
When it comes to atrocities committed during civil and interstate wars, one may wonder whether peace and justice are both achievable. To obtain peace, perpetrators of serious crimes may avoid accountability, while to obtain justice, settlement with criminals is not tolerated. Mark Kersten, in his *Justice in Conflict: The Effects of the International Criminal Court’s Interventions on Ending Wars and Building Peace*, investigates how the International Criminal Court (ICC) helped or hindered peace and justice when it indicted leaders of combatants in two civil wars.

Kersten proposes a framework for examining the ICC’s influence on peace negotiations. He looks at the pre-negotiation phase (influencing whether and when to negotiate), negotiation phase (who is at the table, where talks are held, and what items are on the agenda), and post-negotiation phase (if an agreement is reached, whether it is honored, and whether the sides reach any form of reconciliation). Using the case studies of the situations in Uganda (the government versus the Lord’s Resistance Army (LRA)) and Libya (the government versus rebels coordinated by the National Transitional Council), Kersten carefully analyzes the limits of the ICC’s abilities to encourage peaceful resolutions of these conflicts.
Kersten’s main finding is that the ICC’s greatest method of influence is choosing whom to indict. In the Uganda situation, the ICC indicted Joseph Kony and other LRA senior commanders. The indictments brought the LRA to the negotiating table because they wanted the threat of trial lifted, but the senior leaders were unwillingly to travel to the talks, fearing they would be arrested. The LRA negotiators could not credibly represent the leaders who ultimately had to approve the deal, and Kony never signed it. The ICC indictments reinforced perceptions that the LRA was the evil side of the conflict (and it certainly did commit many atrocities) while ignoring crimes committed by the Ugandan government forces. Kersten also suggests the Ugandan government self-referred the situation to the ICC to undermine the LRA and insulate the government from accountability.

In the Libya conflict, rebels sought to overthrow Moammar Gaddafi’s regime. The UN Security Council referred the situation to the ICC, which indicted Gaddafi and two subordinates. These indictments emboldened the rebels and made them resistant to negotiating. Ultimately, the rebels did achieve military victory and killed Gaddafi. The new government then resisted ICC jurisdiction over the remaining accused, preferring to bring them to trial in Libyan courts. As in Uganda, the ICC Prosecutor has not indicted anyone from the other side, even though some rebel actions, including the possible execution of Gaddafi, constituted war crimes.

Kersten concludes that asking whether the ICC advances peace or justice is asking the wrong question. Rather, we should analyze how the ICC can affect armed conflicts and influence whether peace negotiations are held, who participates, and on what terms. He also shows how difficult it is for the ICC to avoid political considerations. Self-referrals by governments or referrals by the Security Council are both political actions (the government seeking to harm its adversary and the Security Council undermining disfavored governments), and whom the Prosecutor chooses to indict is politically influenced. The Prosecutor has a strong incentive to indict only when there will be support from states to gather evidence and enforce arrest warrants. Indicting war criminals without that support only weakens the ICC’s reputation and its influence.

Kersten’s book is supported with fieldwork, interviews, and extensive citations to the literature. It is a very specialized work, and most suitable for collections focusing on international criminal law and international courts.

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