Striking a Balance: Humanitarian, Peace, and Justice Initiatives

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Unlike the Nuremberg and Tokyo tribunals, established in the wake of a clear military victory, international criminal courts today are increasingly operating within ongoing armed conflicts. From the establishment of the International Court for the Former Yugoslavia (ICTY) to the impact of the Special Court for Sierra Leone (SCSL) on the conflict in Liberia, to the multiple interventions of the International Criminal Court (ICC), international criminal investigations are becoming part of the landscape of armed conflict and altering the manner in which conflicts are managed.

The establishment of international criminal courts reflects the growing will of the international community to hold individuals accountable for serious crimes. However, while the primary justification for setting up these courts is the need for accountability, an almost equally significant justification is that by holding individuals accountable, the courts contribute to establishing real peace. The question arising from this double justification is, what happens when the pursuit of justice aggravates a situation by conflicting with efforts to achieve a negotiated settlement between belligerent parties? Depending on the organizations involved, the answer will be different.

For those mandated to uphold human rights and the rule of law, the answer will generally be to support international justice and to condemn those who use the pursuit of justice as a justification for continuing their campaign of violence or entrenching their positions. For those with a humanitarian mandate, the prioritization is generally to see that security and stability are restored, even if that means sacrificing efforts to achieve justice. The added factor for the humanitarian communities – and one reason some limit their cooperation with international justice mechanisms – is their need to maintain neutrality. Courts, at least in concept if not always in practice, are impartial in the application of law, but when prosecuting individuals for international crimes, neutrality is not a virtue of added value.

Although it does not change the essence of the "peace versus justice" debate or concerns over neutrality, there is often misunderstanding within the humanitarian and religious communities on the functioning of international courts and the differences between them in terms of their legal mandate and decision-making processes. This tension, and the ability of the humanitarian and religious communities to subvert justice for the sake of peace and security depending on the prevailing contacts, also creates inconsistent positions. For instance, many humanitarians supported judicial intervention in post-genocide Rwanda and, at least at the beginning, in Sudan and Congo, yet view the same intervention as unwanted in places like Northern Uganda and Sudan.

For their part, international courts are not blind to contextual complexities. However, depending on their founding statute, they cannot always take these complexities into consideration. In order to maintain integrity and uniform application of the law, they must sometimes apply it in a manner that appears blind to other prevailing circumstances. Unlike previous international courts that had few provisions to allow prosecutors to take peace and security into account, the ICC does include mechanisms that can be used to manage these tensions.

In this article I will first describe the dual narrative of justice and peace underpinning the justification for creating international criminal courts as a precursor to analyzing the fundamentals of the "peace versus justice" tension. I will then describe the mechanics and innovations of the ICC Statute that incorporated some of these concerns. Finally, I will look at the views of human rights groups, civil society, and religious institutions to judicial interventions in attempting to identify their own struggles to merge often conflicting values.

Peace and Accountability:
The Dual Purpose of International Criminal Courts

Because of the nature of international crimes, international criminal courts always intervene either within or in the wake of armed conflict. They operate among a multitude of other diplomatic, humanitarian, and military-related initiatives attempting to restore stability and national unity. While these courts are functionally established to enforce individual criminal

liability, states, practitioners, and commentators frequently profess that by holding individuals accountable the courts contribute to creating the basis for peace.

This dual purpose of building peace through accountability was given as justification for the creation of the *ad hoc* tribunals, both of which were created subsequent to UN Security Council determinations that the situations in the former Yugoslavia and Rwanda were threats to international peace and security.[1] In the text of UN Security Council Resolution 808 which authorized the creation of the ICTY, the Security Council stated

> … that it was convinced that in the particular circumstances of the former Yugoslavia, the establishment of an international tribunal would bring about the achievement of the aim of putting an end to such crimes and of taking effective measures to bring to justice the persons responsible for them, and would contribute to the restoration and maintenance of peace.[2]

