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# DUELING IDEALS: BRIDGING THE GAP BETWEEN PEACE AND JUSTICE

DAVID HINE\*

**Abstract:** When the United Nations drafted the Rome Statute, it intended to create an entity, what would eventually become the International Criminal Court, that would enforce criminal justice on an international level. The Member States, upon which the authority of the ICC depends, are often far more concerned with simply ending the offenses and achieving peace than they are with prosecuting the perpetrators. As a result of this ideological conflict between peace and justice, the efficiency and value of the ICC is jeopardized. This Note discusses the current situation in Uganda as an example of the conflict of interests between a Member State and the court. After initiating the ICC's investigation into the Lord's Resistance Army, a militant group that has plagued the northern region of the country for decades, Uganda has since requested that the prosecution of the rebel leaders be discontinued in order to achieve peace. By examining the interests of both the ICC and the Member States, this Note argues that the language of the Rome Statute has a provision which can be interpreted in a manner that would protect the credibility and goals of every party involved.

## INTRODUCTION

When the General Assembly of the United Nations (U.N.) opened the Rome Statute for signature on July 17, 1998, they did so with a hope of solidifying a global sense of respect for the enforcement of international justice.<sup>1</sup> The carefully constructed document appeared to provide the perfect balance between a relinquishment of prosecutorial duties and a simultaneous recognition of every state's right and duty to exercise criminal jurisdiction over those responsible for international crimes.<sup>2</sup> In order to achieve this comfortable equilibrium between individual state authority and the power of what would become the Interna-

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<sup>1</sup> Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, pmbl [hereinafter Rome Statute].

<sup>2</sup> *See id.*

tional Criminal Court (ICC), the drafters of the Rome Statute first limited the court's jurisdiction<sup>3</sup> and then limited the methods of admissibility.<sup>4</sup>

Perhaps a better way to understand the drafters' actions is to say that they defined what American lawyers would call the Court's subject matter jurisdiction and then moved on to the personal jurisdiction.<sup>5</sup> The subject matter jurisdiction of the court was limited to those crimes the U.N. believed posed the most serious threats to the international community as a whole: the crime of genocide, crimes against humanity, and war crimes.<sup>6</sup> Even those crimes do not automatically fall within the jurisdiction of the ICC, however, for violations need to be admitted to the court in one of three ways, thereby fulfilling a sort of personal jurisdiction requirement.<sup>7</sup> Article 13(b) provides that the U.N. Security Council may refer situations to the Court<sup>8</sup> and Article 13(c) allows the Prosecutor to initiate investigations in situations that seem to involve crimes within the jurisdiction of the Court that are not otherwise being addressed.<sup>9</sup> While each of these methods for admitting a case to the jurisdiction of the ICC seem to further the General Assembly's stated goal, a resolution to guarantee lasting respect for the enforcement of international justice,<sup>10</sup> there remains a third

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<sup>3</sup> *Id.* art. 5(1) ("The jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole. The court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression.").

<sup>4</sup> *Id.* art. 13 ("The court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provision of this Statute if: (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14; (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with Article 15.").

<sup>5</sup> Jamie A. Mathew, *The Darfur Debate: Whether the ICC Should Determine That the Atrocities in Darfur Constitute Genocide*, 18 FLA J. INT'L L. 517, 520 (2006); cf. Milena Sterio, *The Evolution of International Law*, 31 B.C. INT'L & COMP. L. REV. 213, 234 (2008) (discussing the jurisdictional limitations of the ICC).

<sup>6</sup> Rome Statute, *supra* note 1, art. 5 (The Statute also includes the crime of aggression, but Article 5(2) explains that the court will not have jurisdiction over the crime of aggression until a provision has been adopted in accordance with Articles 121 and 123, defining the crime and setting out the conditions under which the court shall exercise jurisdiction with respect to the crime); see Mathew, *supra* note 5, at 520.

<sup>7</sup> Rome Statute, *supra* note 1, art.13; see Mathew, *supra* note 5, at 520.

<sup>8</sup> Rome Statute, *supra* note 1, art. 13(b).

<sup>9</sup> *Id.* art. 13(c).

