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TRANSITIONAL JUSTICE AND PEACE PROCESSES

How Transitional Justice affects peace processes

and the specific case of Ugandan peace talks

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The purpose of this thesis is to analyse the increasing role of transitional justice in world politics and on-going peace processes. The indisputable increase in such procedures has certainly encouraged a vigorous debate on their suitability to politically stabilise the countries, which have suffered a belligerent period.

The theoretical framework of my work is based on the constructivist idea that international organizations have the capability to emancipate themselves from their origin of power, the states, and to define themselves as an independent actor in international politics, also helped by the intrinsic nature of bureaucracy.

Thus, I develop a game theory model of the belief that behaviour of international and internal criminals is based on a principle of rational choice. I defend the concept of rational choice, which is affected by the environment where it is implemented. In particular, an environment, which is more aware of international and human rights, can positively affect peace talks.

Uganda is the central case for various reasons. Above all else, Uganda is the first instance ever of a transitional justice – represented by the International Criminal Court – issuing warrants before the end of the conflict. Furthermore, Uganda has not been seriously influenced by world top powers and it lies in the Central Africa, where the most recent cases of transitional justice took place.

As is evident from my studies, I see a clear change in Uganda situation widely thanks to the sensitizing role of the International Criminal Court. Unfortunately, at the moment of writing (April 2009), lasting peace seems still a long way off, but the situation has clearly improved since the involvement of the ICC in the conflict.

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1. Introduction

Since the beginning of my studies, I have been seriously interested in peace processes and transitional justice. In particular, I have followed the birth and the evolution of the ICC as well as the development of the political debate spurred by American and other top powers' refusal to join the Court. This situation has appeared for me quite ambivalent due to the clear support from almost all world powers for other transitional justice experiences, considering particularly the International Criminal Tribunals for former Yugoslavia and Rwanda, which were generally regarded less efficient and unfair.

1.1. Transitonal justice and power

Transitional justice has captured my attention for the great hope it has spred on post-Cold War era, when the long time postponed wishes for universal accountability have finally found a possibility to be concretised. In particular, I found interesting to consider the political implication and the development of it as an international actor. In this regard, utilising Barnett and Finnemore's theory, I will try to define the idea of transitional justice as a constructed power in the light of international bureaucratic emancipation from states. Therefore, in the light of justice as a power, I will consider the possibility this latter has been able to change the context where negotiators debate.

In particular, the International Criminal Court (ICC) will be the core example in order to understand this transitional justice's emancipation from the original source of power. In fact, the Court is not only permanent, but also independent from the UN or any other major international organisation. In addition, due to its internal complex vote system, the decisional structure does not permit a high level of influence from any state member. This is why I have focused my attention on the ICC.

Contrary to this juridical experience, the International Criminal Tribunals for former Yugoslavia and Rwanda are temporary, limited within specific territories and strongly linked to UN as well as the major world powers. Moreover, they have demonstrated an ineptitude to deal with their tasks properly. Principally due to their uniqueness, lack of experiences and resources.

Then, on the awareness of those new international actors, I will consider how they affect international events and particularly peace processes. In this regard, I will focus on the possibility they create a new environment and in this way modify the behaviour of negotiators. In fact, I suppose the negotiators behave within a logic rational choice but affected by the negotiation field where they find each other. Once clarified the negotiation environment, I will defend the idea they usually act following the logic a game theory in a similar way economical transitions work. Focusing my attention on the above mentioned behavioural mutation, I will then claim a transition from soft- to hardliners using previously Sandler's theory concerning terrorists' approaches where the softliners are more willing to negotiate in opposition to hardliners.

1.2. The studied case

For the reason mentioned above, at the moment of choosing my study cases, I was concentrating on crisis situations involving the ICC. At that time, the Court had issued warrants against Congolese, Sudanese and Ugandan citizens.

Unfortunately, the Democratic Republic of Congo (DRC) seemed to me a unique situation. In fact, the long war, which had affected the area, involved almost all the bordering states and it has let the country in a difficult situation with extremely complex internal divisions and lack of resources in order to cope with the rebels as well as with basic duties of a sovereign state. Similarly, the DRC is rich in raw materials making international economical influences extremely relevant. Therefore these characteristics of the DRC made difficult to analyse the specific case of transitional justice, this is why I prefered not to take it in consideration.

Sudan has also been a difficult case of analysis. In fact, the country is not member of the Court, and the United Nations Security Council (UN SC) has given the legal investiture against it. The UN SC, as we will better see, has power to invest ICC for crimes committed on UN members' territories even if the countries are not ICC member states. This has created obvious antagonist relations between the Court and the local government, which has refused any cooperation and negated any kind of guilt committed by its citizens or officers.

On the contrary, Uganda was an extremely suitable case. The country had suffered for a long time civil war widely neglected by international community. At the same time, a lack of raw materials has made Ugandan civil war a more easily analysable conflict compared to the other two crisis areas. In addition, the national government itself has asked the ICC for investigation and it has provided full collaboration. Furthermore, after ICC involvement, a long negotiation took place in the Sudanese town of Juba.

Following those criteria, I then decided to take Uganda as a core case in order to analyse transitional justice, and in particular the ICC and influences in a peace talks situation.

2. How Justice Became a Power

In the last decades, up to the time of writing in 2009, the World has become smaller. Since the end of the cold war, few people should deny that politics, commerce and social habits have followed more and more dominant Western culture trends. Also in countries traditionally opposing Western ideologies, such as China or Vietnam, the flow of globalization has spread its values. Even transitional justice, defined as those implementations of accountability for the most heinous crimes in a period of political transition, has been positively influenced by this climate of homologation. In fact, international norms have been accepted by an increasingly larger part of world population. In addition, international organisations, and among those international courts, have gained more and more power than ever before. Indeed, the end of the cold war created many options unthinkable during the bipolar World and advocators of a sensible international community have been able to realise part of their long-term dreams.

"In less than a decade, an unprecedented movement has emerged to submit international politics to justice. It has spread with extraordinary speed and has not been subjected to systematic debate, partly because of the intimating passion of its advocates". It was in this way that the former US Secretary of State, Henry Kissinger, described the advent of international justice from the end of the Cold War [Kissinger, 2001]. In these regards, I would like to take particularly into consideration three major cases of transitional justice that, although in their difference, follow a common evolution and are linked by a common international source of legitimacy: the International Criminal Tribunal for former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC).

2.1. Justice and Power

How has international justice become a power? Paraphrasing Barnett and Finnemore [Barnett & Finnemore, 2004, pp. 1-4], international institutions are framed as a structure of rules, principles, norms and decision-making through which others, usually states, act. Indeed, transitional justice was able to extend its rule widely and faster than any other international system in the last decades. In fact, the first of this experience was the ICTY established by the

UN Security Council in order to defend international peace in accordance with the UN Chapter 7 Statute. However, already the year after the Council gave investigation mandate to the ICTR, when hostilities in Rwanda had already been over for several months and no peace had to be defended. Less than four years later, the ICC Statute escaped any kind of external mandate and its duties were self-determined in a general formula claiming to promote the rule of law and punish the gravest international crimes [Driscoll & Zompetti, 2004, p. 30].

International justice, as a whole, is based on the principles of deterrence and the rule of the law and as a sponsor for the end of the culture of impunity. On the other hand, the idea of sovereignty defence and risk of international justice politicization are weak arguments in front of the dream of a World of legality and respect for human rights. In this context, international justice was able to get rid of political influence. In fact, the extension of independent power to international justice has been uninterrupted largely because of a perceived moral superiority. At the beginning of the 90s, the two ICTs were constructed under rigid control from the UN Security Council as well as the NATO powers. However, already in '98, the ICC statute ensured a court widely emancipated from international political power and only the UN Security Council has been granted a modest possibility to affect it. Furthermore, the state parties' decisions always require a remarkable majority ensuring little possibility to express politics in its influence.

Barnett and Finnemore [2004] continue by emphasising the bureaucratic structure of the international organisations, which exercise power through their ability to make impersonal roles. In addition, the missions of transitional justice institutions give to their bureaucratic power a technical, rational, impartial and nonviolent status compared to the perceived partial and violent logic of states. The two authors remind the Weberian consideration of bureaucratic structures described to be the most efficient because of their impersonal logic of work and even more powerful because via their authority, they enable not only the imposition of power inside their offices but also outside them by obliging external institutions to follow their roles. The idea of authority itself can be defined in two ways; *in authority*, the legal power to enforce a decision and, *an authority*, a perceived respectable and reliable expert of a specific subject [Barnett & Finnemore, 2004, pp. 17-23].

International justice has developed in these years an increasingly impersonal role in the international community. Since the beginning both ICTs, and especially the ICTY, have been suspiciously viewed as an expression of the top international powers, even with regard to their mandates finding legitimacy as UN organs established by the Security Council [International Criminal Law, 2001- Driscoll & Zampetti, 2004, p. 42-45]. On the other hand, the ICC situation sees a limited political influence, which has even been considered counterproductive in the studies of peace and national reconciliation by a large amount of ICC opponents. Among others, eminent IR researchers, such as the already mentioned Henry Kissinger, have expressed serious concern on this issue [Kissinger, 2001].

Alternatively, international justice, in its short life, has been perceived, quite unanimously, as *an authority*. An unequivocal example of it can be seen in US refraining from using their veto power against UN Security Council resolution giving to the ICC investigation permission over crimes against humanity committed in Darfur. In this specific occasion, not only the US, which is well-known to be the biggest power opposing the ICC, limited their vote to a simple abstention but they have even verbally supported the Court, at least in the specific situation of Sudan, and they explicitly invited Sudanese rulers to cooperate with ICC officers.

Max Weber has said that bureaucracy is able to classify the World, the right behaviour and, even more, the right way how to solve problems [cited in Barnett&Finnemore, 2001, p.31-32]. In these regards, it is interesting to consider the definition of fair trial implemented by the ICTY, which has provoked a wide range of criticisms among not only suspected criminals but also the international legal staff. Notwithstanding this, the ICTY idea of a fair trial has been implemented and imposed as the only one in the legal procedures. Even more relevant is the case of how crimes are defined in the ICC. Since the statute for the establishment of the ICC has been approved in the Rome Conference, a harsh and often even inconclusive debate has been raised over the idea of genocide, war crimes, crimes against humanity and crimes of aggression. These latter were, due to the impossibility of finding any agreement, left blank in the hope of a future amendment. In fact, the ability to make amendments is an enormous power for the ICC. In agreement with its state parties, they can increase its jurisdiction indefinitely. In this sense, they are able to define what a proper

behaviour for a state is and what is, on the contrary, indecorous and possible of legal punishment.