In 1994, this reasoning was echoed by the ICTY itself when it stated that "Far from being a vehicle for revenge, [the ICTY] is a tool for promoting reconciliation and restoring true peace."[3]

> Similarly, the Security Council in authorising the creation of the SCLC stated that
>
> … a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,…[4]

Academic authorities such as Cherif Bassiouni,[5] Richard Goldstone,[6] and Telford Taylor[7] also assert that international tribunals are vital to peace, insofar as without fair and impartial justice there can be no reconciliation between the people even if there is a political settlement between leaders. Although not recognizing that justice positively contributes to building peace, the Preamble of the Rome Statute recognizes that grave crimes threaten the peace, security, and well-being of the world.[8]

Among the many reasons given for the ability of international criminal courts to assist in building peace is that they contribute to a process of national

reconciliation by substituting individual guilt for collective guilt,[9] provide justice for victim communities, re-establish the legal order in post-conflict environments, provide a forum for truth-telling that creates an authoritative and shared record of history,[10] deter future crimes by strengthening legal enforcement procedures,[11] and raise the normative level of acceptable behavior.[12] Also, the reasoning continues, punishment of criminal actions contributes to establishing 'real peace' by aiding the national transition process and restoring social equilibrium through the ability to impose the rule of law.[13]

However, while international courts may contribute in the above ways, most of these benefits presume there is a sufficient degree of stability and security within the country. In environments where conflict is ongoing and crimes are still being perpetrated, many of the goals identified above are difficult to achieve, and the ability of international courts to contribute to peace becomes much more complicated.

Inherent Tension between Accountability and Peace

The fundamental quandary confronting all international criminal courts that intervene in ongoing armed conflicts is that those whom they identify as suspects are often the same people involved in negotiating a political settlement. During a process of political negotiation, a public arrest warrant against a leader of a party to the negotiations may cause that party to retrench its positions and decrease its willingness to commit to a peaceful settlement. A public arrest warrant will also complicate negotiators' efforts to include indicted persons in talks. As observed by a British official involved in negotiations during the conflict in the former Yugoslavia, the problem was "indicting people [when] you may be negotiating with them."[14] In such conditions, parties may demand immunity from prosecution as a condition to concluding an agreement, and negotiators will be tempted to provide some degree of assurance as a means to increase trust and build incentives.

The suspect may also use the issuing of a warrant as a reason to escalate hostilities, both as a protest and as a means to raise his profile and complicate efforts for authorities to execute the warrant. States, on which international courts rely to execute their warrants, may also be reluctant to execute warrants if they perceive doing so as politically inexpedient and

potentially undermining regional stability, particularly if executing the warrant puts their nationals in danger.[15]

If the prosecutor accommodates these interests and does not issue the warrant, the individual may more likely participate in the peace process and peacemakers may even be able to decrease the level of violence. However, accommodating these interests and allowing suspected criminals to participate in negotiations creates an array of practical and legal difficulties.

Politically, allowing a suspect to participate in negotiations will result in conferring upon that person a greater degree of political, if not moral, legitimacy, as well as give credibility to the agenda they brought to the negotiating table. When the individual is suspected of committing serious crimes and furthering policies believed to foment systemic and widespread atrocities, such a decision sets an uncomfortable precedent and may make it more difficult for a prosecutor to issue a warrant at a later stage.

Legally, as judicial organs, prosecutors must remain independent and impartial in the execution of their responsibilities – factors that would be challenged were they to become, or be perceived to become, involved in negotiations. Also, a growing body of international law promotes the obligation to prosecute those suspected of committing serious crimes,[16] and the international community is showing a growing resolve to recognize unqualified amnesties in international peace agreements.[17]

While these factors obviously influence the environment in which prosecutors operate, how far they are considered depends on the primary source of applicable law, which for prosecutors is contained within the constituent instruments of the courts. A study of these documents and the elements of prosecutorial discretion identified within the statutes is necessary to evaluate the extent to which a prosecutor can accommodate and prioritize the various competing interests.