<sup>10</sup> *Id.* pmb.

method for admission, referrals by Member States, that has proven to be problematic.<sup>11</sup>

The issue that arises out of state referrals to the ICC comes from the likelihood that the referring states possess different interests and intentions than the court.<sup>12</sup> While the ICC, like any other court, is focused on bringing justice to its respective jurisdiction, the referring state parties very often have other factors to consider, namely the peace and safety of their citizens.<sup>13</sup> As a result of these different interests, a rift can be and, in fact, has been created between the ICC and its Member States.<sup>14</sup> This division of parties plays the important role of distinguishing the oft coupled ideals of peace and justice.<sup>15</sup> At the same time though, it also poses a tremendous threat to the Court; the ICC must address these differences and decide whether or not it ought to acknowledge the wishes of the Member States and abandon its own purpose or press on in the name of justice, despite the state parties' opposition.<sup>16</sup>

This Note begins by summarizing the first and only example of this phenomenon in the ICC: the situation in Uganda with the Lord's Resistance Army (LRA). It then explains the steps that were taken by each party, Uganda and the ICC, on the way to reaching the current dilemma. The Note goes on to explain why this dilemma, a conflict between peace and justice, is a product of the unique situation in Uganda as well as the Rome Statute's language and methodology. It examines what the ICC stands to gain from each option going forward, and also what it has to lose. Finally, this Note explains why the best option may, in fact, be one that the Court has to invent for itself.

## I. BACKGROUND

The process that Uganda and the ICC had to go through to reach the current schism of ideals was a long, labor intensive and,

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<sup>11</sup> *Id.* art. 13(a); see Kimberly Hanlon, *Peace or Justice: Now That Peace Is Being Negotiated in Uganda, Will the ICC Still Pursue Justice?*, 14 TULSA J. COMP. & INT'L L. 295, 319–35 (2007).

<sup>12</sup> See Hanlon, *supra* note 11, at 329–35; Robert D. Sloane, *The Expressive Capacity of International Punishment: The Limits of the National Law Analogy and the Potential of International Criminal Law*, 43 STAN. J. INT'L L. 39, 53 (2007).

<sup>13</sup> See Hanlon, *supra* note 11, at 319–35.

<sup>14</sup> See *id.*

<sup>15</sup> Adrian Di Giovanni, *The Prospect of ICC Reparations in the Case Concerning Northern Uganda: On a Collision Course with Incoherence?*, 2 J. INT'L L. & INT'L REL. 25, 35 (2006).

<sup>16</sup> See Hanlon, *supra* note 11, at 321.

most importantly, violent procedure.<sup>17</sup> After breaking away from decades of British rule in 1962, Uganda found itself dealing with the remnants of European colonization.<sup>18</sup> In an effort to maintain control over the locals, the British had divided the country into two regions, the North and the South, and pitted the two areas against each other.<sup>19</sup> For years, this division was exploited by overly ambitious individuals who used violence to rally one region against the other in order to catapult themselves into power.<sup>20</sup> By the middle of the 1980s, President Yoweri Museveni and his National Resistance Movement had gained control of Uganda, causing members of previous governments to seek protection in northern Uganda and southern Sudan.<sup>21</sup>

It was from this rebellious region that, in 1986, an organization calling itself the Holy Spirit Movement, led by Alice Auma Lakwena, rose up against Museveni's government.<sup>22</sup> Though they were quickly defeated by the National Resistance Movement's forces, the short-lived Holy Spirit Movement gained significance in its defeat.<sup>23</sup> A young relative of Lakwena, Joseph Kony, soon took over the role of leading the resistance, utilizing the same religious rhetoric<sup>24</sup> as his predecessor and adding a political element to his fast growing organization, the LRA.<sup>25</sup> In reality, though, the political element, a professed desire to overthrow Museveni and the Ugandan government, was only nominal.<sup>26</sup> The LRA never had any "coherent ideology, rational political agenda or public support," and in fact focused most of its violence on the very people for whom it claimed to be fighting, the Acholis in the northern region.<sup>27</sup>

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<sup>17</sup> See Hema Chatlani, *Uganda: A Nation in Crisis*, 37 CAL. W. INT'L. L.J. 277, 279–85 (2007); Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, 99 AM. J. INT'L L. 403, 406–12 (2005).

