

The ICC's Intervention in Northern Uganda: Beyond the Simplicity of Peace vs. Justice

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Introduction

The creation of the International Criminal Court (ICC) via the entry into force of the Rome Statute on July 1st 2002 sparked enthusiasm. For M. Cherif Bassiouni, “The ICC combines humanistic values and policy considerations essential for the attainment of the goals of justice, redress and prevention as well as the need for the *restoration of world order and world peace*.”¹ Ironically, five years after its creation, the Court has been accused of being an impediment to what it was created to promote: peace. With regards to Northern Uganda, Bassiouni remarks that the ICC indictments against five senior members of the Lord’s Resistance Army (LRA), “was received negatively by some individuals involved in the Ugandan peace process,” who “have argued that it has undercut their efforts to advance peace initiatives.”² The claim that the ICC’s intervention in Northern Uganda obstructs peace seems obvious. It is expressed in its simplicity by Father Carlos Rodriguez: “nobody can convince a rebel leader to come to the negotiating table and at the same time tell him that when the war ends he will be brought to trial.”³

This paper examines the criticism that the ICC obstructs peace in Northern Uganda. It aims to go beyond the simplistic framework of peace vs. justice, which suggests that the pursuit of peace requires abandoning aspirations of justice and that the ICC should immediately withdraw the indictments against the LRA leaders. It also challenges the contrary, but equally simplistic view, according to which a peace settlement must imperatively include strong mechanisms of accountability, therefore suggesting that the ICC should maintain the indictments at all costs. Instead, this paper seeks to provide a differentiated analysis, looking at costs and

¹ M. Cherif Bassiouni, “The Universal Model: The International Criminal Court” in M. Cherif Bassiouni, ed., *Post-Conflict Justice* (Ardsley, NY: Transnational Publishers, 2002), 813-825, at 819. (Emphasis added) One of the most eminent experts of international criminal justice, M. Cherif Bassiouni was the Chairman of the Drafting Committee of the 1998 Diplomatic Conference on the Establishment of an International Criminal Court. He was nominated for the Nobel Peace Prize for his contribution to the creation of the ICC in 1999.

² M. Cherif Bassiouni, “The ICC – Quo Vadis?” *Journal of International Criminal Justice* 4 (2006), 421-427, at 424.

³ Quoted in Frederick Nzwili, “The Forgotten War,” *Catholic World News*, April 2004, Available at <<http://www.cwnews.com/news/viewstory.cfm?recnum=29396>> [Accessed 23 April 2007].

benefits of the ICC's intervention in terms of bringing about peace in Northern Uganda. The analysis takes into account the particularities of the Ugandan context and evaluates the ICC's intervention in the context of broader strategies of conflict resolution. While the pressure generated by the ICC indictments was instrumental to bringing the LRA to the negotiating table in the first place, they now potentially constitute a major stumbling block to the successful conclusion of peace negotiations, especially considering that LRA cadres are primarily motivated by their own survival and safety. As a peace incentive, the ICC should consider removing the threat posed by the indictments in the eventuality that the LRA makes a credible and verifiable commitment to laying down their arms. In order not to undermine the credibility of the ICC, the removal of the indictments should be performed within the legal framework of the Rome Statute, either via United Nations (UN) Security Council deferral (Art. 16) or preferably via the ICC Prosecutor's own decision that withdrawal is "in the interest of justice" (Art. 53.2.c).

Part I – Synopsis of the Conflict in Northern Uganda

Genesis and Root Cause of the Conflict

The conflict in Northern Uganda has to be understood in the context of competition for political and economic resources between different regional and ethnic groups in Uganda. According to Doom and Vlassenroot, the seeds for ethnic fragmentation in Uganda were sown during the colonial era: "British colonial rule effectively created a socio-economic division between north and south that consequently led to an economic marginalization of the north and a further development of the south."⁴ While the South was favoured economically, "northern Ugandans constituted the main pool of recruitment into the army."⁵ It was in particular the

⁴ Ruddy Doom and Koen Vlassenroot, "Kony's Message: A New Koine? The LRA in Northern Uganda," *African Affairs* 98, no. 390 (1999), 5-36, at 7.

⁵ *Ibid.*, 8.

Acholi, 700,000 of whom live in Uganda's Northern districts of Gulu, Kitgum, and Pader, who were engaged as warriors by the British colonial masters. "The asymmetric relationship between economic underdevelopment and dominance in the military sector"⁶ set the Acholi apart from other peoples in Uganda, defined a distinct Acholi identity, and set the ground for tensions with other groups in the future. Like in many African countries, the ethnic antagonism created by the colonial power carried over into the post-independence era, where it was exacerbated by demagogic national leaders. When Uganda gained independence in 1962, Prime Minister Milton Obote relied on the Acholi-dominated army to cement his power and, after an 8-year catastrophic interlude under Idi Amin, to recapture power in 1979. The unpopular Obote was overthrown in 1985 by the Acholi General Tito Okello, who subsequently installed fellow Acholi in supreme political and military positions. When Yoweri Museveni's National Resistance Movement (NRM) usurped power only one year later, "the Acholi were ousted from power in all domains, and many a group in Uganda was in the mood for settling scores."⁷ In subsequent years, as Museveni consolidated his reign and modernized the country, the Acholi were kept on the margins of Ugandan society and largely denied access to political and economic resources.⁸ Thus, the disenfranchisement of the Acholi people constitutes the root cause of the conflict and the breeding ground for violent resistance movements, such as the LRA.

Emergence and Evolution of the LRA

Museveni's coming to power in 1986 and his attacks against the Acholi triggered a violent reaction in the form of two Acholi resistance movements, the first one being a conventional rebel group, the Uganda People's Democratic Army (UPDA), and the second one a curious spiritual

⁶ Ibid.

⁷ Ibid., 10.