The ICC Rome Statute: Increased Sensitization to Contextual Factors

For the prosecutor of the ICC, the legal regime differs in several areas from those of previous international criminal courts. Unlike previous courts that could start investigations based on their own power, the prosecutor must receive notice of crimes from one of three sources.[18] Once notice is

received, the same analytical process must be followed in deciding whether to investigate.

The crime must have occurred after 1 July 2002, the date the Statute entered into force.[19] In addition, it must have been committed by a person either in the territory of "states parties" or a national of a state party.[20] This territorial jurisdiction, however, can be expanded when the UN Security Council acting under Chapter VII refers the matter to the ICC.[21] With 110 states parties, this jurisdictional regime gives the prosecutor much broader jurisdiction than the ICTY, which was limited to crimes occurring in the territory of the former Yugoslavia.

In addition to these jurisdictional criteria, the prosecutor has several admissibility criteria that must be considered. The first criterion, "gravity," is given particular emphasis in the Rome Statute.[22] It is applied both to the alleged crime and to the person believed to be most responsible for committing it. In regard to assessing the gravity of the crimes themselves, the prosecutor has identified four indicia to guide this analysis: the scale of the crimes, the nature of the crimes, the manner of their commission, and their impact.

The second criterion, "complementarity," refers to the ICC's relationship to national jurisdictions. This system is also markedly different from that of the ICTY, which had primacy over national courts. Unlike that "vertical" relationship with states, the ICC cannot simply order national systems to hand over a particular case but must instead defer to genuine national proceedings.[23] The principle of complementarity works on the premise that states have the primary obligation to enforce the law and that the ICC is only a court of last resort if the state having jurisdiction over the crime is either unable or unwilling to prosecute the crime itself.

This more "horizontal" relationship with state jurisdictions encourages states to comply with their obligation to enforce the law rather than to see the ICC as a substitute for national proceedings. Although it is currently unclear what type of proceeding is sufficient to satisfy the ICC's emerging definition of a "genuine proceeding," this system allows the Court to work in a manner that appreciates national justice initiatives.

The third criterion is the "interests of justice." It is a countervailing element that requires the prosecutor to consider certain factors which may

produce a reason *not* to proceed with an investigation or prosecution. This consideration is made only once a positive decision to proceed has already been taken. "In deciding whether to initiate an investigation, the Prosecutor shall consider whether: . . . Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice."[24]

The definition and scope of the "interests of justice" has been a matter of much debate. Initially, some authors argued that this provision could apply if the pursuit of justice impaired peace and security.[25] However, others, particularly from the human rights community, argue for a more restrictive interpretation.[26] This second, more restrictive interpretation is the direction in which the Office of the Prosecutor (OTP) is going. In its policy paper on the "interests of justice," the OTP cites the need to provide redress to victims and the object and purpose of the Statute in pursuing accountability as the basis for interpreting this provision, and it states that exercising this provision would be exceptional in nature.[27]

In the policy paper the OTP says that "it would be misleading to equate the interests of justice with the interests of peace."[28] Were a situation to arise whereby ICC involvement directly threatens peace and stability, the authors of the Statute included Article 16, which obliges the Court to defer an investigation or prosecution for one year in the event the UN Security Council finds that these proceedings are a threat to international peace and security by issuing a Chapter VII resolution. The insertion of this provision is significant, as the mandate and capacities of the UN Security Council are more capable of dealing with resolving conflicts between peace, justice, and security than a judicial body such as the ICC. It should also be noted that any decision by the prosecutor not to proceed based solely on the "interests of justice" is reviewable by the judges.[29]

However, while broader issues of peace and security may not directly factor into decisions, the paper goes on to state that in assessing the "interests of victims," an element of the interests of justice, the OTP will consider the victims' personal security as well as the obligation of the Court to protect victims and witnesses.[30] While the prosecutor cannot change its decisions in light of the effect of its investigations on peace processes or on the general security situation, the prosecutor may take certain precautionary measures

regarding security, including witness protection measures and modifying its public messages and profile.