<sup>18</sup> Chatlani, *supra* note 17, at 279.

<sup>19</sup> *Id.*

<sup>20</sup> *See id.* at 279–80.

<sup>21</sup> *Id.* at 280.

<sup>22</sup> Akhavan, *supra* note 17, at 406. Lakwena claimed to have supernatural spiritual powers and told her soldiers that "bathing in holy water would make bullets bounce off them and the stones they threw would turn into grenades." *Id.* Her forces suffered heavy casualties during a battle with the National Resistance Movement's forces in late 1987, and Lakwena fled to Kenya. *Id.*

<sup>23</sup> *See id.*

<sup>24</sup> Chatlani, *supra* note 17, at 281 (Joseph Kony claimed to have inherited the spirit of Lakwena and marketed himself as a "messenger of God and a liberator of the Acholi people").

<sup>25</sup> *Id.*

<sup>26</sup> *See id.* at 282.

<sup>27</sup> Akhavan, *supra* note 17, at 407.

After 1991, Kony and his followers became increasingly violent as they killed and raped civilians across northern Uganda, leaving thousands of maimed people in their wake.<sup>28</sup> But apart from the LRA's reputation for amputating limbs and brutally disfiguring the faces and bodies of its victims, the LRA also abducted thousands of children, forcing them to serve as child soldiers and sex slaves.<sup>29</sup> Some estimate that the abducted child soldiers made up nearly eighty-five percent of the LRA's forces<sup>30</sup> while others put the figures even higher.<sup>31</sup> Regardless of the precise numbers, the fact of the matter was simple: the vast majority of the LRA's members were also victims of the organization's torturous reign.<sup>32</sup> It was for this reason that Uganda enacted The Amnesty Act in 2000, an expression of forgiveness and an attempt to end the conflict without any further violence.<sup>33</sup> As a result, "from January 2000 to June 2005, Uganda granted amnesty to over 15,000 of the LRA's combatants and abductees."<sup>34</sup> This peaceful progress continued to be overshadowed by the ongoing violence, however, and on December 16, 2003, President Museveni sought outside help and referred the LRA situation to the ICC, marking the first invitation for the court to exercise its jurisdiction.<sup>35</sup>

After more than a year of investigating,<sup>36</sup> the ICC decided that the situation was in fact serious enough to justify criminal prosecution and issued warrants for the arrest of five LRA leaders.<sup>37</sup> Lacking a police force of its own though, the ICC had to rely on Member States, legally bound to enforce the Court's warrants, to arrest the wanted men.<sup>38</sup> After months of inaction, it seemed that the Court was losing

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<sup>28</sup> Chatlani, *supra* note 17, at 282.

<sup>29</sup> *See id.*

<sup>30</sup> Background Information on the Situation in Uganda, [http://www.icc-cpi.int/library/press/pressreleases/Uganda\\_200401\\_EN.doc](http://www.icc-cpi.int/library/press/pressreleases/Uganda_200401_EN.doc) (last visited Nov. 25, 2008).

<sup>31</sup> Chatlani, *supra* note 17, at 282. Chatlani made reference to an estimate that the LRA currently consists of approximately 200 armed commanders and 3000 child soldiers, setting the child soldier contribution to nearly ninety-four percent. *Id.*

<sup>32</sup> *See* Hanlon, *supra* note 11, at 304.

<sup>33</sup> *Id.* Anyone who had participated, collaborated, or assisted in the commission of any crime related to the war or armed rebellion could take advantage of the amnesty by reporting to authorities, surrendering any weapons, and renouncing their involvement in the rebellion. *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Di Giovanni, *supra* note 15, at 25 (the warrants were originally issued on July 8, 2005; the indictments were unsealed on October 13, 2005).