⁸ Wairama G. Baker, *Uganda: The Marginalization of Minorities* (London: Minority Rights Group International, 2001).

group, the Holy Spirit Movement (HSM) led by the mysterious Alice Lakwena. Both groups essentially fell apart in the late 1980s and the vacuum generated by their dispersal came to be filled by a new group: the LRA led by the charismatic Joseph Kony. Combining spiritual elements with traditional insurgency to defend the Acholi from Museveni's NRM, the LRA, according to Anthony Vinci, thus became "the de facto representative of the Acholi ethnic community."⁹ However, "Kony's movement had far looser rules and never achieved the popularity of either the HSM or the UPDA."¹⁰

Two developments in the early and mid 1990s profoundly affected the LRA and transformed the movement into what it is known for today. First, the LRA became an actor in the broader regional conflict between Uganda and Sudan. As retaliation to Museveni's support of the Southern Sudanese rebel movement, the Sudan People's Liberation Movement (SPLM), and in order to destabilize the SPLM, the Khartoum-based Sudanese government began financing and arming the LRA as a proxy force, facilitating "the makeover of what had been a motley group of rebels into a coherent, well-supplied military enterprise."¹¹ The conflict became more entrenched and lethal as a result. Second, the LRA completely dissociated itself from the broader Acholi community. According to Vinci, the LRA in the 1990s transformed from a movement with modest *instrumental* motivations, such as to create political change for the benefit of the Acholi people, into a group solely driven by *existential* motivations, "in the sense that the LRA fights in order to continue providing security and a vocation to its members."¹² Consequently, violence directed against Acholi communities in Northern Uganda increased dramatically. During dreadful

⁹ Anthony Vinci, "Existential Motivations in the Lord's Resistance Army's Continuing Conflict," *Studies in Conflict & Terrorism* 30, no. 4 (2007), 337-352, at 348.

¹⁰ *Ibid.*, 339.

¹¹ Frank Van Acker, "Uganda and the Lord's Resistance Army: The New Order No One Ordered," *African Affairs* 103, no. 412 (2004), 335-357, 338.

¹² Vinci, 337. According to Vinci "*instrumental* motivations are those that bring about a goal beyond the continuation of the organization itself. They require the idea of an "end" that is brought about by "means," that is, specific strategies and tactics." (342, emphasis added) *Existential* motivations, to the contrary, are "motivations to perpetuate the organization in order to provide the benefits of society, such as security and a vocation." (344)

raids on Acholi villages, the LRA would kill, rape, and mutilate civilians, loot property, and, most infamously, kidnap children. UNICEF estimated that in two decades of war, some 20,000 children have been abducted by the LRA; girls are kept as sex slaves and wives for LRA combatants, while boys, and some girls, are brutally indoctrinated and transformed into child soldiers. The humanitarian situation in Northern Uganda was made worse by human rights abuses committed by the Ugandan national army, the Uganda Peoples' Defence Forces (UPDF), as well as a policy of forced displacement and the subsequent failure to adequately provide for and protect the 500,000 mostly Acholi people living in and around internally displaced persons (IDP) camps in 2002.¹³

Escalation of the Conflict in the New Millennium

At the turn of the millennium, two developments in regional and global politics strengthened the position of the Ugandan government. First, the U.S.' self-declared war on terror after the attacks of September 11th provided Uganda with an opportunity to garner increased international support and legitimacy for its actions in Northern Uganda. Museveni successfully portrayed the LRA as a terrorist organization "to the point of directly appropriating the same rhetoric [as Bush] and making direct appeals to the United States as a fellow combatant in the war on terror."¹⁴ As a result, the LRA was added to the U.S. list of terrorist organizations,¹⁵ which made it more difficult for the LRA to obtain remittances from diaspora supporters. Second, the Sudanese element of the conflict in Northern Uganda changed profoundly. Towards the end of the 1990s, the relationship between Sudan and Uganda improved considerably, culminating in

¹³ Human Rights Watch, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda* (New York: HRW, September 2005).

¹⁴ Kevin C. Dunn, "Uganda: The Lord's Resistance Army" in Kevin C. Dunn and Morten Bøås, *African Guerrillas: Raging Against the Machine* (Boulder, CO: Lynne Rienner Publishers, 2007), 131-149, at 148.

¹⁵ U.S. Department of State, Office of Counterterrorism, "Foreign Terrorist Organizations," Fact Sheet, 11 October 2005. Available at <<http://www.state.gov/s/ct/rls/fs/37191.htm>> [Accessed 25 April 2007].

an agreement to stop funding each other's respective rebel group in 1999. Consequently, Khartoum largely discontinued its support of the LRA and explicitly allowed the UPDF to pursue and attack the LRA in Southern Sudan. Also, the Sudanese government and the SPLM signed the Comprehensive Peace Agreement (CPA) in early 2005, ending the 20-year civil war in Southern Sudan. The CPA reinforced the end of Khartoum's support for the LRA, as it no longer needed a proxy-militia and it also extended the SPLM's capacity to control its territory and its desire to expel unwanted forces.¹⁶

As a result of these developments, the UPDF stepped up its military campaign and increased the pressure on the LRA. Operations Iron Fist I in 2002 and Iron Fist II in 2004 succeeded in weakening the LRA's military capabilities and forced it to abandon bases in Southern Sudan. However, as with previous UPDF offensives, "The LRA ... has proved remarkably resistant to military defeat."¹⁷ Thus, the overall effect of Operation Iron Fist "has been to uproot the LRA and make them even more mobile, as it has split its forces into smaller pieces."¹⁸ As they left Southern Sudan and dispersed to territories in the Democratic Republic of the Congo (DRC) and Northern Uganda that were previously untouched by the conflict, "the LRA stepped up its attacks on the civilian population, striking targets outside its usual zone of conflict."¹⁹ Consequently, the humanitarian situation significantly deteriorated, as indicated by the tripling of the number of people living in IDP camps in Northern Uganda from 500,000 in 2002 to 1.4 million in 2006.²⁰

¹⁶ Vinci, 340-341.

¹⁷ Van Acker, 336.

¹⁸ *Ibid.*, 340.

¹⁹ Dunn, 131.

²⁰ UN, *Consolidated Appeals Process (CAP): Uganda 2007*, 30 November 2006, 11.

The Involvement of the ICC in Uganda

Uganda ratified the Rome Statute in June 2002, which means that the ICC has jurisdiction for the three crimes specified in the Rome Statute – genocide (Art. 6), crimes against humanity (Art. 7), and war crimes (Art. 8) – committed by Ugandan nationals or on the territory of Uganda after July 1st 2002.²¹ The ICC became directly involved in Uganda when in December 2003 the government of Uganda referred the situation concerning the LRA to the Prosecutor of the ICC. According to Payam Akhavan, the referral presented important opportunities for both the Ugandan government as well as the ICC: “For Uganda, the referral was an attempt to engage an otherwise aloof international community,” whereas

For the ICC, the voluntary referral of a compelling case by a state party represented both an early expression of confidence in the nascent institution’s mandate and a welcome opportunity to demonstrate its viability.²²

After thorough analysis of available information, Moreno-Ocampo decided to open an investigation in Uganda in July 2004.²³ An ICC investigation team was sent to Uganda and after several months of enquiry, Moreno-Ocampo filed an application for warrants of arrest for crimes against humanity and war crimes against five senior commanders of the LRA including its leader Joseph Kony as well as deputy Vincent Otti. No member of the UPDF was indicted because, according to Moreno-Ocampo, “the crimes committed by the LRA were [found to be] much more numerous and of much higher gravity than alleged crimes committed by the UPDF.”²⁴ In July

²¹ For details on the ICC’s bases of jurisdiction, see Bassiouni, “Universal Model.”