Human rights have an important power as far as the international community perceives the violations. As a result, a strategy of direct or indirect sanctions is initially proposed by other countries' populations and then implemented by their representative institutions. In this context, it is a key element to consider the role of sensitizator, which, in the last decades, has been almost only played by national and international NGOs as well as the human rights watch organisations [Risse, Ropp & Sikkink, 2004]. The modern cases of Myanmar, or the historical human rights battle in South Africa, are clear examples of these phenomena. Unfortunately, Risse, Ropp and Sikkink were not yet able to interpret the rule played by transitional justice institutions as human rights sensitizators. In particular, transitional justice has been able not only to take part in this human rights world sponsoring, but even act as the main actor in this field due to its higher perceived impartiality and authority compared to civil society institutions. Again, the ICTY has played a leading role in this evolution. In fact, it has quite clearly sensitized world public opinion over crimes committed in former Yugoslavia, which unsurprisingly are still an important topic in IR. The same consideration can be raised for the ICTR, which has maintained an international community still focused on the Rwandan genocide issue and the debate concerning Western powers' interference in the area. However, the ICC has played the higher contribution to stimulating debate on specific cases and obliging political makers to take unforeseeable decisions. During its short life, the Court has investigated crimes committed in Congo, Sudan, and Uganda.

As is well-known, Sudanese violence in the Darfur region had been claimed by Western powers as well as denied by local authorities for years. However, the situation has remained in a stalemate since the ICC investigation results. Indeed, three ICC issued warrants have clarified any doubt over the ethnical cleansing perpetrated in the area. Even more, the warrant issued against Ahmad Mohammed Harun, former "Secretary of State for the Interior" and head of the "Darfur Security Desk", and even more against Omar Hasan Ahmad al-Bashir, "President of Sudan", demonstrates the government disinterest, or even approval and involvement, in the cleansing.

However, I see the Ugandan case as far the most emblematic to describe the capability of international justice to influence internal politics. The guerrilla war, waged by the Lord's Resistance Army (LRA) and the legal government, started in the Northern region of Acholi, more than twenty years ago, after president Museveni overthrew the short lived Obella government by a questionable coup d'état. Notwithstanding Uganda's fairly successful internal policies, the civil war was ignored by both Ugandan leaders and, especially, by the international community. However, since December 2003, when the Ugandan president referred ICC for crimes committed in the region, the international community has become more and more active in the area. Both the US and the UK started to invest a relevant amount of money for conflict mediation. At the same time, Caritas, the largest Catholic Church NGO, increased exponentially its donations in order to provide basic supplies to the rebel hosting camps and permitting a continuation of negotiations [ICG, Report 77]. Furthermore, and even more important, the negotiation followed a more moderate and cooperative approach compared to the previous one in 1994, the international community involvement and investment imposed a less ideological attitude and both sides were obliged to maintain a conciliatory attitude [Allen, 2005].

2.2. Historical Precedents

The idea of accountability for international crimes was raised for the first time during the Versailles discussion about international reconstruction after the First World War. The Great War had left Europe in a condition of misery and the winning powers targeted Germany, probably improperly, as responsible for the beginning of the conflict. Although USA was highly concerned about this kind of demonization of Germany, they left Versailles even before the end of negotiations. Britain, but especially France, perpetrated a form of accountability strictly linked with an idea of sovereignty limitation as a form of punishment. As a result, Germany was obliged to sign the so called *Diktat*, which not only limited Germany territorially but also humiliated the country with the wide use of enormous monetary and raw material reparations as well as the restriction of the German Army limited to a mere 100,000 human units. Those conditions affected principally the already mangled population and even winning powers had to recognise their mistake. In fact, already in 1925, French prime minister, Aristide Briand, and German minister of foreign affairs, Gustav Stresemann, together with Belgian and Italian delegates, reduced reparation and withdrew Belgian and

French soldiers from German soil. Similarly, Dawes', and later Young's, plans were organised by the homonymy bankers, again with the precious Stresemann's cooperation in order to help Germany paying its monetary duties and receiving American loans. Unfortunately, the Great Crisis thwarted all these efforts; Germany fell back in misery and we sadly now what the result was [Formigoni, 2006].

At the end of the Second World War, Allied powers did still not seem awaked 20 years after their disastrous experience. However, after harsh negotiations, a plan for the "Trial of European War Criminals" became the mainstream idea highly supported by Western powers. For the first time an idea of personal accountability bypassed the previous concept of national duties toward the international community. In addition, Germany was totally occupied and the warrants' implementation became an easily manageable internal affair among the Allies. The fairness of those trials can be criticised, but it was unquestionably a watershed moment for transitional justice and it helped to create the modern identity of Germany [Teitel, 2006]. In particular, we can remember the Adenauer taken of responsible, in front of international community with his idea of "Common Responsibility" and Marshall's plan were other great successes in order to create one of the best and most stable world democracies.

Unfortunately, the Cold War prevented any wide form of development. However, already at the beginning of '80s a new era of accountability developed especially in a Latin America projected toward a wave of democratisation. Argentina was the first country asking justice for the crimes committed in the Falkland Islands by the British Army. From that time almost all Latin American countries involved in political transition faced a form of transitional justice, notwithstanding those forms of justice were more oriented to reciprocal comprehension than punishment and they resulted principally in truth-seekings and truth-commissions, and only in a second term in juridical trials. The peak of all those experiences was reached with South African post-apartheid transition but the beginning of the post-Cold War era had created conditions for a new form of justice highly institutionalised and newly oriented toward individual punishment as the Nuremberg trials were [Teitel, 2003].

2.3. The Yugoslavian Case

In 1993, for the first time in history, the UN Security Council established an International Criminal Tribunal in order to deter fighters of the brutal Yugoslavian wars against war crimes and crimes against humanity. As is well known, no prerogatives for this power are mentioned in the Charter of San Francisco and none of these acts had been issued before that time, despite UN long history. However, a free interpretation of the UN Statute Chapter 7 invested the Council with such power.

The Yugoslavian wars were a flash-back to the past for Europe. Not only had the post Cold War dream for a peaceful international community broken down but even the idealistic idea of a Europe emancipated by the seeds of war and governed under the basic rules of good neighbourhood relations in the shame of its heinous past. Europe fell down in what would be discovered as the modern cancer of peace: ethnic conflict. European secularised society, run in the name of reason and rational choice, collapsed in a way similar to less emancipated Africa or the Middle East. In addition, ethnical conflicts reminded of the horror of the Second War World, the Holocaust and the 50 millions casualties widespread in the entire continent from the far Volga region to Nantes and Bordeaux. In this context, for instance, it should not be a surprise to discover that the Federal Republic of Germany's first international peacekeeping mission was authorised by the Bundestag in order to bring peace to former Yugoslavian territories.

As seen above, no international court responsible either to investigate or to convict or judge international crimes, existed in the early '90s. In this situation, the UN Security Council established the ICTY. The first great concern regarded UN Security competence to establish an international tribunal. Indeed, Chapter 7 does not give any of these kinds of power to the Council. However, the justification was based on the idea to promote and defend international peace via a resolution act but complaints rose in the fear of a monopolisation and definition of justice played by the Council. Secondly, ICTY opponents have always claimed an illegal use of UN power to impose primacy of the tribunal over the national courts, therefore creating a sort of supra national justice moving aside traditional sovereign monopoly of juridical power. Finally, opponents argue, even admitting a legal act in the tribunal establishment, that it is indeed responsible for international crimes, but the most part of charges regard internal crimes

committed in Yugoslavia as a completely independent country having ethnic troubles within its borders; therefore, here again, within the competences of national courts [Aldrich, 1996]. In addition, the prosecutor's role has raised harsh concerns over his/her high power, which is potentially, and asserting concretely, used with as a political and provocative mean, more than in order to judge the highest and heinous criminals [Jeremy Rabkin, 2002].

Notwithstanding, its positive initial purposes the ICTY has been widely perceived as a tribunal of winners, in the case of United States, against losers, the former Yugoslavian countries. Statistically speaking nowadays, only forty per cent of Croatians, believe the Tribunal was fair [International Criminal Law, 2001]. Certainly, the most negative impressions former Yugoslavians have received from the Court was the inhibited attempt to investigate against NATO troops, implemented by the then prosecutor Louise Arbour in 1999. Actually, she never came to investigate properly against alleged crimes, but she simply ordered an internal staff review on the bases of which, her successor, Carla del Ponte, withdrew any investigation claims because of the impossibility "to pinpoint individual responsibility" [Kissinger, 2001]. Obviously, no evidence can demonstrate any involvement of Western powers in the withdrawal of inquiries, but this case has certainly seriously undermined ICTY credibility in the eyes of former Yugoslavians, which had suffered NATO warfare acts and collateral damages. Furthermore, the right of defence, which only former Yugoslavians warriors have taken advantages of, has been perceived as unfair compared with ICTY accuse rights and perpetrators' alleged power. In these regards, it would be better to let the complaints be clarified by Nich Kostich's, Boris Tadić's defender, words: "...is not be given the right to confront his accuser", "the defence has not been presented with the names of witnesses", "My most vicious my most heinous client [in the United States] has more rights under the US Constitution..." [Driscoll & Zompetti, Gary T. Dempsey, 2004, p.48-68].

2.4. The Rwandan Case

Only one year after ICTY establishment, the UN Security Council voted in favour of ICTR establishment. As well-known, Rwandan crisis was one of the biggest embarrassments for United Nations as a whole and the Security Council in particular. In fact, after the tragic mission in Somalia, which saw the killing of a remarkable amount of American peacekeepers, no permanent member of the Council was willing to approve a peacekeeping mission in a

country affected by a civil war. Sadly famous is the story of an American officer attempting to forbid "the 'g' word", in the State building. Only after the situation became quieter, the United Nations intervened with a Peacekeeping operation and the establishment of the tribunal.