<sup>37</sup> Hanlon, *supra* note 11, at 304–05. The court issued warrants for the arrest of Joseph Kony, Vincent Otti, Okot Odhiambo, Dominci Ongwen, and Raska Lukwiya. *Id.*

<sup>38</sup> *See id.* at 305.

credibility.<sup>39</sup> In an effort to counter this shift in public perception and give strength to the ICC's warrants for arrest, Interpol issued five wanted person notices, one for each of the men indicted by the ICC.<sup>40</sup>

Yet while the case against the LRA was developing in the ICC, and perhaps as a result of the way that things seemed to have stalled, President Museveni and the Ugandan government continued to push their amnesty policy.<sup>41</sup> In August 2006, Museveni declared a cease-fire which was signed and agreed to by the LRA.<sup>42</sup> In addition, the government proposed a peace deal which offered amnesty to the accused members of the LRA, despite their leading roles in years of "systematic murder, abduction, sexual enslavement and mutilation of Ugandan civilians."<sup>43</sup>

Today, Uganda is still pushing for amnesty and resisting the ICC's decision to prosecute the leaders.<sup>44</sup> Perhaps more important than the government's decision to implement such a policy is the amount of domestic support it has received.<sup>45</sup> Many Ugandans believe that forgiveness, not the criminal justice system, is the path to a peaceful life.<sup>46</sup> This is a sentiment shared not only among those who have remained relatively unaffected, but also by those who have themselves been mutilated and tortured.<sup>47</sup> It is this mentality and these people—those in search of peace—that form the ICC's opposition.<sup>48</sup>

## II. DISCUSSION

It is the state referral method of submitting a case to the ICC that has proven to be problematic.<sup>49</sup> Article 13(a) of the Rome Statute allows State Parties to refer potential criminal situations to the ICC for

<sup>39</sup> See Di Giovanni, *supra* note 15, at 34–35.

<sup>40</sup> *Id.*

<sup>41</sup> See Alexander K. A. Greenawalt, *Justice Without Politics? Prosecutorial Discretion and the International Criminal Court*, 39 N.Y.U. J. INT'L L. & POL. 583, 619 (2007).

<sup>42</sup> Jeffrey Gettleman, *Uganda Peace Hinges on Amnesty for Brutality*, N.Y. TIMES, Sept. 15, 2006, at A1.

<sup>43</sup> Greenawalt, *supra* note 41, at 619.

<sup>44</sup> *Id.*

<sup>45</sup> See *id.*; Gettleman, *supra* note 42, at A1.

<sup>46</sup> See Gettleman, *supra* note 42, at A1 ("Peace is more important than punishment, Acholi elders say, and they would rather have Mr. Kony return to Gulu for a [traditional Ugandan forgiveness ceremony] than rot in some European prison.").

<sup>47</sup> See *id.* ("Typical is Christa Labol, whose ears and lips were cut off by bayonet-wielding prepubescent soldiers she now says she would welcome home. 'Only God can judge,' Mrs. Labol said through a mouth that is always open.").

<sup>48</sup> See Di Giovanni, *supra* note 15, at 35; Gettleman, *supra* note 42, at A1.

<sup>49</sup> See Rome Statute, *supra* note 1, art. 13(a); Hanlon, *supra* note 11, at 319–35.

investigation.<sup>50</sup> Article 14 goes on to explain that state referrals are made specifically to determine whether charges ought to be brought against any individuals, cutting off any further involvement by the state at that point.<sup>51</sup> With that statutory purpose in mind, the state referral method for exercising the court's jurisdiction appears to liken itself to the other two methods in that it too furthers the General Assembly's goal of solidifying a global sense of respect for the enforcement of international justice.<sup>52</sup>

The problem, as seen in the Uganda situation, arises after the decision to press charges has been made, for while it is unlikely that the Prosecutor or the Security Council would ever revoke their support for the prosecution of cases that they initiated, referring states have done just that.<sup>53</sup> This apparent revocation may not ultimately have any effect on the Court's actual authority to prosecute the crimes, but it does indicate a serious clash between the interests of individual sovereign nations and the interests of the greater global theater.<sup>54</sup> Furthermore, the existence of such a schism stands as an enormous obstacle in the way of realizing the "lasting respect for the enforcement of international justice" for which the ICC was created.<sup>55</sup> Perhaps the most difficult aspect of this obstacle, the State Party's practical revocation, is the fact that it is not motivated by greed or by violence, but instead by a desire for peace; peace, that is to say, is standing directly in the way of justice.<sup>56</sup>

With the division now more clearly defined as a split between a sovereign state's desire for peace and the court's ambitions for justice, and continuing to use the Uganda situation as an example, one can examine the different options that the ICC has available.<sup>57</sup> One op-

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<sup>50</sup> Rome Statute, *supra* note 1, art. 13(a).