²² Payam Akhavan, “The Lord’s Resistance Army Case: Uganda’s Submission of the First State Referral to the International Criminal Court,” *American Journal of International Law* 99, no. 2 (2005), 403-421, at 404.

²³ ICC, “Prosecutor of the ICC Opens an Investigation into Northern Uganda,” Press Release, 29 July 2004, Available at <http://www.icc-cpi.int/pressrelease_details&id=33&l=en.html> [Accessed 25 April 2007].

²⁴ ICC, “Statement by the Chief Prosecutor on the Uganda Arrest Warrants,” Available at <http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051014_English.pdf> [Accessed 25 April 2007].

2005 the ICC's Pre-Trial Chamber II approved the Prosecutor's request, issuing arrest warrants, which were subsequently unsealed in October 2005.²⁵

The Juba Peace Talks

In July 2006 representatives of the Ugandan government and the LRA gathered in the Southern Sudanese capital of Juba for peace negotiations initiated and mediated by Southern Sudanese Vice President Riek Machar. The talks came as a surprise to many, who had interpreted Museveni's engagement of the ICC as an indication that the Ugandan government had opted for a confrontational approach. In the opinion of the International Crisis Group (ICG), the government's decision to engage in peace talks was motivated by the recognition that regional partners and the UN could not be relied upon to defeat the LRA militarily; and by a desire "to polish an image increasingly tarnished by allegations of corruption, electoral malpractice and inability to end the humanitarian crisis in the north."²⁶ The LRA's motivations to negotiate are somewhat opaque. According to the Ugandan government, the LRA is a spent force and the negotiations are part of their struggle for survival. However, most observers, such as the ICG, suggest that the LRA still has significant military leverage. Thus, the LRA's willingness to negotiate appears to stem from their perception of increasing costs of war due to the pressure generated by a combination of discontinued Sudanese support, UPDF campaigns, and ICC indictments.²⁷

In an attempt to offer a peace incentive to the LRA, Museveni distanced himself from the ICC by offering amnesty to Joseph Kony shortly before the Juba talks started.²⁸ Strangely, a few

²⁵ ICC, "Facts and Procedure Regarding the Situation in Uganda," 14 October 2005, Available at <http://www.icc-cpi.int/library/cases/ICC_20051410-056-1_English.pdf> [Accessed 25 April 2007].

²⁶ ICG, "Peace in Northern Uganda?" *Africa Briefing No. 41*, 13 September 2006, 11.

²⁷ Ibid.

²⁸ Jeevan Vasagar, "Lord's Resistance Army Leader Is Offered Amnesty by Uganda," *The Guardian*, 5 July 2006, 14.

days later, the Ugandan Minister of Security, Amama Mbabazi, contradicted his President, telling Moreno-Ocampo that Kony would not receive amnesty.²⁹ In any case, as the Ugandan government's strategy for dealing with the conflict in Northern Uganda shifted from confronting the LRA to negotiating with them, the utility and therefore the support of the ICC faded. In late August 2006, after several weeks of negotiations, the parties signed a cease-fire agreement, whereby the LRA tentatively agreed to relocate its forces to assembly points in Southern Sudan. The agreement failed to be implemented and it was only thanks to the skilful mediation of UN Special Envoy and former President of Mozambique, Joaquim Chissano, that the Juba peace talks were brought back on track, paving the way for a second round of talks in April 2007.³⁰

Part II – Arguments of Peace and Justice in Uganda

The ICC as an Impediment to Peace: Peace vs. Justice

The ICC's intervention in Northern Uganda is controversial and has prompted criticism from different sides. Three principal clusters of criticisms can be identified. First, there is a notion that the ICC imposes a Western notion of retributive justice, which clashes with the local tradition and desire for restorative justice. According to Katherine Southwick, the ICC in Uganda is "widely opposed by those groups the Rome Statute is designed to serve: the victims."³¹ According to this view, Acholi victims of LRA-violence want reconciliation and reintegration of perpetrators into their communities. This can be achieved via local mechanisms of reconciliation,

²⁹ ICC, "Statement by the Chief Prosecutor Luis Moreno-Ocampo," Press Release, 12 July 2006, Available at <http://www.icc-cpi.int/pressrelease_details&id=167&l=en.html> [Accessed 25 April 2007].

³⁰ David Mwaniki and Manasseh Wepundi, *The Juba Peace Talks – The Checkered Road to Peace in Northern Uganda* (Pretoria: Institute for Security Studies, 28 March 2007).

³¹ Katherine Southwick, "Investigating War in Northern Uganda: Dilemmas for the International Criminal Court," *Yale Journal of International Affairs* 1 (2005), 105-119, at 113.

such as *mato oput*,³² and via a policy of amnesty, which is “integrate[d] into Acholi traditions of forgiveness ... and a long-term strategy of breaking a cycle of violence.”³³ Thus, the ICC’s emphasis on punishment and accountability as well as its opposition to amnesties undermine local justice efforts. Second, the ICC is criticized for being biased in favour of the Ugandan government. The fact that the ICC initially got involved in Uganda at the initiative of Museveni instigated this perception, which was visually corroborated when Museveni and Moreno-Ocampo stood side by side in a joint press conference to announce the referral of the LRA case in January 2004.³⁴ The reproach of bias gained further momentum when the ICC Prosecutor decided to spare the UPDF and limit the indictments to members of the LRA. This decision was contested by different groups, including Human Rights Watch (HRW) and the Kampala-based Refugee Law Project (RLP) who claimed that the UPDF had committed crimes similar to the LRA.³⁵

The third cluster of criticism is most relevant for the purpose of this analysis. The ICC’s intervention is said to obstruct a negotiated settlement between the government and the LRA. Indeed, a coalition of Northern Ugandan civil society actors, spearheaded by the influential Acholi Religious Leaders Peace Initiative (ARLPI) has criticized the ICC for interfering in the peace process. The head of the ARLPI, the Archbishop of Gulu, John Baptist Ondama, said that the ICC indictment “directly works against efforts to end [the] war peacefully,”³⁶ echoing the position of a delegation of Ugandan legislators as well as religious and cultural leaders who travelled to The Hague in April 2005 to tell Moreno-Ocampo that “the ICC investigation was hampering ... negotiations between the government and the rebels and was counterproductive to

³² For details on *mato oput*, see Tristan McConnell, “Uganda: Peace vs. Justice,” *openDemocracy*, 14 September 2006, Available at <<http://www.opendemocracy.net/debates/article.jsp?id=3&debateId=130&articleId=3903>> [Accessed 28 April 2007]

³³ *Ibid.*, 114.