Cooperation between the ICC and Humanitarian or Religious Organizations

While the criteria by which the international prosecutor makes his decisions are fairly clearly defined and must be uniformly applied, the manner in which international and local civil society, humanitarian, and religious organizations relate to international courts and react to their interventions differs, and it often evolves based on prevailing circumstances. These differences are exemplified by the decision of the ICC prosecutor to open an investigation in Northern Uganda.

When the ICC came into being in 2004, it began receiving a wide array of information and correspondence urging it to open investigations in various countries. One of the situations on which the prosecutor received civil society and human rights requests was northern Uganda. At war since 1988, the Lord's Resistance Army (LRA) had committed some of the worst crimes in modern history, abducting tens of thousands of children and making them into ruthless fighters. If anyone needed to be prosecuted and made an example of, it was the leaders of the LRA.

With a willing government and crimes that clearly passed the "gravity" threshold, northern Uganda appeared to be the perfect case for this young court to test its mettle. In July 2004 it officially opened an investigation into the Situation of Northern Uganda. However, even before the investigation was opened, the Court began receiving a litany of concerns from the local civil society and humanitarian NGOs. Although there was no peace process with the LRA at the time, the broadly accepted consensus in northern Uganda was that only a negotiated solution could end the war, and that opening an investigation would entrench the position of the LRA and possibly even make it more violent.

Some of the ICC's most outspoken critics were members of the Catholic Church, including Archbishop Jean Baptiste Odama of Gulu Archdiocese in northern Uganda. His influential voice criticized the ICC and its involvement in his domain, and continues to do so.

> I was stunned by ICC indictment. While we support the concept of the ICC as an institution, we're not happy with the approach to the LRA. The population is desperate for peace talks to be successful. When the ICC came with its ruling, it was like throwing something into the wheel of a moving vehicle.[31]

This view was echoed by other community members and was taken up as an advocacy position by humanitarian NGOs working among them. Although it did not slow down the prosecutor's investigation, it did force the court to take a low-profile approach and complicated efforts to acquire cooperation and support from the local community.

Despite public concern, the facts now demonstrate that the ICC intervention did not stop peace talks. On the contrary, two peace processes were initiated after July 2004 that, at least on the surface, were more advanced and promising than any of those conducted previously. However, these peace talks also failed, not because of the ICC as such or even the existence of the warrants but because of the incessant refusal of LRA leaders to stop their campaign of violence.

Interestingly, after the second peace talks in Juba and the relocation of the LRA from northern Uganda to northern Congo (DRC), not only did criticism of the ICC die down but the office began receiving requests to expand the charges or add additional warrants. Many of these requests came from local communities in northern DRC where the LRA began a vicious campaign of violence in September 2008.

As in northern Uganda, the Catholic Church in northern DRC plays a significant guiding role in shaping public opinion, and many of these requests referencing the need for justice were written at the Church's initiative. Unlike northern Uganda, however, these communications did not reference concern for peace talks or possible security implications that justice initiatives could bring. According to a statement in January 2010 from civil society in Dungu signed by all its principal notables,

> It is an outrageous injustice that the LRA who surrender are not given to the ICC for prosecution but are transported from the cradle of the rebellion to receive amnesty. Enough is enough.[32]

This view is echoed by a Cambonian missionary serving in Congo for more than 20 years who was abducted by the LRA in August 2008: "Perhaps I am

not as good of a Christian as Archbishop Odama, but these LRA have to be dealt with and they must be brought to justice."[33]

How could two different communities with the same faith, experiencing the same types of criminality, have such polar opposite positions? One reason is that members of the LRA, for the currently affected community, are not their children but a foreign force. In addition, the affected Congolese community either had not been aware of, or had doubted the sincerity of, the peace talks in Juba heralded by northern Uganda communities as the best chance for peace. Humanitarian organizations often reflect the views of affected communities, and many of these organizations have modified their positions from arguing for suspension or withdrawal of the ICC warrants to pushing for a quicker, more effective force to arrest LRA leaders.