<sup>51</sup> *Id.* art. 14(1) ("A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.")

<sup>52</sup> *Id.* pmb., arts. 13(b), (c) & 14.

<sup>53</sup> See Hanlon, *supra* note 11, at 329–35.

<sup>54</sup> See Di Giovanni, *supra* note 15, at 35; Greenawalt, *supra* note 41, at 619–20.

<sup>55</sup> Rome Statute, *supra* note 1, pmb.; see Greenawalt, *supra* note 41, at 619–20.

<sup>56</sup> See Di Giovanni, *supra* note 15, at 35.

<sup>57</sup> See generally Nsongurua J. Udombana, *War Is Not Child's Play! International Law and the Prohibition of Children's Involvement in Armed Conflicts*, 20 TEMP. INT'L & COMP. L.J. 57 (2006); James D. Kole, *Lessons of Peace Through Justice*, CHI. DAILY L. BULL. 6 (Nov. 1, 2006); Mahnoush H. Arsanjani & W. Michael Reisman, *The Law-in-Action of the International Criminal Court*, 99 AM. J. INT'L L. 385 (2005); Douglass W. Cassel, Jr., *First Step on Long, Arduous Trip*, CHI. DAILY L. BULL. 5 (Oct. 21, 2005).



tion is for the ICC to simply exercise the authority that Uganda gave the Court when it submitted its referral.<sup>58</sup> Taking such action could be the very thing the ICC needs to finally realize its goal of establishing a sense of respect for the enforcement of international justice.<sup>59</sup> As James D. Kole points out, “[i]n the long run peace does require justice. History teaches that accumulated injustices eventually lead to violence.”<sup>60</sup> Certainly one must acknowledge the difficulties that such tactics cause for those in search of peace, but never, says Kole, should justice be denied or delayed to lessen those hardships; justice is a necessary element on the road to peace.<sup>61</sup>

There are some who also believe that denying Uganda’s request to drop the indictments is the right thing to do, but are driven by a different motivation: deterrence.<sup>62</sup> As Nsongurua Udombana argues, “[i]f the ICC succeeds in bringing the LRA to justice, then it may deter others currently engaging in or contemplating mass atrocities.”<sup>63</sup> The ICC could simply acknowledge that immediate peace in Uganda may be secondary to a plan that would discourage further atrocities around the world and save millions of lives.<sup>64</sup>

The problem with this first option is that the court still lacks any reliable way of apprehending the indicted men.<sup>65</sup> Without any police force, the ICC would be forced to rely upon the Ugandan government, a government whose wishes the ICC will have recently disregarded, to produce them.<sup>66</sup> The ICC would be crippling Uganda’s opportunity to negotiate for peace in order to realize something that the ICC is literally powerless to attain without Uganda’s help.<sup>67</sup> Some, like Udombana, believe this is a mere hiccup in the international justice system and should be no cause for concern, claiming instead that “the international community must take comfort in the fact that there is no time bar for these crimes.”<sup>68</sup> Even if Uganda must endure years

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<sup>58</sup> See Udombana, *supra* note 57, at 102–03.

<sup>59</sup> See Rome Statute, *supra* note 1, pmbl.; Udombana, *supra* note 57, at 102–03.

<sup>60</sup> Kole, *supra* note 57.

<sup>61</sup> *Id.*

<sup>62</sup> See Udombana, *supra* note 57, at 103.

<sup>63</sup> *Id.*

<sup>64</sup> See *id.*

<sup>65</sup> See Hanlon, *supra* note 11, at 305.

<sup>66</sup> See *id.*; Udombana, *supra* note 57, at 103.

<sup>67</sup> See Hanlon, *supra* note 11, at 305; Udombana, *supra* note 57, at 103.