³⁴ Tim Allen, *Trial Justice: The International Criminal Court and the Lord’s Resistance Army* (London: Zed Books, 2006), 96.

³⁵ Kasaija Phillip Apuuli, “The ICC Arrest Warrants for the Lord’s Resistance Army Leaders and Peace Prospects for Northern Uganda,” *Journal of International Criminal Justice* 4 (2006), 179-187, at 185-186.

³⁶ Quoted in *The Sunday Monitor*, 9 October 2005, 2.

peace in the north.”³⁷ The perception that the ICC constitutes a barrier to peace in Northern Uganda has recently gained momentum. The Juba peace talks, which the UN Emergency Relief Coordinator, Jan Egeland, has called “the best chance ever to end [the] war,”³⁸ seem to be significantly complicated because the LRA leader, Joseph Kony, refuses to come out of the bush to negotiate out of fear of being apprehended and delivered to The Hague. A resident of an IDP camp in Northern Uganda gets to the heart of the controversy when she rhetorically asks: “Kony will not come out because of the ICC so to whom shall we attribute our suffering?”³⁹

However, the Juba talks are taking place in earnest, even without Kony’s physical presence. It seems that the peace impediment argument has less to do with the ICC precluding peace *negotiations* as such, – to the contrary, a plausible case can be made that the ICC indictments have actually facilitated the LRA’s coming to the negotiating table – but with the ICC significantly complicating the *conclusion* of a peace settlement. The rationale of this argument is twofold. First, the ICC’s insistence on accountability precludes the use of amnesties as an incentive for the leaders of the LRA to make peace.⁴⁰ Snyder and Vinjamuri argue that under the condition that amnesty schemes “create the right incentives and constraints that leave perpetrators feeling weak, but secure and reconciled to peaceful political change,” they can be “an effective midwife for the birth of peace and democracy.”⁴¹ With regards to Northern Uganda, the RLP argued that “amnesty [is] the most feasible option to ending the conflict and ensuring that ... abducted children can be persuaded to come home” and that the ICC undermines existing

³⁷ “Uganda: ICC Could Suspend Northern Investigations—Spokesman,” *IRINNews*, 18 April 2005, Available at <<http://www.irinnews.org/report.asp?ReportID=46680>> [Accessed 29 April 2007].

³⁸ Quoted in McConnell.

³⁹ *Ibid.*

⁴⁰ On the impermissibility of blanket amnesties for perpetrators of “serious crimes under international law,” see Christine Bell, *Negotiating Justice? Human Rights and Peace Agreements* (Geneva: International Council on Human Rights Policy, 2006), 81-82.

⁴¹ Jack Snyder and Leslie Vinjamuri, “A Midwife for Peace: Amnesty,” *The International Herald Tribune*, 27 September 2006, 9. This op-ed is a synopsis of a longer article by the same authors: “Trials and Errors: Principle and Pragmatism in Strategies of International Justice,” *International Security* 28, no. 3 (Winter 2003/04), 5-44.

and future schemes by creating the fear that amnesty promises will not be honoured.⁴² Second, the prospect of being arrested and prosecuted in The Hague increases the risk, and therefore the anticipated costs of a peace settlement for the indicted LRA leaders. This makes the option of remaining in the bush and continuing war relatively more attractive and decreases the likelihood that the LRA will agree to a peace deal. The crux of the problem is that the ICC arrest warrants and indictments constitute a threat to the LRA's leaders because they fundamentally challenge what negotiation theorists alternatively call interests⁴³ or human needs,⁴⁴ namely the LRA's desire for safety, social status and livelihood.

The case of the ICC in Northern Uganda nourishes claims that the pursuit of international justice in a context of ongoing conflict generally compromises efforts to bring about peace. Known under the banner of "Peace vs. Justice," this argument came to the fore in the context of the war in the former Yugoslavia and the role of the International Criminal Tribunal for the former Yugoslavia (ICTY). In an article published in *Human Rights Quarterly*, an anonymous writer argued that "if one wanted peace, then one had to accept the principle that whatever the parties could agree to freely was acceptable to the peace negotiators."⁴⁵ Instead, alluding to the role of ICTY and the international human rights community, "thousands of people are dead who should have been alive – because moralists were in the quest of the perfect peace."⁴⁶ In this logic, justice and peace are antagonistic objectives and conflict managers have to choose either one or the other. This dilemma is usually invoked by advocates of a pragmatic approach whose priority it is to resolve conflict and who see justice as an unnecessary complication of peacemaking, if not, as articulated by Anonymous, a war-prolonging factor.

⁴² RLP, *Position Paper on the ICC* (Makerere: Faculty of Law, Makerere University, July 2004).

⁴³ On the concept of interests in negotiations, see Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving In*, 2nd ed. (New York: Penguin Books, 1993).

⁴⁴ On human needs, see John Burton, ed., *Conflict: Human Needs Theory* (Basingstoke: Macmillan, 1990).

⁴⁵ Anonymous, "Human Rights in Peace Negotiations," *Human Rights Quarterly* 18, no. 2 (1996), 249-258, at 252.

⁴⁶ *Ibid.*, 258.

The ICC as Promoter of Peace: No Peace without Justice

The controversy surrounding the ICC has mobilized many loyalists who defend the ICC's actions in Uganda and rebuff criticisms in this regard. Concerning the ICC's apparent interference with local justice mechanisms, two counter-arguments are put forward. The first is that locals are in fact interested in strong accountability mechanisms. According to a survey carried out by the International Center for Transitional Justice (ICTJ) and the Human Rights Center at Berkeley, 76% of the queried Northern Ugandan IDP camp residents want those responsible for gross human rights abuses to be held accountable.⁴⁷ A second argument is that the ICC does not preclude, but rather complements local reconciliation mechanisms: while the ICC targets the leaders, local reconciliation and amnesties are directed at the lower-rank LRA combatants, especially child soldiers.⁴⁸ The reproach that the ICC is biased in favour of the Ugandan government is rejected, as stated above, on the grounds that only the crimes committed by the LRA since 2002 meet the high threshold criteria set out in the Rome Statute.⁴⁹

The criticism that the ICC obstructs peace is addressed via four arguments suggesting that the ICC in fact promotes peace, in Northern Uganda as well as generally. First, it is argued that international criminal justice *deters* the commission of future crimes. According to Akhavan, global justice has a preventative effect

not only through pragmatic considerations such as shifting the boundaries of legitimacy and thereby changing the cost-benefit calculus of using atrocities as an instrument of power, but also through the more subtle, but far-reaching, socio-pedagogical influence of judicial stigmatization to induce subliminal inhibitions against criminal conduct.⁵⁰

⁴⁷ International Center for Transitional Justice and Human Rights Center, University of California, Berkeley, *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda* (New York: ICTJ, July 2005).