The ICTR was perceived as a UN duty in front of the International Community. Remarkable is the sentence "what is happening different from what happened in Nazi Germany. Is it because we're Africans that a court has not been set up" pronounced by the post-genocide Rwandan Prime Minister-designate, Faustin Twagiramungu on the Court estabilshment discussion [Jones, 1996]. However, United Nations Security Council took his precaution.

The Jurisdiction was strictly limited not only to Rwandan territory, but also to crimes committed in 1994. [ICTR, web-site]. On the other hand, the ICTR has extended the already dubious UN Security Council right to establish an International Criminal Tribunal even if there are no evident risks for international peace, since crimes were committed before ICTR establishment and UN peace operations were active in the territory [Zompetti, Jeremy Rabkim's hearing, 2004, p.73-80]. In addittion, the location of Ashura, in the United Republic of Tanzania, has partly undermined capability to deal with investigations. The investigations have been affected by the lack of a real force of implementation in an area missing an effective political power and tormented by one of the most brutal civil wars of the last decades. Furthermore, ICTR, as well as ICTY, has investigated only against the highest responsible for crimes committed in the country and often minor human rights offenders have been convicted in national or tribal trials even with higher punishment, such as death penalties, than expected in the ICTs [Driscoll & Zompetti, Gary T. Dempsey, 2004, p.48-68]. Indeed, the perceived legitimacy has been highly influenced by those open issues, in a country desperately affected by misery, being an international inmate was all but a real punishment considering the physical and psychological problems of the ignored victims.

2.5. The International Criminal Court

The ICC represents the last step of international justice development. Particularly the Court has received a great increase of power in terms of jurisdiction and reduced capability of UN Security Council influence in the investigation affairs.

The dream of an international court responsible for the most heinous crimes has origins far in the past at the end of the Second World War. Unfortunately, Cold War international tensions had undermined any possibility for such kind of court negotiation during those difficult years. However, already in '89, the UN General Assembly, in response to an urgent request coming from Trinidad and Tobago representation, asked the International Law Commission to resume work for an international criminal court. This idea was based on the wish to fight against drug traffic and it was not directly related to the purpose of struggle against human right violations. Anyway, the Commission took a long time before concluding its work, submitted to the General Assembly in spring 1994. However, as mentioned above, in 1993 the UN Security Council had already established the ad-hoc tribunal for former Yugoslavia creating a need for further considerations.

In fact, the General Assembly appointed the Ad-Hoc Committee on the Establishment of an International Criminal Court with the task to reconsider the role of a permanent criminal court in the light of Rwandan and Yugoslavian experiences. The Committee met twice in 1995 and drew up a report, which gave origin, under the Assembly authorisation as well, to the Preparation Committee on the Establishment of an International Criminal Court. This organ worked from 1996 to 1998, holding its final session in March-April 1998 and completed a draft text to submit to a diplomatic conference open to any UN member willing to participate. Diplomatic conference, which was held in Rome from the 15th of June to the 17th of July 1998 and concluded with the successful result of a Statute approved by an overwhelming majority of 120 versus 7, and 21 abstentions. In the words of the former General Secretary of UN, Kofi Annan:

"In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you...to do yours in our struggle to ensure that no ruler, no State, no junta and no Army anywhere can abuse human rights

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with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished." [Zompetti, UN Overview, 2004, p.24-25].

According to the Statute of Rome, the ICC jurisdiction concerns four types of crimes: genocide, war crimes, crimes against humanity and crimes of aggression. In particular, genocide has been defined as "Killing or other violent or coercive acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group".

More complex is the situation for the three other crimes. In fact, the war crimes have been intended to cover both internal and international conflicts and takes inspiration from Pentagon's military manuals, strictly deriving from the Geneva Conventions and their Additional Protocols. Anyway, the core negotiation debate resulted on the following sentence: "the Court shall have jurisdiction in respect of war crimes *in particular* when committed as part of a plan or a large-scale commission of such crimes". A relevant amount of countries fought harshly to substitute "*in particular*" with "*only*". On the other side, a "legalist front" proposed the abolition of any specification of such point. As compromise, the form "*in particular*" has prevailed. In this way, the Court is only "advised" to pay more attention on the crimes committed as part of a plan or a large-scale commission [Fowler, 1998].

Not only war crimes but also crimes against humanity saw a tough debate on their definition, which the Statute of Rome describe as "widespread or systematic attacks on civilian population, carried out by specified violent or coercive means". In particular, the dispute was focused on "widespread *or* systematic" or "widespread *and* systematic". In this case, the negotiations saw a victory for the more legalist conference side, which, however, miserly failed in imposing any kind of definition for crimes of aggression [Driscoll & Zompetti, Douglas Cassel, 2004, p.110-126].

Indeed, this was one of the biggest regrets for German plenipotentiary, Rolf Welberts, and the other strong legalist oriented states representatives. In fact, the crimes of aggression are simply advised to be reconsidered with an amendment, needed to be approved by at least two-third of state members and ratified by at least seven-eight of them. In addition, neither

was a reference given in the Statute for crimes of terrorism and drug traffic. However, the same procedure due for crimes of aggression integration can enforce any other kind of crimes. In this context, albeit unlikely, the ICC jurisdiction can potentially be extended unlimitedly.

Finally, in territorial terms the Court is responsible for crimes committed inside state parties' territory independently of the nationality of the charged criminal. Even this issue has increased frictions among those plenipotentiaries willing to require both conditions in order to open an investigation, and those others willing to extend investigation possibilities even under crimes committed against state parties' citizens, in any world territory, or by suspected crimes hosted in territories under ICC jurisdictions. Moreover, the UN Security Council has the possibility to grant investigation right to the Court in any UN state member territory.

Furthermore, criticisms of the ICC investigation system have been raised, and UN Security Council capability to affect it has been strongly discussed and often criticised during all the conferences and until recent days. The Statute of Rome clearly defines these procedures under the Articles 13, 14, 15, and 16. The possibility to refer a crime to the Prosecutor is primarily granted to the state parties. However, State Parties are also not allowed to refer crimes to the Court as long as those crimes are committed on their own territories and they are willing to receive a technical contribution in order to investigate and prosecute them. Moreover, the ICC Prosecutor has a *propio motu* option of investigation. In fact, s/he can initiate independently the start of an investigation "on the basis of information on crimes within jurisdiction of the Court". Moreover, the UN Security Council, as already mentioned, has the right to refer any crime committed inside UN member states to the Prosecutor via a positive act. However, all those carrying on investigations require a second approval, via Prosecutor, from the three judges in the Pre-Trial Chamber. Finally, the UN Security Council has the right to defer an investigation or a prosecution for a period of twelve months by a renewable positive act, therefore without the possibility of the P5 members to exercise their veto right.

Allusion to a possible political use of the Court has often been carried on. However, the Statute of Rome ensures impartiality thanks to a wide required Assembly of State members' majority for the Court higher officers' staff elections. In fact, the eighteen judges, among

those there are the three Pre-Trial Chamber members, nomination demands a two-thirds majority for a nine years non-removable mandate. In addition, the same majority is required in order to remove a judge for misconduct. Instead, the Prosecutor is elected with narrower absolute majority for a non-removable nine years mandate and s/he can be removed with a simple confidence vote [Fowler, 1998].

An extremely relevant point for the ICC juridical system remains the principle of complementarity. Basically, the Court is responsible only for those cases where the local authorities are unwilling or unable to investigate against a certain crime [Driscoll & Zampetti, p. 17]. As is easily imaginable, the statute writers were principally thinking about tyrannical government unwilling to punish the internal fellow criminals or cases where a civil or international war had let the country unable to organise an efficient and fair juridical system in a reasonable time. Certainly, the main purpose was to keep the court out of national affairs if not strictly needed. Unfortunately, the status of unwillingness or incapacity is directly expressed by the prosecutor and, as usual, later submitted to the Pre-Trial Chamber. Notwithstanding the above mentioned precautions, ICC opponents are afraid of a use of the court similar to a supranational tribunal challenging sovereign authorities. They claim the risk for a possible jurisdiction in contrast with national ones in the definition of crimes and the fear of a prosecutor more willing to catch international attention than impose world legality.

Contrary to the other international justice experiences, only secondary complaints were raised because of expected trial unfairness. In particular, US officers emphasised the impossibility to have a jury as clearly expressed by the US Constitutional sixth Amendments [Driscoll & Zompetti, Gary T. Dempsey, 2004, p.48-68]. However, Sudanese government accusations were much more consistent and regarded ICC jurisdiction. As is known, Sudan is not an ICC state party and only the use of UN Security Council's rights has permitted investigation into Darfur's ethnic cleaning. In this context, Sudan does not recognise ICC investigation legitimacy claiming a total extraneousness and a strong opposition to it. Following this logic, Khartoum has refused to implement ICC warrant issues [BBC, *Darfur militia leader in custody*]. In addition, ICC Jurisdiction has been challenged even by the United States, which has repeatedly been concerned about the possibility of one of their citizens being indicted for crimes committed in ICC state parties' territories notwithstanding

US open opposition to the Court. In particular, US worry refers primarily to US soldiers deployed as peacekeepers all around the world including ICC state parties' countries [Fowler, 1998]. Unfortunately, this concern does not seem well-grounded since the many trials implemented by the US Army against its own soldiers for crimes committed abroad result in few doubts over the possibility of their utilisation of the principle of complementarity in order to avoid any kind of ICC intervention.

3. Debate

After having described the status of transitional justice institutions as independent actors in the international community, I will take in consideration the debate, which has risen up over the appropriate use of transitional justice in the last decades.

