Defunding the International Criminal Court

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Late last month the grand-sounding Assembly of States Parties, a 123-nation body that governs the [International Criminal Court](http://www.washingtontimes.com/topics/international-criminal-court/) ([ICC](http://www.washingtontimes.com/topics/international-criminal-court/)), held its annual meeting and granted the court a 7 percent budget increase to more than $140 million per year. Representing the [court](http://www.washingtontimes.com/topics/international-criminal-court/)’s third consecutive budget hike, the money will be lavished on some 700 permanent staff and a new, purpose-built luxury headquarters in The Hague. How this budget increase was justified is not clear, for if the decision had been based on success, the Assembly of States Parties would have been forced to demand a refund.

Over the last decade the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) has demonstrated it is little more than a profligate, and impotent, white elephant. The [court](http://www.washingtontimes.com/topics/international-criminal-court/) has spent $2 billion since its foundation, yet only two out of a total of 12 completed cases have resulted in convictions. America contributes taxpayer dollars to this failure, funding bounties and rewards for the arrest of those wanted by the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/), despite not being a member.

Though claiming to represent the best of international justice, all of its current cases are from Africa. To date, no case has begun against defendants from any other region. Indeed, no institution has arrested and transferred to Europe as many black Africans as the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) since the ending of the slave trade.

This fact alone should seriously put in doubt the organization’s justification to be an “[International Criminal Court](http://www.washingtontimes.com/topics/international-criminal-court/).” When its 123 members represent less than one third of the earth’s population, and the United States, China, India, Russia, Indonesia and Israel have all refused to join, the [court](http://www.washingtontimes.com/topics/international-criminal-court/) simply cannot claim it is a worldwide body.

Yet this does not mean citizens of America or other non-signatories are immune from its reach. Indeed, because accusations of racial prejudice against Africans have been hard to ignore, the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) is working hard to increase its powers and internationalize its future cases, far beyond Africa. In doing so, slowly, Americans are being implicated in its inquiries.

The [court](http://www.washingtontimes.com/topics/international-criminal-court/) is currently investigating alleged war crimes in Afghanistan — a country that is a member — and in October claimed it had evidence of U.S. forces torturing prisoners. Israel is similarly threatened by an ongoing investigation into the 2014 Gaza conflict, made possible by the Palestinian Authority’s membership. There, the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/)’s chief prosecutor stated publicly Israelis are in her sights, saying “anyone — on either side — who commits, orders, incites, encourages or contributes in any other way to the commission of crimes falling within the jurisdiction of the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) is liable to prosecution either at the national level or at the [court](http://www.washingtontimes.com/topics/international-criminal-court/).”

This prosecutor, Fatou Bensouda, was previously minister of justice in Gambia, a tiny African country led since 1994 by a military dictator who claims he can cure AIDS with herbs. That she should have any powers at all to indict Americans and Israelis when they do not support the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) should be reason enough for the United States to call for the [court](http://www.washingtontimes.com/topics/international-criminal-court/)’s closure.

However, it is a new power provided to the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) by the Assembly of States Parties that should be America’s most grave concern. Titled Rule 68, it allows the prosecutor to use at trial any testimony provided by witnesses, even if they have later withdrawn, contradicted or recanted their original claims.

How dangerous this is can be seen through an ongoing case against the current deputy president of Kenya, William Ruto, accused of involvement in postelection violence in that country in 2007-08. In this case, all six key witnesses — on whose claims the trial was initiated — either refused to testify, contradicted themselves in court, or stated their original evidence was untrue. Astonishingly, their original testimony was not even gathered by the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) itself but by local nongovernmental organizations in Kenya, well known to be political adversaries of Mr. Ruto and in receipt of funding from European countries opposed to his election as deputy president.

In any normal court such a devastating collapse of the prosecution’s case and “evidence” would lead to the ending of the trial. It may yet do so, as last month the Assembly of States Parties decreed that Rule 68 could not be used in trials currently underway at the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/). But at the same time as it made its decision regarding the Ruto case, the assembly reconfirmed Rule 68 could be used in all future cases.

This means that in potential cases brought against alleged crimes in Afghanistan and Gaza, Americans and Israelis could find themselves confronted by witness testimony that has been sourced not by the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) itself, but foreign-funded nongovernmental organizations that oppose them. This “evidence” could then still be used — even if those who gave it later said it was untrue.

Before there is a chance for this to happen, all the primary funders of the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/) such as Britain and France, and secondary contributors such as America, must consider if this increasingly unaccountable court should have a future. It is blindly launching new investigations, extending its reach while its existing cases teeter on the brink of failure.

The United States in particular should not ignore the threat this institution now poses to its global interests, not least if this new, extraordinary power over witness testimony is ever put into use. Rather than continuing its tacit support for the [ICC](http://www.washingtontimes.com/topics/international-criminal-court/), the U.S. should instead work with its allies to ensure the [court](http://www.washingtontimes.com/topics/international-criminal-court/) is disbanded and defunded, and this travesty of international justice is brought to an end.