⁴⁸ ICC, "Statements by the ICC Prosecutor and the Visiting Delegation of Acholi Leaders from Northern Uganda," Press Release, 18 March 2005, Available at <http://www.icc-cpi.int/pressrelease_details?id=96&l=en.html> [Accessed on 29 April 2007].

⁴⁹ Supra Footnote 24.

⁵⁰ Akhavan, "LRA Case," 419.

Akhavan sees the deterrence effect at work in Uganda because allegedly, as the LRA case gained momentum in 2004, “the humanitarian situation had dramatically improved.”⁵¹ However, considering the tripling of IDP numbers from 2002 to 2006 as well as the red flag-raising by humanitarian organizations working in Northern Uganda, this argument seems unconvincing, if not intellectually dishonest. Indeed, the reasoning that the ICC has a preventative impact in Northern Uganda seems to be wishful thinking, rather than reality. In this regard, Pablo Castillo explains that the deterrence effect of the ICC will be weak so long as indictments remain highly selective and the ICC lacks reliable enforcement power.⁵²

Second, it is argued that the ICC indictments have generated such pressure that the LRA was left with no other option than to negotiate. According to the ICG, “The ICC indictments ... have been important in bringing the LRA to the negotiating table.”⁵³ Juan E. Méndez, President of the ICTJ, reiterates “that there is a broad recognition that the indictments have assisted in bringing the LRA to the negotiating table.”⁵⁴ The rationale of this argument is that the ICC focused the international community’s attention on the conflict in Northern Uganda and the horrific crimes committed by the LRA. This had the effect of increasing international legitimacy and support of UPDF military campaigns; putting pressure on Sudan to stop supporting the LRA; and inducing states to restrict diaspora funding for the LRA. In a nutshell, the ICC indictments made war more costly and risky, which forced the LRA to seek a way out of the war via a negotiated settlement with the Ugandan government.

⁵¹ *Ibid.*, 417.

⁵² Pablo Castillo, “Rethinking Deterrence: The International Criminal Court in Sudan,” *UNISCI Discussion Papers*, no. 13 (January 2007), 167-184.

⁵³ ICG, “Peace in Northern Uganda?” 1.

⁵⁴ Juan E. Méndez, “International Judicial Responses to Violence,” Speech, University of Pennsylvania, 22 March 2007. Text available at <<http://www.ictj.org/en/news/features/1184.html>> [Accessed 30 April 2007].

Third, it is argued that atrocities committed in the past must imperatively be dealt with in order to build sustainable peace. This argument is often presented under the banner of “No Peace without Justice”⁵⁵ and is most eloquently summarized by Archbishop Desmond Tutu of South Africa:

Experience world-wide shows that if you do not deal with a dark past such as ours, effectively look the beast in the eye, that beast is not going to lie down quietly; it is going, as sure as anything, to come back and haunt you horrendously.⁵⁶

With regards to Uganda, HRW states: “We have seen time and again that turning a blind eye to justice only undercuts durable peace.”⁵⁷ Impunity of those responsible for human rights violations constitutes the true root cause of the conflict and therefore, “Accountability for gross violations of human rights and justice for the victims of such violations comprises a strong foundation upon which peace and stability are built.”⁵⁸ In this logic, the ICC has a positive impact on peace in the long run “by ensuring that accountability and justice are present in the peace and reconstruction process in Northern Uganda.”⁵⁹

The fourth argument takes the LRA case beyond the Ugandan context and suggests that, while possibly making it more difficult to achieve a peace deal in Uganda, the case contributes to peace on a global level by boosting the credibility and effectiveness of the ICC. Indeed, the ICC faced serious difficulties in the years after its creation due to U.S. hostility and a complete lack of cases. Museveni’s referral in December 2003 was the first time the Court was seized by a state and it evidently constituted a very welcome sign of confidence that was critical in inducing further state referrals as well as the Security Council’s landmark referral of the situation in

⁵⁵ “No Peace without Justice” is also the name of a human rights NGO that works in the area of international criminal justice, in particular on issues concerning the ICC. See official website at <<http://www.npwj.org/>>.

⁵⁶ Desmond Tutu, “Healing a Nation,” *Index on Censorship* 25 (1996), 39.

⁵⁷ HRW, “Uganda: No Amnesty for Atrocities,” *Human Rights News*, 28 June 2006, Available at <<http://hrw.org/english/docs/2006/07/27/uganda13863.htm>> [Accessed 29 April 2007].

⁵⁸ HRW, *Uprooted and Forgotten*, 59.

⁵⁹ *Ibid.*

Darfur.⁶⁰ Provided the symbolic significance of the LRA case, the successful prosecution of the indicted LRA leaders is deemed crucial to improve the reputation of the ICC and thus to bring the Court closer to fulfilling its mission of promoting global governance and peace. Richard Goldstone, the former Prosecutor of the ICTY and the International Criminal Tribunal for Rwanda (ICTR), tellingly stated in this regard:

If you have a system of international justice you've got to follow through on it. If in some cases that's going to make peace negotiations difficult, that may be the price that has to be paid. The international community must keep a firm line and say are we going to have a better world because of the international court or not.⁶¹

The theme here is that the benefits of the LRA case in terms of promoting peace globally outweigh its costs of making peace more difficult in Northern Uganda; therefore, the indictments against Kony and his fellow indictees should be maintained.

Part III – The Way Forward for the ICC in Uganda: Options for Flexibility

Two Strategies to End Conflict

In order to assess the ICC's role in a broader context, it is useful to take a step back and to inquire about different options for dealing with a group like the LRA. If the *goal* is to end war in order to alleviate the suffering of civilians who have borne the brunt of years of warfare, one must settle on the most effective *means* for this purpose. With regards to Northern Uganda, it is important to recall that the LRA does *not* represent the interest of the broader Acholi community; the organization is self-referential and principally interested in self-perpetuation. Also relevant here is the fact that the LRA has committed horrific atrocities and bears responsibility for the

⁶⁰ Bassiouni, "Quo Vadis?" 424-426.

