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Case Posed: But Can the Prosecution Rest?

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Case Posed: But Can the Prosecution Rest?

Abstract

Julie Flint and Alex de Waal have published a damning article about the ICC prosecutor Luis Moreno Ocampo which reads, by extension, as a trouncing of the entire institution. I'm not in the loop with the court's day-to-day politics well enough to offer an informed counter-argument, so instead, by way of playing devil's advocate, let me agree for argument's sake with a number of the authors' claims, hyperbolic and partisan though they sound at places, and then (again for argument's sake), push back on the assumptions the authors make about the implications of those claims.

Keywords

Human rights, International Criminal Court (ICC), United Nations (UN), Management, Leadership

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Case Posed: But Can the Prosecution Rest?

by Charli Carpenter

Julie Flint and Alex de Waal have published [a damning article](#) about the ICC prosecutor [Luis Moreno Ocampo](#) which reads, by extension, as a trouncing of the entire institution. I'm not in the loop with the court's day-to-day politics well enough to offer an informed counter-argument, so instead, by way of playing devil's advocate, let me agree for argument's sake with a number of the authors' claims, hyperbolic and partisan though they sound at places, and then (again for argument's sake), push back on the assumptions the authors make about the implications of those claims.

- Let us assume that Moreno-Ocampo erred, as has been ably described, in failing to launch a full-scale investigation of the atrocities in Darfur. But why single out Darfur as uniquely deserving such an investigation? After all, ten to twenty times as many people have died in Democratic Republic of the Congo—the country whose conflict yielded the first indictee to be tried by the court, [Thomas Lubanga Dyilo](#).
- Let us assume that the [indictment of President Omar Bashir](#) and [Joseph Kony](#) by the court are, as Flint and de Waal say, toothless acts that only undermine peace processes on the continent. At worst, are the authors not accusing the ICC simply of upholding its mandate to prosecute the law? From a policy perspective, the authors are absolutely right. But the ICC is not a political institution; it is a judicial institution. By issuing indictments that can only be realized through third party state action, the ICC is refusing to become politicized, refusing to serve as a substitute for political action, and is passing the buck back to governments in whose hands, ultimately, the enforcement of international law lies.
- Let us assume that Flint and de Waal have *accurately* depicted the Chief Prosecutor of the ICC as a hopelessly abrasive, procedurally obtuse, and [personally corrupt](#) individual whose behavior has undermined morale at the ICC. Must it therefore follow that his conduct has damaged the ICC's legitimacy beyond repair? I doubt it. Given that prickly, self-important curmudgeons abound in leadership positions of international institutions, it's hard for me to see the sort of broad implications of this that the authors describe. Should Moreno Ocampo be replaced, if this picture is accurate? Probably. Would the court function more smoothly, would the ICC staff be happier with a more charismatic, able figurehead? Certainly. But will the court's legitimacy as an institution be dependent on this? I'm not so sure. Many other international organizations have had rocky starts only to emerge down the line, with some tinkering, as powerful forces for good—the defunct League of Nations and its successor come to mind. Judges at the ICTY [routinely fell asleep on the job](#), and those in Arusha were known to [laugh at rape victims](#), but these institutions with all their flaws managed to bring justice to many (including landmark convictions for sexual violence) and will be remembered by most as significant steps on the road to greater accountability for war crimes. It remains to be seen how States Parties will react to the excesses of Moreno Ocampo during the 2010 Review Conference of the Rome Statute. Let us not, however, throw out the baby with the bathwater.

Charli Carpenter is an Assistant Professor of Political Science at University of Massachusetts-Amherst. Her teaching and research interests include national security ethics, the laws of war,

transnational advocacy networks, gender and political violence, war crimes, comparative genocide studies, humanitarian affairs and the role of information technology in human security. She is the author of [Innocent Women and Children: Gender, Norms and the Protection of Civilians](#), and the editor of [Born of War: Protecting Children of Sexual Violence Survivors in Conflict Zone](#). Dr. Carpenter blogs about international politics at [Duck of Minerva](#) and about asymmetric warfare at [Complex Terrain Lab](#).