



Changes in the International Criminal Court

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The commencement of the term of office by ICC prosecutor Karim Khan may open a new chapter in the activities of the tribunal. Thanks to his experience in other courts operating with UN support, Khan has the chance to strengthen the role of the ICC. However, he will have to deal with the difficulties encountered by his predecessors, including with the reluctance of some members of the UN Security Council (UNSC) and the preference of the political interests of individual states over the efficient functioning of the international judiciary.

On 16 June, Khan, a British lawyer, succeeded Fatou Bensouda as ICC prosecutor. The role of the prosecutor, elected by the assembly of 123 states parties to the ICC's Rome Statute for a 9-year term, is to bring charges on his own initiative, at the request of the Security Council, or the ICC states. As part of the preliminary examination, the prosecutor verifies whether the information provided to him justifies the initiation of an investigation. He then refers the case to the tribunal, which gives its consent to start it. Due to the nature and importance of the cases, the prosecutor's decisions are often the subject of political criticism.

The Tenure of Prosecutor Bensouda. Khan's predecessor, Bensouda of Gambia, took office as ICC prosecutor in 2012. Her actions contributed to refuting the accusations previously made against the court that it focused its attention only on crimes committed on the African continent. During her tenure, all ICC investigations that were opened to date were into acts committed outside Africa, including in Georgia, Afghanistan, Bangladesh/Myanmar, and [Palestine](#). Additionally, Bensouda conducted many preliminary examinations outside the African continent, including on crimes committed in Ukraine, the Philippines, or by British forces in Iraq (the latter ended with a decision not to initiate an investigation).

The efforts to hold UK and U.S. decision-makers accountable signalled that the court is not an instrument to impose the will of Western countries on developing

countries. However, the inquiries met with criticism from states not parties to the ICC Statute (in particular, the U.S. and Israel). In connection with an examination of the possibility of crimes committed in Palestine, the Israeli authorities accused the ICC of a lack of jurisdiction, anti-Semitism, and strengthening Hamas. In turn, in response to a preliminary examination into U.S. military operations in Afghanistan, the Trump administration [withdrew Bensouda's visa and froze her assets in the U.S.](#)

The New Prosecutor. The change in prosecutor will be visible in many areas. First, Karim Khan was nominated by the UK, a permanent member of the UNSC. This may translate into increased cooperation with the Council (e.g., more regular direct communication), which not only informs the prosecutor's office about possible crimes but also has the right to postpone or suspend an investigation. Although, unlike Bensouda, Khan was not elected by acclamation, he was supported by African countries, which proves that he is trusted by them.

Also unlike his predecessor, Khan did not previously serve in the ICC prosecutor's office. This allows him to start with a fresh look at the functioning of the office and distance himself from Bensouda, who was accused of revealing details of cases in informal consultations with former ICC prosecutor Luis Moreno-Ocampo, whose deputy she was in 2004-2012.

Moreover, Khan has extensive experience in international and hybrid (domestic with international elements) courts. He acted as a prosecutor or defender before the Tribunals

for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon. This translates into extensive contacts, knowledge of the legal culture of many regions, the perspectives of various parties to the proceedings, and the methods of operation of individual courts. This should make it easier for him to fulfil the promises to conduct dialogue and strengthen cooperation with countries sceptical of the ICC.

Khan announced that he would put victims' rights at the centre of trials, including by paying more attention to local communities affected by the acts judged by the court. This is to be done by encouraging the organisation of hearings if possible outside ICC headquarters in The Hague in countries where the crimes are alleged to have been committed. Additionally, the new prosecutor intends to intensify information activities about the role of the ICC and the decisions it makes. Khan also emphasises the need to cooperate with civil-society organisations. These activities should contribute to improving the image of the ICC among the public.

Old Problems of the ICC. The new prosecutor will have to deal with inherited problems that have made it difficult for his predecessors to perform their tasks. High among them is the lack of ratification of the Rome Statute by the U.S., China, and Russia, which—individually or within the framework of the UNSC—can influence the course of cases or even face criminal charges falling within the jurisdiction of the court. The change of U.S. president to Joe Biden, who advocates multilateralism, offers a chance for a more constructive dialogue with the United States (even if the U.S. does not establish close cooperation with the ICC in the near future, it will not—as was obvious in the presidency of Donald Trump—make it difficult to perform its tasks). With Biden's entry into office, the measures taken against Bensouda were cancelled, bringing an [improvement in U.S.-ICC relations](#). However, in view of the opposition of the new president to the court's proceedings concerning crimes committed in Afghanistan and by allied Israel in Palestine, there is low likelihood of cooperation. There are no prospects for improving relations between the ICC and China or Russia. Due to China's persecution of the Uighurs and the investigation of crimes committed by Russia in Crimea and eastern Ukraine, none of these states will cooperate with the ICC.

The court is also not distinguished by efficiency—within 12 years from the commencement of its first trial and across 30 open proceedings (with one or more accused), it

has sentenced only 10 people, and acquitted four. In this regard, Prosecutor Khan has announced he will improve the functioning of the office at the stage of evidence collection. Better researched and documented cases should translate into more persuasive indictments and faster sentencing. However, these efforts will be limited by the court's relatively insufficient budget.

Another challenge will be the persistent fragmentation of the international criminal justice system. Since 2002, when the ICC started its activities, with the help of the United Nations, it has engaged in the Special Court for Sierra Leone (reconstituted in 2013) and the International Residual Mechanism for Criminal Tribunals (2010), which took over the functions of the Tribunals for the former Yugoslavia and Rwanda. The creation of these hybrid national-international structures demonstrates the limited confidence of states in a fully international ICC. From this perspective, Khan's announcements about the greater involvement of local lawyers from the country concerned in the work of the court are particularly important. His experience so far in hybrid courts is also an opportunity to introduce reforms to the ICC based on other institutions with a similar function.

Conclusions and Perspectives. The new prosecutor gives the ICC the opportunity to strengthen its activities, which is supported by Poland as it has been a party to the court since its inception. However, the implementation of Khan's priorities will be limited by the lack of some states' signing the Rome Statute (including the U.S., Russia, China, and Israel) and the court's insufficient financial resources. Additionally, the new prosecutor will have to pursue cases that could not be closed before the end of his predecessor's mandate. Although reforms are necessary, due to limited personnel and budgetary resources, it will be difficult for Khan to allocate adequate resources to implement his vision.

It will be beneficial for the ICC to continue extending the scope of cases it examines to include crimes committed on all continents, as initiated by Bensouda. It also will be important to look for the possibility of extending the tribunal's jurisdiction to states not party to the Rome Statute, for example, by inviting them through diplomatic channels to recognise ICC jurisdiction rather than establishing new hybrid courts. In this regard, information campaigns announced by Khan about the tribunal's activities and the effects of its rulings, as well as cooperation with non-governmental organisations, will be necessary.