⁶¹ Quoted in Chris McGreal, "Justice or Reconciliation?: African Search for Peace Throws Court into Crisis," *The Guardian*, 9 January 2007, 14.

dreadful humanitarian situation and the displacement of more than half of the Acholi people in Northern Uganda. Given these two factors, it can be plausibly argued that there is no moral imperative to negotiate and make peace with the LRA; a military strategy can be considered as a feasible alternative. Hence, from a conflict resolution perspective, there are two broad strategic options to deal with the LRA, and similar groups for that matter. The first one is the *marginalization option*, that is, a strategy of putting military pressure; isolating rebel leaders politically and diplomatically; stigmatizing them morally; and imposing sanctions, such as travel bans, an arms embargo, and curtailing the flow of remittances from the diaspora. In this scenario, conflict is terminated by means of annihilating the group or by coercing it to abandon armed struggle. Alternatively, the *appeasement option* implies a strategy of negotiations, compromises, and incentive packages, leading to a peace deal that satisfies the interests of the group and its leaders. Here, war ends because rebels voluntarily lay down their arms.⁶²

International Justice in the Midst of Conflict

Arsanjani and Reisman distinguish two types of international criminal tribunals: *ex post* tribunals, such as the Nuremberg and Tokyo tribunals, “established *after* the acute and violent situation in which the alleged crimes occurred has been resolved by military victory or political settlement;” and *ex ante* tribunals, “established *before* an international security problem has been resolved or even manifested itself, or ... established *in the midst* of the conflict in which the alleged crimes occurred.”⁶³ *Ex ante* tribunals, such as the ICTY and the ICC, operate in circumstances, where “other authoritative political entities are still engaged in reestablishing

⁶² Conflict resolution theorists usually advocated for *peaceful* resolution of conflict by means of negotiations between the parties concerned. However, it has been plausibly argued that war can be a legitimate means to ending and setting the ground for resolving deep-seeded conflicts. See, e.g., Edward N. Luttwak, “Give War a Chance,” *Foreign Affairs* 78, no. 4 (July/August 1999), 36-44.

⁶³ Mahnoush H. Arsanjani and W. Michael Reisman, “The Law-in-Action of the International Criminal Court,” *American Journal of International Law* 99, no. 2 (2005), 385-403, at 385. (Emphasises in the original)

order” and therefore, the tribunal’s decisions “may influence these political and often military actions.”⁶⁴ Indeed, it is important to recognize that international criminal tribunals operating in a context of ongoing conflict have political effects, even if their decisions have legal rationales. Thus, for a more sophisticated assessment of the role of international courts in the midst of conflict, it is interesting to assess their role in the context of the two broad strategies for conflict resolution identified above.

For this purpose, it is pertinent to reflect on the role of the *ex ante* tribunal that undoubtedly paved the way for the ICC: the ICTY. For Pierre Hazan, the ICTY was “*Realpolitik* clothed ... in legality, to better reach its objectives,” played by the U.S. during the war in the former Yugoslavia “as a moral card against the virulent criticism of its inaction levied by mass media and the public” and useful to France in order “to pre-empt any danger of being accused of complicity due to the pro-Serb position of President Mitterrand.”⁶⁵ However, in the years following its creation in 1992, the ICTY developed into an independent institution, recognized for its moral authority and for effectively drawing the world’s attention to the horrific crimes committed during the wars in the former Yugoslavia. Nonetheless, the ICTY’s room for manoeuvre rested on political and financial support from its creator states as well as their enforcement capabilities to carry out arrests of accused war criminals. This meant that the effectiveness of the ICTY was largely a function of the broader conflict management strategy. When the international community, led by France, the U.K., and especially the U.S., opted for a pragmatic peacemaking strategy of negotiations with all parties, including those accused of war crimes and crimes against humanity, the ICTY was largely redundant. Alternatively, when the

⁶⁴ Ibid.

⁶⁵ Pierre Hazan, “The Revolution by the ICTY: The Concept of Justice in Wartime,” *Journal of International Criminal Justice* 2 (2004), 533-540, at 536-537. This article is based on Hazan’s book *Justice in a Time of War: The True Story of the International Criminal Tribunal for the Former Yugoslavia* (College Station, TX: Texas A&M University Press, 2004).

international community, in the face of horrible atrocities, was no longer willing to accommodate certain parties (the Bosnian Serbs after Srebrenica in 1995; Milosevic after the Kosovo war in 1999) even though they still held power, the ICTY was more effective. The handling of Serbian President Slobodan Milosevic in 1999 is a case in point. Paul R. Williams writes that in the framework of the Rambouillet/Paris negotiations in February/March 1999, “Mr. Milosevic ... was named by the mediator as the individual responsible for guaranteeing the peace.”⁶⁶ Thus, even though his culpability for the wars in Bosnia and Kosovo was quite clear, Milosevic and members of his regime were given a prominent role in the negotiations. Proposals to include in the draft accords an obligation for NATO to enforce ICTY arrest warrants were rejected because Western negotiators saw them as “unnecessarily antagonistic of the Serbian regime and likely to produce a political backlash.”⁶⁷ The tide turned as a result of Serbian intransigence in the Rambouillet/Paris negotiations, the attack on Kosovo by Serbian forces, and the subsequent NATO bombings of Serbia from March to June 1999. Milosevic had become a pariah and this paved the way for the ICTY getting a hold of him. Encouraged by the U.S., the ICTY Prosecutor Louise Arbour indicted Milosevic in May 1999;⁶⁸ roughly two years later, Milosevic was arrested and extradited to The Hague, where he stood trial until his death in 2006.

The ICTY exemplifies the role of *ex ante* tribunals in the context of the two conflict management strategies identified above. On the one hand, the actions of international criminal tribunals *complement and reinforce* the marginalization option. As the case of Milosevic shows, indictments and the corresponding arrest warrants are a useful means to stigmatize and isolate alleged war criminals. An international criminal tribunal can legitimize military action against a pariah group, de-legitimize states that provide support for such groups, and catalyze international

⁶⁶ Paul R. Williams, “The Role of Justice in Peace Negotiations” in Bassiouni, *Post-Conflict Justice*, 115-133, at 166.

⁶⁷ *Ibid.*, 125.

⁶⁸ *Ibid.*, 130.

sanctions against this group. On the other hand, it seems that *ex ante* tribunals *complicate* the appeasement option. As discussed in the case of the LRA, the prospect of being tried in an international court threatens the security of rebel leaders, thus making continued warfare a relatively more attractive alternative to peace. However, to qualify this point, it needs to be noted that peace negotiations require both carrots and sticks; it seems that pressure generated by international tribunals can play a role to induce warring parties to come to the negotiating table. But it remains that rebels will not abandon warfare if they anticipate that peace will lead to their leaders' arrest, trial, and imprisonment.