In these regards, scholars from different disciplines have been interested in the field. In particular, the debate has risen on the question concerning the convenience of transitional justice in term of helping peace and reconstruction of a civil society after conflictual experience. On the one hand, defenders of transitional justice have claimed the usefulness and the desirability for an ethical attitude holding a moral conduction not only in the specific case of human crimes accountability but as basis for the establishment of a peaceful and stable society [Vinjamur & Snyder, 2004]. However, they recognised a complex relation between peace and justice, but they even claim the necessity for a justice, which "should never be bartered in a *realpolitik* fashion in order to arrive at political expediency" [Bassiouni 2002a, p. 41 *in* Vinjamur & Snyder, 2004]. In this regards, modern history is sadly full of human right abusers having escaped their duty in front of justice, for instance neither Idi Amin nor Mobuto Sese Seko were punished for their crimes. Unfortunately, those cases of impunity has tended to not be the exception but the norm almost unanimously accepted until recent time. Finally, one of the transitional justice advocates' core points lies on the believed flexibility of international community and the possibility, as well as need, to create new custom behaviours among international actors, in order to eradicate the culture of impunity as a choice during peace process and democratic transition negotiations. On this point, we have certainly seen, has even recognised by Kissinger [2001], a great increase of transitional justice procedures since the end of the cold war.

On the other hand, transitional justice opponents focus their analysis on two major points. Firstly, their attention is paid on the trials, which, for their nature, are partial due to the objective impossibility to judge all criminals and the need to concentrate their activity over the higher accountabilities. In order to reach this goal transitional justice need to create a filtering over possible investigation, which can be claimed as being politically influenced. A typical example of it can be the disinterest paid by the ICC to Ugandan military force or ICTY

impossibility to open investigation against NATO troops. Secondly, they derive consequential ethical prescriptions. They state that relation between Justice and Peace can be understood only when taking into consideration also political actors' self-interests. They claim that legal defenders underestimate political consideration causing an even higher level of abuses. Successful transitional cases granting full impunity are numerous, from Chile to Spain or former Centre-European People's Republics. However, it is important to remind that transitional justice was not a common practice since few years ago and no transitional justice custom was in process of construction; therefore the idea of immunity was a more tolerable and accepted idea in the international community system [Vinjamur & Snyder, 2004].

3.1. Incapacitation

With the expression *Incapacitation* is intended the power with which transitional justice has to render criminals politically impotent and unable to commit other atrocities due to their international warrants or other juridical acts played in transitional time.

Various International Justice's advocates claim the capability of immobilising brutal human rights abusers using legal tools. For instance, Sierra Leonese civil war re-rising up after the so called Lomé Peace Accord, would be difficult if the peace process was linked with a system of accountability against the Revolutionary United Front's higher officers, and, in particular, its top leader Foday Sankoh, which instead was appointed as vice-president of the country. Indeed, afterward the semi-international Special Court for Sierra Leone's (SLSC) has strongly helped the peace stabilisation and the disarmament of rebel fighters. Especially, the SLSC has undermined the capability of the defendants to recreate the climate and conditions for a new escalation of the military conflict [ICG, Africa Report nr. 28].

An analysis of the Democratic Republic of Congo's situation can lead to a similar conclusion. After the long brutal civil war, the region of Ituri was the last still affected by the conflict. A watershed on peacebuilding has certainly been the presidential decision to invite ICC for investigations against crimes committed in the area. However, it is tempting to speculate about the political interest of President Paul Kagame in cleaning the area from possible opponents, such as Thomas Lubanga Dyilo, leader of the local rebel group. In any case, ICC has followed a strict and commendable work of investigation for the sake of justice

and placing accountability for heinous crimes against humanity and war crimes committed in the area. This intervention has certainly resulted as a remarkable spur for local communities to take the right path toward inter-ethnical relations stabilisation in the area and also with the other Congolese multicultural realities [ICG Africa Report nr. 84].

The case of Radovan Karadžić at the ICTY presents a noteworthy example. Involved in the Srebrenica massacre, after the warrant issued by the Tribunal in '96, at the moment of writing he is under arrest after threeteen years as fugitive from the warrant issued by the Tribunal. Although at the moment he has faced no sentences, his capability to affect Serbian politics has become almost inexistent. Today it is known that he went hiding in the mountains in the centre of Serbia together with a group of loyal militiamen. Even though government did not seem eager to launch a serious manhunt, his life was serious affected by the international warrant and his possibility to escape forever from transitional justice really low. Furthermore, Dayton negotiations were certainly greatly eased by his obligated absence and Milošević as the only Serbian representation in the peace talks [Akhavan 2001, *in* Mendeloff 2004].

On the other hand, several scholars recognise a difficulty in the use of transitional justice as a form of incapacitation against leaders holding power. The already mention position of Kissinger remains firm [Kissinger, 2001]; he strongly argues the concrete difficulty to negotiate any kind of concession with a leader wanted by an international warrant. In his article, he also reminds about Daytona negotiations, but assuming it impossible in case, at that time, Milošević was already subject of an international warrant for crime against humanity, which was issued by the ICTY only afterward. However, he goes even further pointing to Pinochet's self-granted immunity as pre-condition for a transition toward democracy. His immunity was later violated by foreign powers, first of all Spain and, to some extent, United Kingdom. In a similar way, he interprets Spanish forgetfulness and preceding forgiveness for the crimes committed during the infamous civil war and the subsequent long lasting despotic regime. Huntington also defends immunity as a form of negotiation toward democracy in his "The Third Wave: Democratization in the Late 20th Century" [Huntington, 1998, p.228] referring especially to the Central European cases of transitions between communist and democratic regimes, when the former communist leaders gave up power peacefully in exchange for immunity for their crimes. Moreover, Huntington goes a bit further

than Kissinger and he tries to define the role of justice: "officials of strong authoritarian regimes that voluntarily ended themselves were not prosecuted; officials of weak authoritarian regimes that collapsed were punished, if they were promptly prosecuted".

3.2. General deterrence

Since the ICTY establishment, transitional justice's advocates have defended the idea of justice as a tool, which deters human rights abuses. Even UN have officially expressed this kind of opinion in their report of the Secretary General, which literally states "They can help to de-legitimise extremist elements, ensure their removal from the national political process and contribute to the restoration of civility and peace and to deterrence." [UN, 2004]. However, other international legal defenders criticise this limited interpretation of justice; as Paul Seils and Marieke Wierda affirm:

> "The debate on international justice has tended to focus on the somewhat narrow justifications of deterrence and retribution, ignoring developments in criminal punishment theory and practice. Such narrow justifications lead policy-makers to argue that peace and justice are often competing choices, and they may lead them to equate criminal justice with a form of vengeance, thus casting doubt on the morality of its pursuit over that of forward-looking ideals" [Seils & Wierda, 2005].

A first analysis of the problem could support the idea of a lack of deterrence played by the international justice. In particular, Yugoslavian case can been seen as an emblematic demonstration of justice impotence in front of crimes perpetrations. In fact, the most heinous massacre, Srebrenica, and ethnical cleaning perpetrated by Serbs and Kosovars in Kosovo were committed after the establishment of the Tribunal in '93. However, Meron claims ICTY was not able to enforce its role of legal power because of its lack of implement indictments [Meron, 1998, in Vinjamur & Snyder, 2004]. In other words, crimes were perpetrated because no punishment were expected notwithstanding were perceived as crimes. Even clearer is the Hazan's position, which compares Yugoslavian and Darfur cases:

> "...the warring parties took account of the legal risk during the first few weeks after the creation of the ICTY in 1993. They later realized that the Tribunal was weak and, confident of impunity, committed the Srebrenica massacres. In Darfur, too, according to

eyewitness reports, the militia scaled down their acts of violence when they felt that they might be in trouble because of them." [Hazan, 2004].

In these terms, the international justice does not lack deterrence power, but the long time culture of impunity, which has permitted the development of limitless decisional power among military officers, which has to be broken out. Simple potential criminals do not perceive the threat of punishment and therefore they commit crimes in the belief that they are untouchable.

In these regards, Kim and Sikkink's [2007] quantitative study represent a wide step toward understanding. They analyse what they describe as last twenty years of "justice cascade", taking in consideration one hundred countries, which have experienced transition from non-democratic to democratic regimes and from arm conflict to peace. According to their results, transitional justice in its various forms does not only help to create a stable post-conflictual society, but also decrease probability of other human rights abuses both in the country as well as in the reference geographical area. In particular, these results present the idea of changing mentality and creating new customs in the areas influenced by transitional justice. There is an especially interesting case of Sub-Saharan Africa comprising principally the area of Central African Republic, Democratic Republic of Congo, Rwanda, Sudan and Uganda where justice has spread with the exception of the Sierra Leonese and Liberian cases in an ever-increasing implementation of accountability, which started with the Rwandan case. Diane Orentlicher also expresses a similar position: "The fulcrum of the case for criminal punishment is that it is the most effective insurance against future repression" [Orentlicher 1991, p. 2540].

From this viewpoint, not only transitional justice affects the countries directly involved, but also creates the conditions for new international customs developments. Globally speaking, it is remarkable how the increasing interest for transitional justice is spreading in the World. The recent cases involving former red Khmers' leaders in Cambodia and – although highly questionable - trials against Saddam Hussein and other top Bathist in the post-conflict Iraq can be considered emblematic.

3.3. Moral Education and the Rule of Law

"It is now well understood that prosecution might contribute meaningfully to a range of issues that cannot be best or fully described in terms of retribution or deterrence alone. These include the reconstruction of trust and confidence in the institutions of the state, restoring dignity to victims as rights-bearing citizens, and the rehabilitation of offenders. It also may be more appropriate, especially in the context of systematic and massive abuses, to see prosecutions as playing a positive role of persuasion, encouraging a commitment to democratic values, instead of the more negative view of deterrence as motivating obedience through fear of being caught and punished. Prosecutions should be understood as addressing these multiple goals"

in this way Seils and Wierda [Seils & Wierda, 2005] rise the issues of moral education and rule of law spreading rule played by the transitional justice.

A general belief wants internal justice more effective, in educational terms, compared to the international justice. Unfortunately, internal justice is not always possible. First of all, the infrastructure and the human resources available in a post-conflictual country are often quite poor. In addition, even in case a suitable internal juridical system is disposable not always respects the basic roles of impartiality required by international juridical standards. In this regards, Saddam Hussein's, and his collaborators', trials represent a core example. In fact, they have been claims on their partiality since the really beginning not only among Sunnite Iraqi minority, whom Hussein belonged to, but even among top international organisations, which considered the trial "flawed and unfair" [Amnesty International, *Iraq: Amnesty International...*, 2006]. On the other hand, Milošević's case can be seen an opposite situation, Yugoslavian post-war Koštunica's government was pressing ICTY to host and organise the former dictator's trial but international community was firm in imposing ICTY role [Kissinger, 2001]. Reality has seen an objective difficulty to maintain impartiality in internal juridical processes, as well as a risk of perceived distance in international prosecutions.

