On April 5, 2016, the pre-trial chamber in the Kenya situation decided to terminate the case against William Ruto based on the weakness of the evidence against him, though it did not formally acquit him. The vote was 2-1.

On March 21, 2016, the ICC completed its first trial, convicting Jean-Pierre Bemba, a rebel military leader in the Central African Republic, of crimes against humanity and war crimes for acts between 2002 and 2003. He was sentenced to 18 years in prison, and is currently appealing his conviction.

Finally, with respect to the investigation of the Gaza flotilla discussed on p. 535, note 3, on July 16, 2015, the pre-trial chamber rejected the Prosecutor’s decision to terminate the investigation and ordered her to reconsider. The judges rejected the Prosecutor’s claims about the feasibility of trying potential defendants in the Israel Defense Forces as well as her views about the gravity of the incident. The appeals chamber subsequently rejected the Prosecutor’s appeal. The ruling elicited significant commentary, including this criticism.

During 2015-16, the trends concerning African leaders’ opposition to the Court intensified. In June 2015, indicted Sudanese President Omar al-Bashir visited South Africa, an ICC party, for an AU meeting. ICC members are obligated to enforce the Court’s arrest warrants. Responding to a petition by an NGO, a South African court ordered that al-Bashir remain in South Africa; but the government ignored the order and al-Bashir left the country from a South African military airfield within hours. The Supreme Court of Appeal affirmed in a March 2016 ruling that the government had violated its treaty and statutory obligations in not preventing al-Bashir from leaving the country.

In October 2016, Burundi became the first state to withdraw from the ICC. A few days later, the South African government announced that it would submit a bill to Parliament to withdraw from the Court. Gambia announced a similar move the following week. In a statement, South Africa’s Minister of Justice said that the Rome Statute “compel[s] South Africa to arrest persons who may enjoy diplomatic immunity under customary international law but who are wanted by the court” and that “South Africa has had to do so, even under circumstances where we are actively involved in promoting peace, stability and dialogue in those countries.” A political opposition party and various NGOs subsequently sued the government for failure to follow the South African Constitution. In February 2017, the South African High Court ruled that the government’s attempted withdrawal violated the Constitution. The Court held that any treaty approved by Parliament required Parliament’s assent in the event of withdrawal. Although the government did not appeal the decision, it introduced legislation to authorize the withdrawal, which has not passed.

On January 31, 2017, the AU, at its summit meeting, passed a non-binding resolution endorsing a “Withdrawal Strategy” and encouraging AU members to consider the document’s recommendations (which, despite its title, do not focus on withdrawal from the Court). A small number of states, including Nigeria, Senegal, Cape Verde, and Liberia opposed the resolution or the endorsement of the Strategy.