In terms of policy and cooperation with international criminal courts, Kate Mackintosh of Médecins Sans Frontières (MSF) has explained the quandary that the humanitarian community found itself in when confronted by a real functioning International Criminal Court.

> Before the International Criminal Court (ICC) became a reality in 2002, most humanitarian workers thought it was a good thing…. The emerging regime to promote justice and accountability and to end impunity for crimes against civilians serves the same long-term goal of protecting civilians. Nevertheless, cooperation by humanitarian workers with criminal prosecutions can be difficult to square with the need to appear neutral and to safeguard humanitarian access and cooperation.[34]

In fact, before the ICCs creation, many humanitarian and church-based organizations called on states to support the new court.[35] In advocating its support for the Court, the United Church of Christ stated that "the International Criminal Court reflects the strongly affirmed hope . . . that there is an emerging global consensus about human rights and justice long ago revealed in God's profoundly hopeful promise in Biblical history."[36] However, although many organizations called for the creation of the ICC, its actual existence and intervention into delicate environments have since produced varying positions based on these organizations' perceptions of

whether it is improving or aggravating the situation of the people they serve.

An additional example of this dichotomy is evident in comparing reactions to the ICC activity in Kenya and Sudan. In Kenya, the ICC's announcement that it would investigate the post-election violence was welcomed by the Kenyan churches,[37] but its announcement that it was issuing a warrant against the President of Sudan created a great degree of criticism and concern, particularly when Sudan expelled 13 NGOs for cooperating with the ICC. [38]

Médecins Sans Frontières, which has one of the most developed policies on the ICC and, with the exception of the International Committee of the Red Cross, the most restricted policy for cooperation, explains the dilemma this way: Cooperation with the ICC may jeopardize the access of humanitarians to persons in need and challenge the neutral character of humanitarian organizations that allows them to function between belligerent forces. Accordingly, MSF will never meet ICC officials in the field and will respond to requests for information only if it is the sole source available to provide crucial evidence. However, MSF does not prevent individual staff members from voluntarily testifying in judicial proceedings.[39]

This consistently conservative policy is not followed by other humanitarian organizations, many of which often make decisions based on what is happening on the ground. Making decisions by weighing the need for justice with the need to maintain the neutrality and impartiality required for navigating in conflict situations is the main reason for the varied positions taken by humanitarian and civil society organizations in supporting and cooperating with the ICC. The conditions that may satisfy an organization for cooperating in Kenya and northern Congo may not be satisfied in Sudan and northern Uganda. This variance can be understood from a practical perspective, but the lack of uniformity inhibits organizations from developing standardized policies of cooperation with international criminal courts.

Conclusion

Regardless of their respective positions, humanitarian organizations and civil society are compelled to work in the same situations. This fact creates

real dilemmas. While humanitarians want to contribute to the fight against impunity for grave violations of international law – both to uphold basic standards of justice and, in the longer term, to prevent these violations from re-occurring – the involvement of international courts in ongoing armed conflicts can complicate efforts to find a resolution. In addition, as these courts are impartial insofar as they are created to apply the law uniformly, they are not neutral; cooperation with these courts may thus impact on one of the sacred principles of humanitarianism.

Unlike the legal judgments that are intended to be purely objective, humanitarians, with their need to operate in an essentially political environment, find it difficult to develop a coherent and universal policy on international criminal courts. As such, some organizations may support the same international judicial intervention in one context but reject it in another.

For those working in international criminal courts the challenge is to act judiciously but not to be so blinded by the law that the complexities in which the courts operate are overlooked.[40] While the absoluteness of rules must be maintained, flexible strategies must be developed in order to prevent the efforts to achieve justice from undermining the security of the intended beneficiaries of such efforts.

More important, and something that is often overlooked because of the novelty and profile of international judicial interventions, is that international courts are not the only mechanisms to obtain justice. They are just one instrument among national, local, and traditional justice mechanisms seeking to provide justice and restore the dignity of victims. As stated by UN Secretary General Kofi Annan, "the goals of justice and reconciliation compete with each other . . . each society needs to form a view about how to strike the right balance between them."[41] It is this balance that both the international criminal courts and the humanitarian community must seek to obtain.