Jamie Mayerfeld expresses his viewpoint over internal and external justice clarifying is positive position over any kind of fair transitional justice, which he defends as an appropriate form of role of law education. However, he goes even farther and defend the ICC principle of Complementarity has a good solution among the concrete possibility of a country to undertake

alone its juridical duties and the possibility of an external help in case of unwillingness or incapacity to concretise a fair trial [Mayerfeld, 2001].

In these regards, the problem of legitimacy for external justice is always present. As we have seen above not the ICTY neither the ICTR has been unable to catch a wide support from the local population but, again, transitional justice's advocates recognise the need of creating new customs in order to increase transitional justice legitimacy. In particular, Mayerfeld defends the ICC uniqueness, as permanent international court, and especially the principle of complementarity, which gives priority to internal justice and limits ICC intervention to those case where national government is "unwilling or unable" to perpetrate prosecutions against the alleged human right violators. Moreover, Mayerfeld's study foresees a peculiar capability of ICC to fight against the culture of impunity due to its higher distance from political powers compared to the previous experiences [Mayerfeld, 2001].

3.4. Retribution

Transitional Justice has often claims a moral role in distributing retribution to the victims. Unfortunately, they have clearly lacked finances in order to achieve their goals. In fact, the vast resources invested for their activities have covered no relevant retribution programmes and it has been almost totally focused on the mere prosecutorial and trial organisation costs.

The situation does not seem much better is considering the capability of transitional justice to influence retribution governmental programmes. In fact, often the involved countries are in difficult political and economical conditions and unwilling to take such kind of investments. Furthermore, lack of infrastructures and especially political reasons often mine local governments' willingness of acting in this direction.

However, I believe, if transitional justice has demonstrated little capability to create retribution politics, it has also been able to sensitise and mobilise international community. In this way, if victims rarely receive a proper retribution, from both local government as well as transitional justice institutions however those latter have a great capability to influence international aid organisations and they receive a high support from international aids. The

already mentioned case of Uganda can clarify the situation. In fact, if the government still seems unwilling to perpetrate a retribution policy, international NGOs and especially the catholic one Caritas, has started to increase remarkably their investment particularly after the ICC intervention in the area [Allen, 2005].

3.5. Reconciliation

Reconciliation is probably one of the primary goals in the totality of post-conflict situations. Thanks to efficient reconciliation programmes, there is much lower probability for hostilities to rise back and greater possibility to create stable liberal-democratic institutions.

Sceptics of the transitional justice have often emphasised the risk of more difficult peace cohabitation among conflict sides in case of a juridical accountability. They particularly stress the risk of integration in society of those people who are politically closely linked with the charged human rights abusers. In this context, the risk of a preservation of a high level of tension can strongly undermine any kind of social stabilisation affecting both the possibility of a permanent peace as well as the development of liberal structures in the country [Majzub, 2002].

The positions of other scholars are radically diffent claiming an active help played by transitional justice in the reconciliation process. Lydiah Bosire [2006] gives particularly importance to this point when she strongly defends the role of justice as form of reconciliation. She considers justice not just as a moral need but also as a form of reconciliation and approaching among victims and abusers for the sake of stable peace. In addition, as seen before, international justice seems to help creating situations of trust in institution and developing liberal institutions values. Her thought continues stressing the core importance played by efficient Demobilization, Disarmament, and Reintegration (DDR) programmes, which are oriented principally toward rebels and guerrilla warriors. Those programmes are far more efficient when run together with a form of accountability providing a moral legitimacy for DDR programmes. Moreover, Bosire points up that unfortunately only few transitional cases can boast symbolic characters, such as Mandela, who can be real icons of reconciliation around the country, and tangible doings might be necessary in order to help reconciliation and normalisation of the political situation. Furthermore, a common idea wants

victims better forgive if there is some form of accountability, even the sceptic Majzub [2002] remembers Klitz's sentence "society cannot forgive what it cannot punish".

This idea is strongly supported by the already mentioned quantitative study by Kim and Sikkink's [2007], which defends a general positive effect played by transitional justice on reconciliation and capability to create a more stable peace as well as liberal societies. This study acquires even more important influence role if its uniqueness as qualitative research study in the field is taken into account. In particular, Vinjamur and Snyder [2004] expect an increasing importance of this kind of researches in the future of transitional justice field.

3.6. Peace and Justice

Transitional justice has often faced criticism over the possibility to mar peace processes. In particular, opponents blame the risk of rendering negotiation more difficult since no possibility of using amnesty as a political tool would be available. At the same time, human rights perpetrators would be unwilling to find an agreement as long as their criminal pasts would not be forgiven. These concerns are raised by Majzub [2002] bringing to mind some of the most successful transitions of the last years, which have seen a totally impunity for crimes committed during the wars or undemocratic regimes. Although some of the transitions mentioned seem to me quite questionable such as Sierra Leone or Haiti, the issue is certainly lamply demonstrated also by the harsh criticism posed by the Kissinger [2001] quoting Pinochet case of granted immunity for himself and his collaborators, later impugned by Western powers during Chilean democratic transition. He continues speaking about Daytona negotiation during Yugoslavian wars, where the presence of Milošević would have been impossible if at that time he had already bound by an international warrant. Kissinger reminds the key importance of that process and the great help given to stabilise the situation at the time.

An answer to those positions is given by Michael J. Gilligan [2006] who sees the light approach toward human rights, perpetrated by dictators as well as rebels, as a consequence of a the culture of impunity. Particularly, he clarifies few human rights violators are not awake their status of dictator or rebel cannot last forever. Fallowing this logic, they commit crimes on the certainty to do not be charged at the end of their ruling period or waging war. Then

here again it is proposed the need for a change in international habits. Differently Mayerfeld [2001], which recognising the difficulties to find a common role covering all possible transition situations, reminds Daytona peace process and especially the forced Mladić's absence, due to an ICTY warrant, as a positive effect of transitional justice on peace talks. Especially he emphasises the possible help transitional justice gives in the simplification of peace talks' participants freeing them from the most extremist wings and delegitimizing the most unreliable elements. Finally, Kenneth Roth [2001], in reply of Kissinger, criticises the former Secretary of State concerning the improper example of Pinochet's immunity since it was a self-concession on the already clear end of regime. According to Roth, this is the most common procedure permitting impunity after heinous crimes and it is far from Kissinger's idea of an independent concession given by free people toward their previous slaughterers.

4. Criticism toward ICC

As seen above the Court has suffered criticisms from some of the most relevant political thinkers in the World. In this chapter, I will try to scroll down the main points against the Court and the answers given by ICC defenders.

4.1. Contrary Votes

As known India abstained to vote in favour of the Statute of Rome. As the largest democratic country in the World, Indian decision had an extremely relevant weight in South-East Asian, as well in on the globe. Indian plenipotentiaries motivated they decision claiming an over power played by the UN SC.

We have then to go a bit back and remind Indian critical position toward the UN higher Council, which strongly affected Indian vote. In fact, they focused their criticism over the assumption, UN SC can destabilise ICC impartiality since it has power to open investigation notwithstanding part of the P5 members have not ratified, nor signed, the Statute of Rome yet. In addition, India criticises the possibility UN SC has to interrupt temporarily investigation as well as warrant enforcement [Zompetti and Driscoll, pp. 42-45]. Then Indian criticism has to be even considered on the base of its general negative idea of the world system and the over power played by the UN SC, whom it is one of the stronger reform-proposers as demonstated already taking part in the G4 UN reform proposal together with Brazil, Germany and Japan.

Different is the situation of Israel. In fact, its plenipotentiaries claimed to be extremely sorry concerning their decision but they were obliged by the circumstances. Unfortunately, Israel perceived the definition as "the most heinous crimes" for "transferring population into occupied territory", an open politicisation against their internal interests. In other word, Israel perceives the ICC definition of "the most henious crimes" as an open form of anti-Sionism against occupied terrories' policy implemented in the West Bank and previously on Gaza Strip. In this contest, it expresses a wide regret even because it has been extremely active during the Rome Conference and it would not expect such kind of treatment at the end of it. [Zompett and Driscoll, pp. 46-47]

4.2. Complementarity

As said above, the principle of complementarity has raised a warm debate about the legitimacy of the ICC to investigate in case where the ICC itself perceives the juridical responsable states, as "unwilling or unable" to open a legal procedure. Specifically, the major fear lies on the possibility for ICC to cover the role of an international supra court and therefore been in competition with the national legal structures. In this contest, the ICC member states would have no freedom to organise their judicial systems in a way not conformed to what the Court considers as standard. In addition, Dempey sees the situation even worsely since he forecasts a possible political influence due to the fact prosecutors are chosen by the Assembly of the State Members, without consideration to the members internal political regime therefore giving basically the same power to democracies and other undemocratic forms of government [Driscoll and Zompetti, Gary T. Dempsey, 2004].

Defenders of the Court, and above all Kenneth Roth, have strongly opposed these criticisms against Complementarity. In fact, they argue the "unwilling or unable" definition is strictly linked with basic principles or fair trials. Therefore, if US, as well as any other country, would not be able to deal with such basic criteria it would be evidently a problem of the country more than an ICC juridical abuse. Moreover, political influences are quite unforeseeable, first of all because the most part of state members are democracies. In addition, the decisional procedures, as described above, ensure a high level of impartiality due to the complex majorities required in order to appoint higher officers, as well as remove them [Driscoll and Zompetti, Kenneth Roth, 2004].

On the contrary, Kissinger proposes to overpass this idealist concept of universal justice with a more practical mechanism letting to the UN General Assembly the power to impugn international crimes. Then those impugnations should be discusses in the Security Council, which would have the discretional power to establish, or not, a special international court according to the political reality in the area. Roth considers this idea, at least, ingenious for the high level of partiality and political heterogeneity presented in the UN GA compared to a clearly dominant democratic representations in the ICC Assemble of State Members [Driscoll and Zompetti, Kenneth Roth, 2004].

