

Egypt to Join the ICC but also Guarantee Bashir Immunity
by Mark Kersten, Justice in Conflict
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Many, many months ago, I wrote that Egypt had declared it was set to join the International Criminal Court (ICC). That was back in early April 2011, when the country was in the midst of the 'Arab Spring'. Nearly two years later, Egypt's Minister of Justice, Ahmed Mekki has announced that the country will soon join the Court. But that wasn't all. Mekki also announced that Egypt will sign an Article 98 Bilateral Immunity Agreement with Sudan in order to prevent Sudanese President Omar al-Bashir from being arrested and surrendered to the ICC. Bashir, as readers will know, has been charged by the ICC with crimes against humanity, war crimes and genocide for his role in the Darfur conflict.

Back in April 2011, Egypt's Foreign Minister declared that the country was on the road to joining the ICC:

“Egypt is currently taking the required steps to join all United Nations agreements on human rights and to join the International Criminal Court...I think the events that have taken place in Egypt in recent days and the arrest of senior officials is evidence that the state wishes to follow the rule of law... domestically and internationally.”

Despite these comments, until today there has been virtual silence regarding Egypt's plans to join the ICC. One of the reasons for this was likely the relationship between Egypt and neighbouring Sudan, particularly in regards to the fate and role of Bashir. Egypt has previously invited and hosted Bashir on its territory, drawing the ire of human rights groups. Still, nothing in the country's behaviour has suggested that it planned to support the Sudanese leader's surrender to the ICC. Before joining the Court, Egypt thus needed to square its relations with Bashir with its intention to signing up to the ICC. In my original post on the subject, I wrote that Egypt would have to clarify how it expected to have its cake and eat it too by both joining the Court and maintaining good relations with Sudan. Here is how Mekki has explained Egypt's approach:

“We recognize the difficulty of ratification by Egypt of the Rome Statute and joining the International Criminal Court in the presence of relations of Egypt with Arab countries such as Sudan, which has its leader wanted by the ICC for crimes against his people, but we can avoid this embarrassment with Sudan by concluding bilateral agreements with some countries, including the Sudan, with Egypt being the state headquarters of the Arab League.”

By offering Sudan a Bilateral Immunity Agreement (BIAs), Egypt has devised a plan by taking a page out of the George Bush administration's book. Rather controversially, the former US President signed BIAs with some 100 states in order to be assured that they would not detain or surrender any US citizens to The Hague. The administration achieved this in large part by threatening to revoke aid to those states which refused to sign up.

Notably, an Egypt-Sudan BIA would be the first of its kind, the first time a BIA has signed between two states, neither of whom is the United States. If so, this could be a troubling new development for the ICC. Moreover, while there are sharp divisions in Egypt over the fate of Bashir, the BIA appears to be yet another demonstration of the strategic importance regional states hold in maintaining good relations with Bashir.

It remains unclear if the BIA between Egypt and Sudan will include any other individuals indicted by the ICC or only Bashir. Regardless, the news for the ICC is bitter-sweet. Egypt is set to become the thirty-fifth African state become a member-state of the ICC and join the small handful of Arab states who have signed and ratified the Rome Statute. But Egypt has also made one thing clear: they won't be handing over one of the Court's most sought-after indictees any time soon.

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