<sup>68</sup> Udombana, *supra* note 57, at 103.

of war before the indicted men are arrested, the result will have been well worth the wait, for justice is the ultimate goal.<sup>69</sup>

Others take a very different approach, viewing the court's inability to enforce its policies as a sign of its fragility.<sup>70</sup> In their article, Mahnoush H. Arsanjani and W. Michael Reisman warn that "the failure of governments will simply become the failure of the ICC."<sup>71</sup> The solution to this problematic scenario introduces a second option for the ICC: turn the issue back over to Uganda.<sup>72</sup> Rather than deterrence, one motivation behind the second option is the notion of holding Member States accountable for their own political problems.<sup>73</sup> Uganda has been unable to end the civil war within its borders for two decades, and while the referral to the ICC technically asked for help in dealing with human rights violators, the referral also effectively asked the ICC to end the conflict.<sup>74</sup> This, of course, is something the ICC is not designed to do.<sup>75</sup> Or, as Arsanjani and Reisman phrase the issue, "If neither [military action nor negotiation] has proven effective, what will referral of the situation to the ICC accomplish?"<sup>76</sup> The answer is simple: nothing, because the ICC, a court of criminal justice, is not equipped to solve political problems.<sup>77</sup>

More importantly, when the ICC fails in its role of problem solver, it will simultaneously expose itself as a weak authority, thereby jeopardizing its ability to enforce international criminal law.<sup>78</sup> "To start war crimes investigations for the sake of justice at a time when the war is not yet over, risks having, in the end, neither justice nor peace delivered," one Ugandan religious representative explained.<sup>79</sup> This is why so many Ugandans believe that the ICC should discontinue its pursuit of the indicted men.<sup>80</sup>

This raises another plausible motivation for the second option (dropping the charges and handing sole control of the situation back

<sup>69</sup> *See id.*

<sup>70</sup> *See* Arsanjani & Reisman, *supra* note 57, at 395.

<sup>71</sup> *Id.*

<sup>72</sup> *See id.*

<sup>73</sup> *See id.* at 393–95.

<sup>74</sup> *See id.*

<sup>75</sup> Arsanjani & Reisman, *supra* note 57, at 393–94.

<sup>76</sup> *Id.* at 395.

<sup>77</sup> *See id.*

<sup>78</sup> *See* U.N. Office for the Coordination of Humanitarian Aff., *Uganda: ICC Could Suspend Northern Investigations*, Apr. 18, 2005, <http://www.globalsecurity.org/military/library/news/2005/04/mil-050418-irin01.htm>.

<sup>79</sup> *Id.*

<sup>80</sup> *See id.*

over to Uganda): peace.<sup>81</sup> Just as there are people who feel that peace should never interfere with justice, so are there people who believe that justice, or at least the kind doled out by courts, should never interfere with peace.<sup>82</sup> In fact, it seems that a growing number of Ugandans adhere to this preference.<sup>83</sup> With so much support among the people, and with a real possibility of having a nation at peace for the first time in decades, Ugandan officials feel that the judges of the ICC should reconsider the necessity of the indictments.<sup>84</sup>

Unfortunately, while dismissing the indictments may help Uganda achieve peace, it will do absolutely nothing to further the enforcement of international justice, the very thing that the ICC was created to do.<sup>85</sup> The time that the ICC spent developing the case, the unprecedented issuing of international indictments, and the months spent waiting for the wanted men to be apprehended would all be quickly tossed aside.<sup>86</sup> The court would be turning its back on a situation that, according to its own conclusions, involved crimes against humanity so egregious that they warranted official action.<sup>87</sup> Such a move would be utterly damning to the ICC: establishing itself, in these early days of its existence, not as a trumpeter of justice and truth but instead as a hypocrite who does nothing to stop the violations.<sup>88</sup> In the face of this decision, a matter of determining whether the ICC should continue to pursue justice and risk further war or step aside in the name of peace and sacrifice its own credibility, peace and justice seem to be as incompatible as two goals could possibly be.<sup>89</sup>

### III. ANALYSIS

In reality, the situation is not nearly as bleak as the polarized options may lead one to believe.<sup>90</sup> It is true that the ICC is, and ought to

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<sup>81</sup> See Cassel, *supra* note 57.

<sup>82</sup> See Gettleman, *supra* note 42, at A1.

<sup>83</sup> See *id.*

<sup>84</sup> See *id.* (“We can go to the judges and say there are new circumstances and that the indictments are no longer needed,” said a Ugandan government spokesman, Robert Kabushenga.”).