4.3. Problem of Territorial Jurisdiction

Kissinger's position toward ICC territorial jurisdiction is extremely negative. In particular, he considers an open abuse of international customs the extension of jurisdiction even under no member states' citizens, if the crimes have been committed in member state territories or against member state citizens. Roth, on the contrary, claims a totally legitimacy of this authority since this is a usual practise for internal judicial systems. In fact, usually crimes committed by foreigners are judged inside the countries where the crime has been committed. Even more, some country, such as Belgium for instance, recognises the right to universal jurisdiction for crimes committed against their citizens and only mere logistic reasons have stopped to limit this right only toward cases involving its own citizens. Moreover, USA themselves have utilised the principle of universal rights against drugs traffic committed in international water or even against terrorism not only in the recent years of war against terrorism but even during the last decades for instance in the case of Noriego. In fact, the previous Panamanian dictator was accused and condamned, by the US judicial system and in the USA, for human crimes and drug smaggling committed in Panama. [Driscoll and Zompetti, Kenneth Roth, 2004]

Drug traffic and terrorism, as seen above, are not part of the ICC Statute. However, Dempsey discusses them as possible extension of ICC jurisdiction. His fear lies on the risk to extend ICC jurisdiction basically unlimitedly. Unfortunately, Dempsey's criticisms do not take in consideration the complex amendment approval system needed in order to extend jurisdiction. In fact, as mention above, a 2/3 majority is needed in order to approve it and it has to be ratified by at least 7/8 of state members. In addition, as Roth reminds, US have used international law as legitimacy in order to fight against drug traffic in international water toward USA. Furthermore, I believe the current war against terrorism and US claimed authority against international terrorism could be seen as another deviation of Dempsey and Kissinger's idea of international jurisdiction in modern international crimes reality.

4.4. Cost Escalations

The problem of ICC possible cost escalation has founded is origin in the previous transitional justice experiences and the high cost international community has paid for the ICTs. Those experiences have bound more than 10% or UN budget. In particular, US have

supported 25% of those costs [Luc Côté, 2006]. If those criticisms about transitional justice are more than legitimate, it is actually true that according the Statute, article 117, the assessed state contributions to the Court are based on the UN GA criteria and modelled and adjusted according to, in case, special national needs if some of the member lives a difficult economical situation. On the contrary, the ICTs budget has basically been totally financed by UN SC.

However, in the desirable case US decide to join the Court. Although they would probably be the higher financer, I see quite unforeseeable a dramatic escalation of costs as has been in ICTs' cases. In fact, a permanent court, for its nature, tends to be less expensive since there is no need to recreate and try out a new bureaucratic system. Furthermore, I personally see the article 100 of the Statute of Rome as a clear insurance to any kind of cost escalation. In fact, this article clearly states:

> "The ordinary cost of execution costs for execution of requests in the territory of the requested State shall be borne by that State" and only few secondary voice are mentioned under ICC cost competences: "a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody; b) Costs of translation, interpretation and transcription; c) Travel and subsistence costs of the judges, the Prosecutor, the Deputy Prosecutors, the Registrar, the Deputy Registrar and staff of any organ of the Court; d) Costs of any expert opinion or report requested by the Court; e) Costs associated with the transport of a person being surrendered to the Court by a custodial State; and f) Following consultations, any extraordinary costs that may result from the execution of a request."

4.5. The Loosing of Rights

Another major criticism refers to the lost of rights inside the Court compared to national judicial system. In particular, Dempsey considers the absence of the right for a jury formally recognised on the US Constitution 5th Amendment, this would make impossible for US to join the Court without modifying their Constitution. However, Dempsey does not consider that US martial law does not provide a jury right and still it is integral part of American legal system. Therefore, on this regard, Roth sees Dempsey's criticism as inconsistent and led by his biases over the ICC. Even more, most probably the charged people

for international crimes will be member of Army or rebels' group therefore people involved in belligerant acts and in any case responsable in front of martial law [Driscoll and Zompetti, Gary T. Dempsey, 2004].

Dempsey again stresses the already mentioned problem related with ICTY and the lack of defence rights as well and the, according to him, questionable role of witnesses, which have the right to do not appear in front of the defence. Especially this last issue is one of the core accuse he points out that instead American constitution gives much highest defence possibility and the right to know the witnesses' identities. Here again, Dempsey sounds contradictory considering USA legal impossibility to join the Court. In fact, US have supported ICTY since its establishment without raising the legal issues proposed by Dempsey. However, the Yugoslavian tribunal does not provide, as described above, this kind of right for fear of retaliation indictees can organise against witnesses, a kind of cirmunstance, forseeable in war and humanitarian crisis but less luckily in peaceful and well organised Western society such as USA.

5. Soft- and Hard Liners in Peace Processes and Transitional Justice Influence

During my studies on transitional justice and peace talks, I have found myself often unsure about what kind of methodology to use in order to analyse a conflict crisis solutions and in particular Ugandan case. Then I started to think more and more about game theory.

Using a constructivist approach on my analysis, I cannot consider a pure idea of rationalism. In this regard, I am suiting those two potentially contradictory concepts clarifying that the whole my idea of rationality has to be considered inside the international community arena. In other words, as in a chess board, the pieces are moved according to given rules; in the international community global actors, which are themselves constructed, play their moves utilising an idea of rationality related to the international rules and their assigned places in the global chess board.

Given this little preamble, I will then clarify what is this idea of rationality, how it plays a role in the decision-making of actors and in what way the international position of actors affects their rational choice.

5.1. Rational Choice

Why criminals, and in my specific case indicted human right abusers, can be considered rational actors inside the constructed World described above? This is, of course, a precondition in order to interpret their actions and wishes inside a game theory system.

Luckily in this regard, different studies have been done since the '60s and many articles have clarified the complicated relation between crimes and rational choice. In particular, the idea criminals tend to optimise their result as well as in other rational choice activities. Only a few years ago Bill McCharty stated:

> "Rational choice provides a fruitful approach to understanding criminal decision-making, and it can be combined with explanations of the origins of preferences and the availability of the mechanisms by which preferences are realized" [McCharty, 2002].

Already in 1968, Gary Becker [1968] illustrated how the tendency to crime is influenced by three major factors. According to him, the costs associated with arrest, probability of conviction and state punishment decrease the possibility of committing the crime. Considering this, I perceive human rights abuses highly probable in crisis situations as strictly connected with the lack of a world juridical authority. As seen above, this context has changed quite quickly in recent years, but it is still unclear what will be the evolution in the future, especially in light of recent phenomenon of war against terrorism.

In particular, the problem of conviction appears by far to be the most relevant issue in order to prevent crimes. Here again international crimes convictions are still sporadic and there is no certainty of juridical punishment due to weaknesses and partiality of the international prosecution system. In this last point, previously described experiences such as ICTs and the less questioned ICC represent a good change in the trend, but political influence is still really relevant and the capability to implement certainty of law appears still fairly poor.

Then the social costs can be considered, which have been carefully analysed by Staffort and Warr [1993]. According to them, society punishes criminals in term of not re-acceptation after the crime has been found and, even harder, if the crime has been punished. If we transfer this concept into international community, we can see international society as a structure tending to not re-integrate their members who have violated human crimes and these violations are part of public domain. Here again African dictators represent a good example. In fact, although rarely condemned in front of a court, they have often been unable to regain power or even continue to live in their own countries after their removal from government. Crucial instances can be seen in former presidents of Zaire and Uganda, Sese Seko Mobutu and Idi Amin respectively. Despite spending comfortably and quietly the rest of their lives in foreign countries, they were totally excluded from any kind of international event, formally isolated even by their previous international supporters and they were not allowed to enter back in their own country neither before nor after their deaths. Coming back to our time, Robert Mugabe seems a good case of an internationally sanctioned leader. In fact, although still in office at the moment of writing, his Zimbabwe is politically totally isolated, expelled from British Commonwealth and in a disastrous economic situation, which should be

probably solved only with Zimbabwean re-integration into international community after total or partial reduction of Mugabe's political power in his own country.

Concerning rational choice, Paul Collier uses a material approach in order to describe the behaviour of rebels in his "Rebels as a Quasi Criminal Activity" [2000]. He considers rebellion activities in a similar way to criminal ones. In particular, he emphasises the material needs of rebels. In fact, he claims no rebels can avoid considering their activity in an economic way, especially he tends to maintain a distance from any kind of ideological point of view. Then he considers looting as a primary need in order to collect the basic supplies for the troops since rebellion activities are expensive. For the same reason, he sees the role played by external supporters as vital for rebels groups due to the supplies they can get in terms or arms, food, etc.

Collier does not insist only on mere material need. In fact, he speaks about raping as a useful and heinous tool in order to keep the soldiers' moral high and even more to humiliate and subject the population under rebels' roles. Similar consideration can be made for mutilation and free brutality, which is exciting for rebels and at the same time useful in order to stabilise a dominant position toward the local population. Therefore, high rebel officers not only permit them, but also encourage this kind of actions in order to maintain their troop "warm" and strong control over population.

Finally, he considers the origin of rebel movement as possibly linked with criminal activities, therefore following similar decision-making logics. In particular, his position over LRA origins appears especially interesting for my research as it will be demonstrated below. In fact, he sees LRA, together with Medellin drug cartel, as two core examples of former criminal activities transformed in more complex rebel groups.

Regrettably, similar considerations can be demonstrated in regular armies, which theoretically are supposed to strictly follow the international conventions. Unfortunately, also regular privates are sadly known for committing human crimes. The reason is that many of them feel extraneous to the conflict, they have a low salary and they risk their lives daily. In this context raping and looting are seen as a form of extra payment for their undervalued job.

At the same time, knowing the situation, higher officers tend to ignore the behaviour of their private in order to reduce the risk of an internal Army uprising, insubordination or even simple apathy.

5.2. The Cost of Human Right Abuses

As mentioned above, social punishments are a relevant cost for an international criminal. A clear study of this phenomenon has been done in the previously quoted article "Do Human Rights Trials Make a Difference?" written by Kathryn Sikking and Hunjoon Kim [2007].