The ICC in Uganda: Options for Flexibility

Applying this reasoning to Northern Uganda, it becomes clear that Museveni's seizure of the ICC in December 2003 was part of the Ugandan government's broader strategy to marginalize the LRA by isolating their leadership, while at the same time stepping up military pressure. Indeed, a few months after the referral, the UPDF launched Operation Iron Fist II. According to Adam Branch, "Museveni's request is an attempt to claim international legitimacy for a military counterinsurgency."⁶⁹ In this regard, Arsanjani and Reisman raise serious doubts about the LRA referral because it permitted the Ugandan government

to co-opt the ICC in a confrontational criminal context for what – despite all the attendant violence – may essentially be political struggles, for which negotiation and settlement might be the only practicable mode of restoring minimum order.⁷⁰

⁶⁹ Adam Branch, "International Justice, Local Injustice: The International Criminal Court in Northern Uganda," *Dissent* 51, no. 3 (Summer 2004), 22-26, at 25

⁷⁰ Arsanjani and Reisman, 392.

Akhavan's position is diametrically opposed:

The view that dialogue with fanatical murderous leaders would somehow lead to a peaceful settlement is a chimera. ... Instead of holding the Uganda hostage to never-ending, and potentially futile, negotiations, the international community ... should focus on the arrest and prosecution of perpetrators.⁷¹

For this purpose, he welcomes the ICC's involvement since it "help[s] government forces confront the insurgents."⁷² Whatever the merits and justifications of a military solution for the LRA problem, it is clear that the ICC facilitates such a solution.

The current Juba talks evidently represent a different approach for dealing with the LRA. Museveni's tentative backing of the current negotiations, and his withdrawal of support for the ICC, indicate a change of conflict management strategies from marginalization to appeasement. The rationale of this transformation is the recognition that it is unfeasible to deal with the LRA militarily, probably due to a combination of factors including the inaccessibility of the terrain, the lack of capacity (or interest) of the UPDF, the tenacity of the LRA, and the inconsistency and insufficiency of international military support. Most observers confirm this assessment. For Southwick, "domestic and international support for peace negotiations reflect the belief that the costs of a military strategy against the LRA are unconsciously high."⁷³ According to the ICG, a wholly military solution is undesirable because it would exacerbate the humanitarian crisis and it is probably unachievable, given that the LRA has proven to be "an organisation with a demonstrated recuperative capacity."⁷⁴ This statement is echoed by Branch:

The 'military solution' is simply not a solution. For a number of reasons ... the UPDF has not been able to defeat the LRA for eighteen years. Instead, violence by the UPDF is

⁷¹ Akhavan, "LRA Case," 419 and 420.

⁷² *Ibid.*, 403.

⁷³ Southwick, 110.

⁷⁴ ICG, "Peace in Northern Uganda: Decisive Weeks Ahead," *Africa Briefing No. 22*, 21 February 2005, 4.

unfailingly answered with increased violence by the LRA against the unprotected civilian population.⁷⁵

If the status quo of protracted conflict is deemed unacceptable and the marginalization option unfeasible, then, by elimination, negotiating with the LRA emerges as the most desirable option for solving the conflict in Northern Uganda.

As discussed above, *ex ante* criminal tribunals tend to make conflict resolution via a negotiated settlement more difficult. There is a real danger that the ICC's insistence on prosecuting Kony precludes a pragmatic peace deal that could terminate the brutal two-decade conflict in Northern Uganda. The ICG's most recent report suggests that "The Juba peace process has advanced further than any previous initiative and is the best hope for a negotiated resolution to the conflict."⁷⁶ In light of this, there is a need to consider flexible options so the ICC does not jeopardize this promising opportunity for peace. This does not mean that the ICC should immediately withdraw from Uganda; to the contrary, the Court can play a useful role in the peace process. However, if the Juba talks are to make such progress that a deal with the LRA is imminent, the threat posed by the ICC indictments somehow has to be removed or deferred. For this purpose, four flexible options can be identified, each with distinct advantages and deficiencies.

First, as part of a final peace settlement, Kony and his fellow indictees could be given asylum in a third country that is not party to the Rome Statute.⁷⁷ The advantage of this option is that it would put Kony beyond the reach of the ICC, physically as well as legally. The problem,

⁷⁵ Branch, 25.

⁷⁶ ICG, "Northern Uganda: Seizing the Opportunity for Peace," *Africa Report No. 124*, 26 April 2007, 2.

⁷⁷ By virtue of Art. 86, states party to the Rome Statute are obliged to cooperate with the ICC and cannot offer asylum to people indicted by the Court. (Annie Wartanian, "The ICC Prosecutor's Battlefield: Combating Atrocities While Fighting for States' Cooperation – Lessons from the UN Tribunals Applied to the Case of Uganda," *Georgetown Journal of International Law* 36 (2005), 1289-1316)

however, is that in the light of the fate of Charles Taylor,⁷⁸ the LRA may not deem this option credible. Also, such an arrangement would undermine the credibility of the ICC and probably weaken the international community's support for the implementation of a peace agreement.⁷⁹

Second, the Ugandan government could promise to challenge the admissibility of the LRA case under the complementarity principle in Art. 18.2 of the Rome Statute. One of the cornerstones of the Rome Statute framework is that the ICC can only exercise jurisdiction with respect to cases that the state concerned is "unwilling or unable" to investigate or prosecute.⁸⁰ Given the reasonably well-functioning Ugandan judicial system, some authors have argued that the LRA referral "does not seem to meet the requirement of admissibility under Article 17 of the Statute."⁸¹ However, the decision to open an investigation in Northern Uganda suggests that the ICC thinks otherwise. Unless a future peace agreement contains strong accountability mechanisms providing for the prosecution of LRA leaders in national Ugandan courts, it is unlikely that the ICC would declare the LRA case inadmissible on the grounds of it violating the complementarity clause.⁸² Thus, while this option has the advantage of being respectful of the international legal framework, it is highly unlikely that the LRA would accept it as a satisfactory guarantee.

The third option is for the Security Council to suspend the proceedings of the ICC for a period of 12 months on the basis of Art. 16 of the Rome Statute. This scenario is in compliance with international law; in addition, the requirement to renew the deferral every year would be a

⁷⁸ Charles Taylor was lured into resigning from the Liberian Presidency in 2003 by means of an offer of safe exile in Nigeria. Three years later Taylor was arrested and extradited to The Hague.

⁷⁹ According to the ICG, "The international community is unlikely to support any agreement that grants blanket amnesty to the LRA. ... If there were blanket amnesty, donors would be unlikely to give the diplomatic and financial support essential for implementing a peace agreement." (ICG, "Peace in Northern Uganda?" 17)

⁸⁰ Art. 17.1.a of the Rome Statute.