Notes

[1] United Nations Security Council [hereafter SC] Res. 808, UN SCOR, 48th Sess., 3175th mtg., at 1 UN Doc. S/RES/808 (22 Feb. 1993).

[2] See Report of the Secretary General (S/25704), at para. 10 and 26.

[3] See UN Doc. S/1994/1007 (29 August 1994).
[4] SC Res. 1315, UN SCOR, 4186th mtg., UN Doc. S/RES/1315 (2000).
[5] Cherif Bassiouni, *The Statute of the International Criminal Court: A Documentary History* (Ardsley, NY: Transnational Publishers, 1998), 1211.
[6] Richard Goldstone, "Justice as a Tool for Peace-Making: Truth Commissions and International Tribunals," *NYU Journal of International Law and Politics* 28 (1995-1996): 485-503.
[7] Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York: Knopf, 1992), at 634-41.
[8] Preamble, para. 3, ICC Statute [hereafter ICCSt.].
[9] Sterling Johnson, *Peace without Justice: Hegemonic Instability or International Criminal Law?* (Aldershot: Ashgate, 2003), 183. Richard Goldstone, "Justice as a Tool for Peace-Making," 488.
[10] *Finding the Balance: the Scales of Justice in Kosovo*, International Crisis Group, ICG Balkans Report no. 134, 12 September 2002.
[11] The issue of whether international criminal justice actually deters crime is contested. Little empirical evidence supports this belief, and some criminal behavioral psychologists say that for criminal justice systems to deter, the system must have the ability to impose liability and punishments.

For an overview see Danilo Zolo, "Peace through Criminal Law?," *Journal of International Criminal Justice* 2 (2004): 731; Paul Robinson and John Darley, "Does Criminal Law Deter? A Behavioural Science Investigation," *Oxford Journal of Legal Studies* 2 (2004): 173-205; Andrew von Hirsch, Anthony Bottoms, Elizabeth Burney and Per-olof Wikstrom, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Cambridge, UK: University of Cambridge Institute of Criminology, 1999).

For authors expounding the belief that international criminal law deters crime, see Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?," *American Journal of International Law* 95 (2001): 9; Paul Williams and Michael Scharf, *Peace with Justice? War Crimes and Accountability in the Former Yugoslavia* (Oxford: Rowman & Littlefield Publishers, Inc., 2002), 21, 22.
[12] Report by UN High-Level Panel on Threats, Challenges and Change. Follow-up to the Outcome of the Millennium Summit, UN General Assembly, A/59/65, 2 December 2004, 35; Antoine Garapon, "Three Challenges for International Justice," *Journal of International Criminal Justice* 2 (2004): 716.
[13] Michael Scharf and Nigel Rodley, "International Principles on Accountability" in Cherif Bassioni, ed., *Post Conflict Justice* (Ardsley, NY: Transnational Publishers, 2002), 89-96.
[14] G.J. Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton Univ. Press, 2000), 222.
[15] Christine Bell, *Peace Agreements and Human Rights* (New York: Oxford Univ. Press, 2000), 270-73.
[16] International Covenant of Civil and Political Rights (Article 2), Convention Against Torture (Articles 4,5 and 7), American Convention on Human Rights (Article 1), Inter-American Convention on Forced Disappearance of Persons (article 1), Inter-American Convention to

Prevent and Punish Torture (Article 1).

See also non-treaty human rights standards, such as the Declaration on Protection of All Persons from Enforced Disappearance, General Assembly Res. 47/133, 18 December 1992, and the Principles of the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, ECOSOC Res. 1989/65, 24 May 1989; Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, GA Res. 3074 (XXVIII), 3 December 1973.

Cf. Jelena Pejic, "Accountability for International Crimes: From Conjecture to Reality," *International Review of the Red Cross* [hereafter *IRRC*] 845 (2002): 28.