In fact, Sikkink and Kim, as well as Becker [1968] looking at internal crimes underline the juridical cost for indicted people, which can totally undermine any capability of maintaining a political status after warrant issuing. A clear example can be seen in the already mentioned case of Mladić. Once, one of the top leaders during the Yugoslavian war but unable to join the Daytona Peace Talks due the international warrant issued by the ICTY. Coming back to our main area of interest, Africa, another example can be the former Sierra Leone rebel leader Foday Sankoh, who was politically castrated by SCSL warrant after a short and successful political career during the post-Lomé agreement time [ICG, Africa Report nr. 28].

The research continues taking into consideration the cost of image, which an international investigation can give to politicians indicted for heinous crimes even when the warrant is not implemented. Here again previously analysed cases explain the situation clearly. In particular, the three Sudanese warrants issued against Ahmad Mohammed Harun, Ali Muhammad Ali Abd-Al-Rahman and Omar Hasan Ahmad al-Bashir. Although Sudanese government does not recognise and implement ICC decisions, all the executive was negatively affected by the warrants and the international pressure has further discredited its image [ICG web-site, *Our Silence on Sudan Shames us*].

5.3. The Post-Colonial Countries

States are obviously the major actors in the international communities. However, as they are social constructions, I do not believe we can consider all of them in a similar way. On the contrary, since Western powers impose their political model everywhere in the World, it would be better to consider relevant differences among states according to their origin. Then even the state-actors in our game cannot be considered equally, but the awareness of those differences is a must. Concerning this, I would like to consider Michael Barnett's and Christoph Zuercher's description of post-colonial states presented in their paper, "The Peacebuilder's Contract: How External State-building Reinforces Weak Statehood" [2008],

Firstly, they consider that post-colonial political institutions find their origins in foreign countries and even with the purpose to defend foreign interest in the area. After independence, those systems of strong particular representation remain a characteristic of post-colonial countries often in open contrast with the common sense of welfare. Unfortunately, central African sovereignties represent good examples of this phenomenon with their internal division and their colonially constructed borders. At the moment of writing, the Democratic Republic of Congo again faces internal incomprehension due to ethnical misunderstandings. Similarly, Sudan is sadly quoted in newspapers regarding its enduring Darfur problem.

Secondly, the post-colonial model emphasises the need to cope with international powers in order to maintain economic stability. In fact, post-colonial countries are usually unable to maintain an independent financial system and they need international help in order to keep their monetary budget in equilibrium. This situation obliged post-colonial countries to follow more strictly recommendations of their supporters in both international and internal politics. Therefore, international supporters implement a concrete power in post-colonial countries. This power can then be affected, as seen above, by human rights watch organisations and transitional justice institutions in their role as opinion makers. Examples of this mechanism can be seen for instance in the famous commercial sanctions against Apartheid South Africa. Similarly, as it will be demonstrated below, Sudan has suffered international pressure in order to reduce support to Ugandan LRA.

In addition, Barnett and Zuercher consider low capability of post-colonial countries to implement effective policies for a material lack of resources as well as low civil sentiment. As a consequence, I assume potential opponents, and especially rebels, will gain a strong power due to the inability of the legal authority to fight against them. Furthermore, this low territorial control does not bring a clear perception of the borders. Here again, not only Uganda but also entire sub-Saharan Africa can be seen as an example for low political effectiveness and permeable borders. In fact, international rebels coming principally from Rwanda and Uganda, have dramatically affected Congolese civil war and Congolese-Rwandan boarders are still extremely unclear [Rai-Report, web-site]. Similar situation can be seen in the Ugandan conflict with a permeable boarder with not only Sudan but also the Democratic Republic of Congo and the Central African Republic [ICG, African Report nr. 46].

Finally, Barnett and Zuercher recognise a tendency to a higher level of corruption in post-colonial countries, which warps political decisions. Regarding these, a good source of consideration can be the Transparency International annual report of "Corruption Perceptions Index" [Transparency International, web-site]. Predictably, post-colonial countries tend to have a much higher rank of corruption and all sub-Saharan Africa is affected by it. In fact, on the 2008 table, Uganda occupies the 126th position out of 179, Rwanda the 102nd, the Democratic Republic of Congo the 158th and Sudan the 173rd. Regarding this issue, the entire area can be considered sadly homogeneous notwithstanding a certain evident gap in favour of Uganda and Rwanda, which, in fact, tend to have a slightly better political situation compared to the other mentioned countries.

5.4. Soft and hardliners

In the context mentioned above, I have then tried to find a suitable model to describe a conflictual situation and peace talks if affected by transitional justice. I started to assume the major actors are two, the government and the rebels. In addition, we can consider two possible results of the negotiation: continuation of the war or a peace agreement. In this context, I needed to find a solution about the reason why peace processes often fail.

In this regard, I tried to figure out a way to describe behaviour of different actors. Fortunately, I found Todd Sandler and Daniel G. Arce M., "Terrorism and Game Theory" [2003]. In their research, they describe a system where the terrorists can be divided in soft- and hardliners according to their willingness to conclude violent actions. At the same time, legal government cannot know the terrorists' dominant position; therefore, in order to stop the conflict they tend to be more oriented to satisfy requests of the hardliners, as far as government is genuinely interested in finding a solution. One of their core points then focuses on the idea that hardliners' goals of the hardliners are dominant compared to those of the softliners. I will then try to use this division not to describe the relation between terrorists and government but the one between rebels and government.

I consider the basic idea of soft- and hardliners to be extremely interesting, but I think it is more appropriated to propose the same division also inside the government ranks. In fact, in the light of my previous post-colonial institutions description, I do not see why it has to be assumed that a government always keeps responsible positions toward its citizens. Even more, it can describe the fluttering of political position from soft and hardliners, or vice-versa, due to external power influences in internal and international affairs. In addition, at a governmental level, soft and hardliners can gain more or less power according to the sheer success of military or political operation in the conflictual area of the country, or the mere relevance of those sub-interests linked and corruption apparatus and internal divisions, which torment the country.

I then want to follow again Barnett and Zuercher's [2008] work quoting their idea of national elite considering not only legal institutions but also illegal fighters and guerrilla officers. In fact, those latter along with legal institutions usually claim to represent particular interests in open contrast to state institutions, which are described as corrupted and partial or at least unable to cope with the local problems. At the same time, rebel groups develop their own interests in terms of territorial control, exploitation of local material and market, etc. Those interests are linked with a conflict continuation. This is why higher rebel officers can have a material interest to maintain a status of war and therefore continue to hold their privileges. Hence, they can be most probably considered as hardliners because of their material advantage in maintaining high tensions. On the other hand, low rank commanders, as

well as simple fighters, do not enjoy the privileged life reserved for top officers and they have a higher probability of not being punished in case of peace, therefore they are more willing to find an agreement and return to civil life as far as this is a foreseeable solution.

5.5. Rational Choice and Incomplete Information

As outlined above, in the past years a large number of studies have been conducted on rational choice in terrorists-government relations. One of the core relevant points of these studies has been the lack of information, which required different analyses.

This instrument as been used for instance by Per Baltzer Overgaard:

"...it is natural to suggest the both terrorist group and the government lack relevant information on the motives, resources, and ex ante commitment of the opposition. In general then, the terrorist group is likely to be uncertain about the exact type of government it is facing when it is planning a terrorist campaign." [Per Baltzer Overgaard, 1994].

Furthermore Håvard Hegre, together with the already mentioned Todd Sandler, wrote "Economic Analysis of Civil Wars" [2002] which strictly relates rational choice and decision making of fighters in civil wars, claiming that:

Modern theoretical tools of utility maximization, rent seeking, and strategic-based optimization are appropriate techniques for studying the opposing interests in civil conflicts.

Then on the bases of what is explained above, I have developed a first basic graphic explaining the relation existing between the soft- and hard liner governments, soft- and hard liner rebels, and peace and war.

Gov. / Rebels	Softliner	Hardliner
Softliner	**Peace**	**Peace/War**
Hardliner	**Peace/War**	**War**

As easily comprehensible, the Softliners/Softliners and the Hardliners/Hardliners crosses bring to obvious results. On the former, a peace agreement due to the both actors' wish to conclude hostility and, on the latter a continuation of warfare for the high level of conflicts still present on both sides. The situation on the two other cells is more dubious. In order to explain what can be the solution, it is better to develop our model toward a Bayesian game.

5.6. Bayesian game and Peace

Contrary to Sandler & Todd, I do not think the softliners can be considered as actors always tending to satisfy the requests of the opposing hardliners since their lack of knowledge about opponents of their negotiators. Sandler & Todd claim that since softliners want to reach peace, in the uncertainness of their opponents' position, they always offer concessions that can be accepted by hardliner opponents. On the other hand, I believe soft- and hardliners tend to estimate the opponents' positions and behave in a way suitable with their suppositions. In fact, they do not play in total ignorance of the opponent, but in an imperfect knowledge of the others' position. They have, of course a *nature*, defined as an approach toward negotiation, in the specific case soft- or hardliner, but they also estimate the others' position from the basis of their incomplete knowledge.

How can they evaluate a nature of the actors? I then try to use a simple formula known as Bayes' Rule, which is widely used in social, and natural sciences and it has the purpose to evaluate the probability of some *nature* of someone/something from a position of imperfect information. The formula is the following one:

$$P(A \mid B) = \frac{P(B \mid A) \cdot P(A)}{P(B)}$$

Where:

P(A) is the marginal probability of A.

P(B) is the marginal probability of B.

P(A/B) is the conditional probability of A, given B.

P(B/A) is the conditional probability of B, given A.

5.6.1 Example

Let us assume there is a school where 60% (0.6) are boys and 40% (0.4) girls and among those latter 50% (0.5) use trousers. What is the probability a random student wearing trousers is a girl?