⁸¹ Arsanjani and Reisman, 392. For a contrary opinion, see Akhavan, "LRA Case," 412-415.

⁸² Based on the South African model, a range of Ugandan actors proposed the establishment of a truth and reconciliation commission in conjunction with a scheme that requires appearing before the commission in order to be granted amnesty. (Allen, 116; Southwick, 114-115) There is a debate whether such an arrangement is permissible under international law and whether the ICC would accept it under Art. 18.2. (Bell, 85-86)

strong disincentive for the LRA to violate an agreement. However, if the LRA case is deferred against the ICC's will, the downside of this option may be to undermine the credibility of the Court. In terms of the negotiations, the LRA may not regard it as sufficiently credible for fear that the indictments will be reactivated once they have given up their arms and ability to spoil peace.

Lastly, the Prosecutor could decide to withdraw the indictments if he deems that doing so would be in the "interest of justice."⁸³ If Moreno-Ocampo credibly offered the withdrawal of the indictments as an award for the conclusion and successful implementation of a peace agreement, this option would clearly be most effective in terms of inducing the LRA to lay down their arms. Also, discretion would remain with the Prosecutor and the Court's constructive role in bringing about peace in Northern Uganda would likely improve its reputation. The problem, however, is whether a withdrawal of the indictments is legally feasible. If Art. 53.2.c is interpreted in a narrow sense, that is, equating justice with formal legal accountability, it would be difficult to justify withdrawal.⁸⁴ If, however, the notion of justice is expanded, withdrawal becomes viable. When conflict is ongoing, injustice is perpetual and omnipresent. Stopping violent conflict constitutes the necessary, if not sufficient condition that allows for justice to be rendered. In that sense, peace negotiations are indeed in the interest of justice. Also, it seems that for the victims of the war in Northern Uganda justice has a lot to do with reconciliation; again, peacemaking seems to be a requirement for and therefore in the interest of justice. Arsanjani and Reisman provide a particularly interesting rationale for interpreting the notion of justice in Art. 53 in a broad sense. For them, *ex ante* tribunals operate under very difficult circumstances, where

⁸³ Art. 53.2.c of the Rome Statute.

⁸⁴ HRW, *Policy Paper: The Meaning of 'The Interests of Justice' in Article 53 of the Rome Statute*, (New York: HRW, June 2005). For HRW, the Security Council (based on Art. 16), not the ICC Prosecutor should take into account issues of peace and security.

a formidable challenge falls on the prosecutors and eventually on the judges who must determine whether and how to set priorities among their curial responsibilities and the inevitable political consequences of their actions.⁸⁵

Art. 53, therefore, “indicates that the drafters were aware of the magnitude of the challenge these particular problems could present;”⁸⁶ it was designed as a flexible tool allowing the Prosecutor to act pragmatically so that the decisions of the ICC do not produce a stalemate.

Concluding Remarks

The ICC’s impact on peace in Uganda is undoubtedly a delicate issue aplenty of dilemmas and conflicting arguments. In our view, the position of international human rights organizations and many international lawyers is too rigid. There is a real danger that a legalistic tunnel vision focusing narrowly on prosecuting Joseph Kony ignores the high political costs of such a strategy and neglects the wishes of the victims of the conflict. To “sacrifice” the Ugandan peace process for an abstract ideal of international justice would be, in the words of Branch, tantamount to “international law fundamentalism.”⁸⁷ Also, if justice means formal legal accountability, then peace *is* possible without it. Synder and Vinjamuri remind us that more than two thirds of peace agreements since the end of the Cold War, including, for example, the widely acclaimed case of Mozambique, get by without providing for the prosecution of perpetrators of past human rights abuses.⁸⁸

However, it is important not to fall for simplistic arguments on the other extreme of the spectrum of opinion. The ICC does not generally obstruct peace and to immediately withdraw indictments would be wasting a potentially very helpful mechanism for peace. The pressure

⁸⁵ Arsanjani and Reisman, 385.

⁸⁶ *Ibid.*, 386.

⁸⁷ Branch, 25.

⁸⁸ Synder and Vinjamuri, “Midwife for Peace.”

generated by the ICC indictments has been crucial in getting the LRA to the negotiating table. The same pressure can now be used to force the LRA to remain at this table and to implement a peace deal. The international community needs to make clear to Kony that if the Juba talks fail because of his intransigence, the ICC arrest warrants will be executed. However, it is important to realize that the “war stick” only works if a “peace carrot” in the form of a withdrawal of the ICC indictments awaits Kony at the end of the road. One sensible option in this regard would be for the Security Council to suspend the proceedings of the ICC. Even better is the possibility that the ICC Prosecutor himself withdraws the indictments based on Art. 53 of the Rome Statute. Contrary to HRW’s argument,⁸⁹ there is no neat division of labor between the Security Council focusing on peace and security and the ICC focusing on justice. Justice in the midst of conflict inevitably has implications on the security situation; a pragmatic interpretation of Art. 53 would demonstrate that the ICC is cognizant of this reality and the hidden costs of its activities.

The peace vs. justice argument seems persuasive on a theoretical-philosophical level, reflecting the tension between a principled approach focusing on *goals* and a pragmatic one emphasizing on *means*. However, in its application to concrete cases, such as the role of the ICC in Uganda, the argument becomes overly simplistic and ultimately inaccurate. On the one hand, the ICC indictments are a highly incomplete vehicle to justice: in a 20-year civil war, the ICC only focuses on the most egregious crimes committed during the last five years; among thousands of perpetrators on both sides, the ICC only targets five senior leaders of the LRA; among different means of justice – forgiveness, reconciliation, truth-telling, compensation, retribution, revenge, etc. – the ICC chooses only one, that is, punishment. Arguments that withdrawing the ICC from Uganda is a vehicle to peace are equally unsatisfactory: as discussed above, the ICC can indeed make a pragmatic contribution to the peace process; also, the ICC indictments are

⁸⁹ Supra Footnote 84.

only *one* among many obstacles in the peace talks. Were the indictments to be removed, it is by no means certain that a peace agreement would materialize, let alone that sustainable peace would take root in Northern Uganda.⁹⁰ Thus, we need to abandon the idea that the ICC in Uganda exemplifies a general incompatibility of peace and justice and to conceive of the controversy in terms of a tension between different actors with different agendas and priorities. Ultimately, the goal is the same: to end the terrible war and to allow hundreds of thousands of Northern Ugandans to live a life in dignity and prosperity. A pragmatic and flexible approach offers the best chance to attain this goal.

⁹⁰ For an argument that peace in Northern Uganda is unrealistic, with or without the ICC, see Dunn (146-148).

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