<sup>85</sup> See Rome Statute, *supra* note 1, pmbl.; Thomas Hethe Clark, *The Prosecutor of the International Criminal Court, Amnesties, and the “Interests of Justice”: Striking a Delicate Balance*, 4 WASH. U. GLOBAL STUD. L. REV. 389, 390 (2005).

<sup>86</sup> See Clark, *supra* note 85; Di Giovanni, *supra* note 15.

<sup>87</sup> See Clark, *supra* note 85; Di Giovanni, *supra* note 15.

<sup>88</sup> See Hanlon, *supra* note 11, at 322–26.

<sup>89</sup> See Clark, *supra* note 85; Di Giovanni, *supra* note 15.

<sup>90</sup> See Hanlon, *supra* note 11, at 336–37.

be, actively pursuing the enforcement of international justice.<sup>91</sup> It is also true that by stepping away from the Uganda situation at this point, the ICC may appear more passive and tolerant of violations than a developing international authority ought to be.<sup>92</sup> So while it may seem that pursuing justice and backing out of Uganda are contradictory options, there may actually be a way to align their interests: empowering the court and bringing peace to Uganda.<sup>93</sup> Indeed, by using the unique and complex circumstances that surround the LRA situation in Uganda, the ICC may be able to justify a decision that is very different from that which most people would expect from a court of this nature.<sup>94</sup>

Perhaps the most famous instance of international criminal justice can be seen in the trials of war criminals before the Nuremberg Military Tribunals after World War II.<sup>95</sup> There, the tribunals were meticulous in the prosecution of every potential offender.<sup>96</sup> High ranking officers and subordinate soldiers were subject to the same, or at least comparable, charges; even doctors who facilitated the Nazi regime were tried at Nuremberg.<sup>97</sup>

The same will not ever be said about the pending trials in the Uganda situation, for only five men were indicted by the ICC, compared to the dozens of individuals tried at Nuremberg.<sup>98</sup> This, of course, is a result of the LRA's bizarre composition: the vast majority of the offenders are, or were at some point, also counted among the victims.<sup>99</sup> While the reasoning behind the limited scope of prosecution is sound, it does nothing to silence the objections of those who desire peace.<sup>100</sup> Instead of delaying peace to bring the entire LRA to justice, a decision which might have been justifiable, the ICC would be crippling peace negotiations in order to bring charges against just five men.<sup>101</sup> In

<sup>91</sup> *Id.* at 336.

<sup>92</sup> *See id.*

<sup>93</sup> *See generally* Arsanjani & Reisman, *supra* note 57; Hanlon, *supra* note 11, at 336–37; Udombana, *supra* note 57; Cassel, *supra* note 57; Kole, *supra* note 57.

<sup>94</sup> *See generally* Arsanjani & Reisman, *supra* note 57; Hanlon, *supra* note 11, at 336–37; Udombana, *supra* note 57; Cassel, *supra* note 57; Kole, *supra* note 57.

<sup>95</sup> *See* Lieutenant Colonel (Ret.) Gary Solis, *First George S. Prugh Lecture in Military Legal History: Judge Advocates, Courts-Martial, and Operational Law Advisors*, 190/191 MIL. L. REV. 153, 158 (2006).

<sup>96</sup> *See id.*

<sup>97</sup> *See* Solis, *supra* note 95, at 158; Gail H. Javitt, *Old Legacies and New Paradigms: Confusing “Research” and “Treatment” and Its Consequences in Responding to Emergent Health Threats*, 8 J. HEALTH CARE L. & POL'Y 38, 45 (2005).

<sup>98</sup> *See* Hanlon, *supra* note 11, at 304–05; Solis, *supra* note 95, at 158.

<sup>99</sup> Hanlon, *supra* note 11, at 304.

<sup>100</sup> *See* Gettleman, *supra* note 42, at A1.

