is that charge true?

Of the 39 people who have been **indicted**, all are Africans, including Sudanese President Omar al-Bashir, former Ivorian President Laurent Gbagbo, and Kenyan President Uhuru Kenyatta (see below). But that alone isn't evidence of bias: Most of the cases were referred to the court by

African governments themselves. The current prosecutor, Fatou Bensouda of Gambia, points out that the victims of the crimes for which indictees are being prosecuted have also been Africans — people with no hope of getting justice in their own countries. Bensouda was appointed in 2012 expressly to combat the ICC's image as anti-African, and she has opened preliminary investigations into possible war crimes in Georgia, Afghanistan, Colombia, Iraq, Palestine, and Ukraine. But Africans are not **appeased**. Sheriff Bojang, Gambia's information minister, calls the ICC a "court for the persecution and humiliation of people of color."

Who has quit the ICC?

South Africa was first, last month. Its government ignored the ICC indictment and failed to arrest Sudan's Bashir when he visited South Africa for a regional conference this year. South Africa says it can't fulfill its role as the continent's peace broker if it's expected to arrest the warring leaders. Gambia and Burundi followed, and Kenya and other African states may, too. Earlier this month, Russia withdrew from the court altogether after the ICC issued a report calling the annexation of Crimea an occupation. Russia's exit is symbolic, since Russia never ratified the treaty, but Cambridge University law professor Sarah Nouwen says every withdrawal hurts. "The smaller the court's jurisdiction, the more selective it will be seen as operating."

Will the court survive?

In diminished form, perhaps, but the court is headed for even greater opposition in the coming months. The ICC is about to open an official investigation into possible war crimes committed in Afghanistan from 2002 to 2005 — some by the Taliban but others by U.S. forces. Charges against Americans are unlikely, as the prosecutor would have to show that the U.S. failed to address allegations of torture through its own justice system. But the mere existence of an investigation is likely to harden U.S. opposition to the court. President-elect Donald Trump has already said he wants to bring back waterboarding "and go tougher" in terrorism interrogations, so cooperation between a Trump administration and the ICC is all but ruled out.

Kenyatta's ill-fated indictment

The indictment of Kenyan President Uhuru Kenyatta was a turning point for African objections to the court. It was the first time the ICC decided to prosecute a case on its own **volition**, without being referred by a member state or the U.N., and many Africans saw it as unwarranted meddling. Prosecutors indicted Kenyatta, his rival, William Ruto, and several others for inciting revenge killings after the disputed 2007 election. But evidence was hard to come by — partly because of Kenyan government obstruction and witness intimidation. Kenyatta and Ruto then joined political forces to become president and vice president, campaigning and winning the 2013 election while under indictment for crimes against humanity. After that rebuke of the court by Kenyan voters, the ICC dropped the charges. One ICC official told Reuters that Africa's rejection of the court's authority "was bound to happen when dictators decide to run for cover."

Possible response options:

- In your opinion, is the ICC necessary? Explain.
- Why might it be problematic that the ICC continues to weaken?
- What could the ICC do to potentially improve its standing in the world?
- Choose one passage and respond to it.