[17] While in the early 1990s, the UN was involved in negotiating broad amnesties in El Salvador, Haiti and Guatemala, the international community has become increasingly reluctant to grant amnesties for serious crimes, as demonstrated in the peace agreements in the DRC, East Timor, and Sierra Leone. See I. Martin, "Haiti: International Force or National Compromise?" in *Journal of Latin American Studies* (1999): 711-34. For an overview see Carsten Stahn, "United Nations Peace-building Amnesties and Alternative Forms of Justice: A Change in Practice?" *IRRC* 845 (2002): 191-205. See also N.J. Kritz, "Where We Are and How We Got Here: An Overview of Developments in the Search for Justice and Reconciliation," in A.H. Henkin, ed., *The Legacy of Abuse – Confronting the Past, Facing the Future* (New York: The Aspen Institute and New York University School of Law, 2002), 82.

[18] Notice of crimes under the statute can be referred by the UN Security Council, a state party or any other source.

[19] Article 12, ICCSt.

[20] Ibid.

[21] Article 13 (b), ICCSt.

[22] Article 17(1)(d) states that the crimes must be of "sufficient gravity to justify further action."

[23] Article 17, ICCSt.

[24] Article 53(1)(c) ICCSt.

[25] The interests of peace and security have additional relevance, in that Article 16 allows the Security Council to defer ICC investigations if the Council deems the investigations to be a threat to international peace and security under Chapter 7 of the UN Charter.

[26] *The Meaning of "the Interests of Justice" in Article 53 of the Rome Statute*, Human Rights Watch Policy Paper, June 2005.

[27] Paragraph 4 of the Preamble of the ICC Statute affirms that the most serious crimes of concern to the international community must not go unpunished; while the last paragraph states that the authors are resolved to guarantee lasting respect for the enforcement of international criminal justice. This more limited definition may be further evidenced by the use of the term "interests of justice" in Articles 55(2)(c), 65(4), 67(1)(d), all of which employ it to refer to matters regarding the rights of the accused or victims as affected in the course of an investigation or trial.

[28] *Policy Paper on the Interests of Justice*, Office of the Prosecutor, ICC, September 2007. www.icc-cpi.int/library/organs/otp/ICC-OTP-InterestsOfJustice.pdf).

29 ICCSt., Art. 53(3), (4).

[30] The Court's obligation to protect victim and witness security and well-being is expressed in Article 68(1) and Article 54(1)(b).
[31] Question time: Archbishop John Baptist Odama of Gulu, Uganda, www.caritas.org.
[32] "Again more deaths … the latest attacks by the LRA against the civilian population in the territory of Dungu," Memorandum of Civil Society in Dungu, 22 January 2010. (Translated from French.)
[33] Interview by the author in 2009.
[34] Kate Mackintosh, "The Development of the International Criminal Court: Some Implications for Humanitarian Activity," in *Humanitarian Exchange Magazine*, December 2005.
[35] Resolution on The International Criminal Court, Approved by the NCC General Assembly November 11, 1999.
[36] United Church of Christ's Support for the ICC. Adopted by the 25th General Synod in July 2005: www.amicc.org/docs/UCC%20Resolution.pdf
[37] "Kenya: Church Calls for International Criminal Court Trials for Post-election Violence," *Catholic World News*, 21 July 2009.
[38] "Sudan says decision to expel aid groups is irrevocable," *Sudan Tribune*, 8 March 2009.
[39] UNITAR Peace and Security Series: A humanitarian dilemma: protecting civilians and promoting justice. Organized jointly with the Friends of the International Criminal Court (ICC), 30 October 2007.
[40] David Kennedy, "The International Human Rights Movement: Part of the Problem?," *Harvard Human Rights Journal* 15 (Spring 2002): 117.
[41] UN Press Release SG/SM/8892, SC/7881 (24 September 2003). Remarks made to the ministerial meeting of the Security Council on "Justice and the Rule of Law: The United Nations Role."

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