<sup>101</sup> *See* Di Giovanni, *supra* note 15, at 35; Hanlon, *supra* note 11, at 304–05.

fact, since Raska Lukwiya is already dead, and there are reports of both Vincent Otti and Dominic Ongwen's deaths as well, the ICC would be subjecting a nation to further violence and torment so that they could cling to the possibility of prosecuting as few as two persons.<sup>102</sup> Such behavior on behalf of the ICC is so reckless that some may count it as a human rights violation itself and certainly not in the best interests of justice.<sup>103</sup>

The issue of stabilizing the Court's authority still remains.<sup>104</sup> The ICC has officially determined that the men at large are, in fact, human rights violators; it can not simply turn its back on its own conclusions without providing a well reasoned explanation.<sup>105</sup> Such an explanation may already exist in the very document which created the ICC: the Rome Statute.<sup>106</sup> Though not exactly on point, Article 53 discusses the different factors the Prosecutor is to consider when determining whether an investigation should be initiated; one of those factors is whether an investigation and subsequent prosecution is in "the interests of justice."<sup>107</sup> At no point beyond Article 53 does the Rome Statute indicate that such a consideration is ruled out after the pre-investigation period; in fact, "the interests of justice" are constantly referenced as an ongoing concern of the court throughout the entire Rome Statute.<sup>108</sup> This fact makes the decision to discontinue plans to prosecute the indicted men a much easier one for the Court.<sup>109</sup> Instead of simply turning its back on the earlier decision to prosecute the men, the ICC may now, by the authority of the Court, determine that the prosecution of the indicted men would no longer serve the "interests of justice."<sup>110</sup>

This may seem like useless rhetoric, but by having the ability to take an active role in its decision making process rather than simply being bullied by international cries for peace, the ICC gives itself an op-

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<sup>102</sup> See Hanlon, *supra* note 11, at 304–05; *Ugandan Rebel Leader Feared Dead*, BBC NEWS, Nov. 7, 2007, <http://news.bbc.co.uk/2/hi/africa/7082437.stm>; Luis Moreno-Ocampo, Prosecutor of the Int'l Crim. Ct., Statement at Informal Meeting of Legal Advisors of Ministries of Foreign Affairs (Oct. 24, 2005), available at [http://www.icc-cpi.int/library/organs/otp/speeches/LMO\\_20051024\\_English.pdf](http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051024_English.pdf).

<sup>103</sup> See Rome Statute, *supra* note 1, arts. 5, 53.

<sup>104</sup> See Hanlon, *supra* note 11, at 336–37.

<sup>105</sup> See *id.* at 304–05.

<sup>106</sup> See Rome Statute, *supra* note 1, art. 53.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* arts. 53(1)(c), 53(2)(c), 55(2)(c), 61(1)(b), 65(4), & 67(1)(d).

<sup>109</sup> *Id.*; Di Giovanni, *supra* note 15, at 35; Hanlon, *supra* note 11, at 336–37.

<sup>110</sup> Rome Statute, *supra* note 1, arts. 53(1)(c), 53(2)(c), 55(2)(c), 61(1)(b), 65(4), 67(1)(d); Di Giovanni, *supra* note 15, at 35; Hanlon, *supra* note 11, at 336–37.

portunity to save face.<sup>111</sup> Instead of continuing with the prosecutions and appearing coldhearted and even inhumane, the ICC can abandon the indictments and come across as a benevolent protector of human life.<sup>112</sup> Furthermore, in making such a decision, the court will no longer look spineless and manipulated, but instead wise and decisive.<sup>113</sup> As for Uganda, it will get exactly what it asked for: the opportunity to have peace within its borders for the first time in decades.<sup>114</sup> Everybody wins.

#### CONCLUSION

This analysis of the ICC's options in dealing with the LRA case in Uganda should help people understand the complexity and potentially life threatening implications that come with the situation. It is important for people to understand that the decision to pursue justice may at times adversely affect thousands, if not millions, of lives. It is equally important to realize that ignoring justice in the name of peace very often carries consequences as well. Hopefully, the ICC recognizes this balance and finds a way to allow the peace negotiations to continue without damaging its own practical authority. To date, the court has given little indication on what it plans to do with the LRA situation; only time will tell.

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<sup>111</sup> See Hanlon, *supra* note 11, at 317–26.

<sup>112</sup> See *id.* at 336–37.

<sup>113</sup> See Arsanjani & Reisman, *supra* note 57, at 395; Hanlon, *supra* note 11, at 336–37.

<sup>114</sup> See Hanlon, *supra* note 11, at 336–37; Gettleman, *supra* note 42, at A1.

