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“Seeking Justice, Strategically”

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“Seeking Justice, Strategically”

Abstract

In his opinion piece, Ian Paisley takes to task the International Criminal Court (ICC) for, as he sees it, intervening in domestic processes of reconciliation at the expense of long-term prospects for peace. The "peace versus justice" paradox is not a new one and Paisley expresses a common criticism of justice mechanisms as disruptive of post-conflict, societal healing and the overwhelming hurdle of governing in the aftermath of violence. Missing from his analysis is a broader understanding of trends in international justice and accountability, of which the ICC is only one component. While the ICC is certainly not immune from criticism, a more apt judgment would take into account multiple layers of justice at work in post-conflict settings and to suggest ways to strategically leverage the specific qualities of the ICC for human rights purposes.

Keywords

Human rights, International Criminal Court (ICC), Peace, Justice, Balance

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"Seeking Justice, Strategically"

by Joel R. Pruce

In his opinion piece, Ian Paisley takes to task the International Criminal Court (ICC) for, as he sees it, intervening in domestic processes of reconciliation at the expense of long-term prospects for peace. The "peace versus justice" paradox is not a new one and Paisley expresses a common criticism of justice mechanisms as disruptive of post-conflict, societal healing and the overwhelming hurdle of governing in the aftermath of violence. Missing from his analysis is a broader understanding of trends in international justice and accountability, of which the ICC is only one component. While the ICC is certainly not immune from criticism, a more apt judgment would take into account multiple layers of justice at work in post-conflict settings and to suggest ways to strategically leverage the specific qualities of the ICC for human rights purposes.

The advent of the ICC was the product of a long struggle by activists, lawyers, and survivors to establish a permanent adjudicatory body to build on the ad hoc tribunals that emerged in the 1990s in Rwanda and the Former Yugoslavia. Designed to hold individuals accountable for war crimes, genocide, and crimes against humanity, the ICC arrived at its first conviction last month against Thomas Lubanga for his use of child soldiers in the Democratic Republic of the Congo. Apart from this recent development, the Court has issued indictments against many of the world's nastiest people. However, as Paisley correctly points out, this ostensibly well-intentioned approach to justice is accompanied by an array of unintended byproducts that do damage to other human rights goals. For instance, ahead of the indictment of Sudan's President Omar al-Bashir, the NGO community cautioned the move for fear of a backlash against aid providers and advocates active domestically. Those warnings went unheard and al-Bashir immediately acted [to expel groups](#) including Save the Children, Oxfam, CARE International, and Médecins sans Frontières. So, if the ICC's goal is to alleviate suffering, the indictment worked against that goal. If the objective is to work towards the long-term pursuit of international justice, whatever the short-term effects, then it still remains to be seen whether this was a smart move seeing as how al-Bashir is still in power, at large, and terrorizing civilians in the regions of the [Nuba mountains, Blue Nile River, and South Kordofan](#). It almost appears as if the indictment antagonized al-Bashir and provoked him to lash out. Alex de Waal [has gone so far](#) as to suggest that this indictment served certain personal interests because the ICC has become a platform for the self-aggrandizement of its chief prosecutor, Luis Moreno Ocampo. Cynical or not, that the ICC has produced criticism indicates its controversial nature, despite its progressive human rights goals.

However, while Paisley's point is well taken—that the ICC's interventions may have negative side effects on other worthwhile goals—ultimately the ICC is only one component of a steady trend towards international justice; and it's not even the most relevant one. In her widely circulated new book, [The Justice Cascade](#), Kathryn Sikkink produces empirical research about the positive impact felt by states that have held perpetrators to account, particularly in the areas of stability and future deterrence (see reviews [here](#), [here](#), and [here](#)). Her research demonstrates that the pursuit of justice has not compromised parallel steps toward democracy and human rights protection. Most pertinent to Paisley's critique, Sikkink does not focus her attention solely on international justice per se, but instead explores a range of mechanisms including domestic courts, hybrid creations, and other accountability measures. Across multiple regions and going

back decades, Sikkink's work simply does not support Paisley's fear that "The wheels of justice must be allowed to turn at their own pace, but that they must not impede the peace process."

The existence of the ICC does not presuppose its trump over national efforts, but merely that it can serve the cause of justice well when other alternatives fail. The ICC is a court of last resort and is designed as such. When a domestic or regional body is unable or unwilling to seek prosecution of these high crimes, signatories to the Rome Statute are obligated to step in. Yet, taking Paisley's claim seriously, we can inject a call for strategic caution when issuing indictments and intervening in national politics. ICC prosecutors should work with relief and advocacy organizations to arrive at a decision that serves a multitude of human rights, not just those associated with final accountability. The global human rights community as a diverse constellation of actors should make a concerted effort to align its goals and not work at cross-purposes. This includes coordination with local actors and an appreciation for potential unintended consequences. Peace and justice are not mutually exclusive, but it does require certain centralized planning to reach the lofty goal of achieving both.

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