

# Preface

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There are times when those who work in the Academy or in public service who focus on justice and human rights may have doubts that human progress is possible given the horrors that the world has witnessed in the last century and the first decade of the 21st Century. This was certainly the case for this author after close to two decades of academic and professional work in the fields of international human rights, justice and law. Then came along the opportunity to experience first hand the work of those in the international arena who devote, not only their professional lives, but also much of their personal lives to building a global institution the primary function of which is to promote peace and justice among our human family. The institution was the International Criminal Court the historic establishment of which is the culmination of centuries of humanity's desire to promote the idea that sustainable peace is only possible in the absence of impunity, as the first chapter of this work will discuss.

It was at the end of 2008 that I readily accepted an invitation to be a Visiting Professional at the International Criminal Court in The Hague during the spring and summer of 2009. I opted for a position in the Legal Advisory Section of the Office of the Prosecutor. This choice was deliberate because I wished to understand how the early investigations and prosecutions were being shaped by the Office of the Prosecutor and, in particular, by the Chief Prosecutor, Luis Moreno-Ocampo.

The experience was immensely enriching as it made me realize that theoretical perspectives of the relationship between the search for peace and the thirst for justice in the intense conflict zones of our world must be tempered with the actual facts on the ground and the reality that the truth lies somewhere between extreme positions on whether peace trumps justice or justice trumps peace.

As the discussion on the conflict in Northern Uganda reveals in Chapter 3 of this book, the solution may be neither a peaceful settlement nor justice fulfilled, but instead may lie only a military endgame. In the spring and summer of 2009, I also learned that the interplay between desired prosecutorial strategies and ultimate judicial outcomes is hugely complex and rarely predicible, given the great challenges of a permanent international criminal tribunal in gathering evidence, producing and protecting witnesses, creating or building upon new modes of criminal liability while

attempting to reconcile civil and common law methods of prosecution and judicial decision making.

Given the enormous complexity of the historic challenge laid before the International Criminal Court to combat impunity for the most serious crimes known to humanity and to promote the cause of international justice, there is fertile ground for the armchair critics to throw unexamined barbs at the Court and its officials. The impact of such critiques could undermine the critical support from the international community needed for the future strengthening of the Court and could even imperil its legitimacy. For this reason, this work has attempted to examine the main critics and present contrary perspectives based on what was experienced first hand while at the Court. In particular, the criticism that the Court has imperiled peace in Sudan in its drive to impose accountability on high officials, including the President, has the potential to cause, in my view, unjustified undermining of the Court. This is the focus of Chapter 2.

However, it is also acknowledged that those who are immersed in the daily challenges and complexities involved in the work of the Court should not lightly cast aside legitimate critiques of the Court or its officials. There is no global institution that is perfect. Certainly, given the fact that this historic global institution is in its infancy, it would be unreasonable for there not to be room for improvement and mistakes to be rectified. It also became clear that the global fight against impunity as regards the most serious of international crimes cannot be fought alone by the Court. The co-combatants must be the entire international community and global civil society along with regional and multilateral organizations. To leave this global fight only to the International Court is to program it for failure, as Chapter 4 of this work discusses.

The genesis of the work therefore comes from the linking of decades of theoretical perspectives with the exigencies of real world facts and practical applications of international humanitarian and criminal laws constitutionalized in the Rome Statute of the International Criminal Court. The result is a work that denies that there is a zero sum game between peace and justice. That type of analysis is the preserve of the armchair critic. Nevertheless, the final chapter of this work identifies the potential threats to the future of the Court and how they can be dealt with.

It is up to the international community together with regional and multilateral organizations to help the International Criminal Court become an instrument for both peace and justice. Adapting the wisdom of Martin Luther King – a denial of justice anywhere is a threat to peace and justice everywhere.

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