We can start taking those data:

P(G) the probability the student is a girl = 0.4

P(B) the probability the student is a boy = 0.6

P(T/B) the probability the student wears trousers, given this is a boy. Since all boys wear trousers is = 1

P(T/G) the probability the student wears trousers, given the fact she is a girl. As we already know = 0.5

P(T) the student wears trousers:

$P(B) \; x \; P(T/B) + P \; (G) \; x \; P \; (T/G) = 0.6 \; x \; 1 + 0.4 \; x \; 0.5 = 0.6 + 0.2 = 0.8$

P(G/T) the probability the student is a girl given s/he wears trousers:

$$P(G \mid T) = \frac{P(T \mid G) \cdot P(G)}{P(T)} = \frac{0.5 \cdot 0.4}{0.8} = 0.25$$

Therefore, the probability to find a girl among trousers wearers is 25% (0.25)

5.7. How to apply Bayesian Theorem to our Peace Process

Numerical precision as in the example proposed above is probably impossible, but the expectations of each other actors to see hard- or softliners in front of them can be assumed with the same logic of thinking.

Let us take the expectation of the government to see hardliners in front of it given the fact they have accepted to start negotiations. Assuming that all softliners are willing to negotiate, but only part of the hardliners wants to do it. Therefore:

P(H) the probability the rebels are hardliners.

P(Hn) the amount of hardliners willing to accept to start negotiations in proportion to the total amount of hardliners.

P(S) the probability the rebels are softliners

P(S/N) the probability the rebels are softliners, given the fact they started negotiations is given by:

$$P(S \mid N) = P(S) \cdot 1 = P(S)$$

P(H/N) the probability the rebels are hardliners, given the fact they started negotiations is given by:

$$P(H \mid N) = P(H) \cdot P(Hn)$$

P (N) The probability of rebels to be willing to start negotiations is given by:

$$\text{P(S|N)} + \text{P(H|N)} = P(N) = P(S \mid N) + P(H \mid N) = P(S) + P(H) \cdot P(Hn)$$

Then the same formula as above can be applied in order to find out the probability of having hardliners in the peace table although they accept to start negotiation:

$$P(N \mid H) = \frac{P(H \mid N) \cdot P(H)}{P(N)} = \frac{P(H \mid N) \cdot P(H)}{P(S) + P(H) \cdot P(Hn)}$$

Of course, the expectation of dealing with hardliners is inversely related with the probability of finding an agreement. At the same time, this formula is applicable to both, government expectation to find hardliner rebels or rebels' expectation to find hardliner government.

5.8. The role of Transitional Justice

As seen throughout the previous chapters, transitional justice internationalizes local situations and obliges international community to be more sensible in the area. On these concerns, transitional justice and its capability to raise up certain crisis attention permits to influence the soft and hardliners equilibrium inside peace talks negotiators' rank. Therefore, we have to consider that transitional justice as a status quo destabilization factor.

In particular, we have to be aware of the idea that a strong contribution is required in order to enforce the softliner rank. In fact, softliners usually are not concerned about criminal prosecutions since transition justice pays its attention only on those with higher responsibilities. In this context, they see a greater advantage in order to reach peace because the transfer of responsibility for justice from the local government to international institution reduces the possibility for the latter to implement a revenge policy against them.

Instead, the international community usually invites legal authorities to implement a policy of reintegration of rebels in the civil society and in the national defence system apparatus. In addition, the international community tends to be more willing to financially support peace processes after transitional justice intervention and the internationalisation of the conflict make it more difficult for both sides to behave irrationally [Allen, 2001].

Then the Bayes' rule corrected with the new equilibrium proposed by transitional justice can be taken into consideration. Given *(°)* as the new post international justice intervention in the conflict:

$P(H°) < P(H)$ the probability rebels are hardliners is lower then before.

$P(Hn°) < P(Hn°)$ the amount of hardliners willing to accept to start negotiations in proportion to the total amount of hardliners is lower the before.

$P(S°) > P(S)$ the probability rebels are softliners is higher than before

$P(S/N°) > P(S/N)$ the probability the rebels are softliners, given the fact they started negotiations is higher since:

$$P(S°) \times 1 = P(S°) \text{ which is higher than } P(S).$$

$P(H/N°) < P(H/N)$ the probability the rebels are hardliners, given the fact they started negotiations is lower since given by:

$$P(H/N°) = P(H°) \times P(Hn°) \text{ and those latter values are both lower than before, therefore}$$

the total result will also be lower.

$P(N°) \geq P(N)$ The probability of rebels to be willing to start negotiations is given by:

$$P(S/N°) + P(H/N°) = P(S°) + P(H°) \times P(Hn°)$$

It is already known that $P(S°) > P(S)$ and $P(H/N°) < P(H/N)$. However, it has to be taken into consideration that the increase in of softliners is due to a movement from hard- to soft- position played by part of hardliners rebels. Furthermore, knowing the totality of softliners are willing to negotiate but only some of the hardliners then it can be assumed that the increase of $P(S/N°)$ is more or, in the worst case, equal to the decrease in $P(H/N°)$. In light of this explanation it can be understood why $P(N°) \geq (N)$.

Based on what is described above, the same formula can be used as before, adjusted in the new environment:

$$P(N \mid H°) = \frac{P(H \mid N°) \cdot P(H°)}{P(S°) + P(H°) \cdot P(Hn°)}$$

Due to the information given above, it can be claimed:

$$P(H/N°) \times P(H°) < P(H/N)\ P(H)$$

and

$$P(S°) + P(H°) \times P(Hn°) \geq P(S) + P(H) \times P(Hn)$$

Therefore

$$P(N \mid H°) = \frac{P(H \mid N°) \cdot P(H°)}{P(S°) + P(H°) \cdot P(Hn°)} < \frac{P(H \mid N) \cdot P(H)}{P(S) + P(H) \cdot P(Hn)} = P(N \mid H)$$

In other words, the probability to find responsive negotiators is higher is the international community, and international justice, are active in the area.

THE UGANDAN PEACE PROCESS

AND

ICC INFLUENCES

Here I will start speaking about our concrete case of Ugandan peace process. The situation in Uganda have been extremely complex since the really beginning of the war. However, international community has been unwilling to find a solution. Similarly, the large majority of mass communication has ignored it.

In this context, I found myself in a difficult situation in order to collect information. As easily forseeable no quantitative data, if not in extremely small amount, were available. On the contrary, good qualitative data were easily collectable on the major human crisis watch organisations.

Among those, far the most relevant has been the International Crisis Group, which has provided me the large majority of my material. This organisation has been in the area for a whole decade and it has provided excellent material easily reachable. Another organisation that I could not ignore has been, of course, Amnesty International. Anyway, its material merely focused on human rights violations has been only partly interesting for my studies.

Unfortunately, the necessary historical backgroung needed in order to analyse the situation was not easily collectable neither on University libraries nor on-line. In this regard, I was like to find the Medeghini's deep analysis of Ugandan history, which provided concrete help. At the same time, I used the masterpeices written by Tim Allen, far the biggest expert of Ugandan crisis, which gave me an enormous help since his excellent analysises and his complete historical descriptions.

Finally, since the situation was constranly evolving I have tried to mantain my attention focus on on-going peace process as well as the influence paid by ICC arrest warrants. In this regard, I had no other possibility but collecting information from mass media sources. Then, I clearly tried to use the most reliable ones. In particular, the overwhelming majority of my material comes from BBC News. In addition, the ICC web-site has also been useful in order to remain updated concerning the work done by the Court.

6. Brief History of Uganda

6.1. The Age of Exploration

During a large part of modern history, Uganda did not exist as political institution neither were its territories known to Westerners and the future British colonists. In fact, the exploration of Africa, which led the discovery of the Lake Victoria and nowadays Ugandan inland took place less than one century and a half ago from the time of writing, February 2009.

The mystery of Nile's sources had been a constant puzzle. Already during domination of the Roman Empire in Egypt emperor Nero financed explorations in order to find them. However, no Roman ever arrived Southern than the Lake No, nowadays in Southern Sudan. In the Middle Ages, after the collapse of the Roman Empire, no explorers were able to discover Uganda.

Up to the 19th century, Europeans had already conquered and explored a large part of the World, however, the Lake No remained the last known point of Central Africa. Arab geographers did not manage to go further than Romans either. Furthermore, Central Africa was generally regarded as an infertile land, difficult to explore and impossible to exploit. Only in the 19th century, interest in exploration of Africa grew not only in the always-prolific explorers' minds but also on the governmental level materialising itself in the Scramble for Africa. In such euphoric climate, European colonists developed eagerness in conquering and exploring Africa, the last unknown part of the World [Medeghini, 1973].

The first white man entering in the current Ugandan territory was an Italian explorer, Giovanni Miani. His adventure in the heart of Africa was possible only thanks to Egyptian government, which financed his exploration in the vain attempt to find Nile's sources. Unfortunately, his march was interrupted by various difficlties inconvenients and in January 1860, he was sadly obliged to move back to North also in the light of the imminent rain season, which would have blocked him for months. Despite his good results and Egyptian readiness to finance new missions in the area, Miani had to refuse a new engagement due to personal reasons, which brought him back to Italy [Medeghini, 1973].

The British explorers Jan Hanning Speke and Richard Burton had more success in the same attempt when they left Zanzibar trying to reach Nile's source from east. Their first achievement was the discovery of Lake Tanganyika during winter 1858. Unfortunately, Burton got sick in Kazè and Speke was forced to continue alone toward Lake Victoria, which he discovered on the spring 1859. However, only two years later, accompanied by Captain James Grant, he came back to the area, just outside of the Ugandan territories, in Karàgwe, where they met the local king Rumànika who informed them about two white men having passed by, probably Mania and a Maltese explorer, Amabile de Bono. On 19th Febraury 1862, finally the two explorers entered in the present Uganda. In the local administrative capital, Banda, they were warmly welcomed and they spent a couple of months there. Then Speke alone asked permission from the local sovereign, Mutesa, for explorations of the interior where on 28th July 1862 he found the source of Nile. A centuries old mystery was resolved, but the explorers' thirst for knowledge was still strong [Medeghini, 1973].

In this context, although initially put off by Speke's discoveries, another British explorer, Baker, was personally spurred by his predecessor to continue exploring the area since only a little part of central Africa was explored. Then Baker undertook a long travel cataloguing almost the totality of present Uganda. In addition, he reached the North where Mania arrived few years before. Finally, he ended his exploration not on the South but on the North. In this way the UK was able to control the strip of land all along the Nile and establish a dominant position in the area opening the possibility for administrative control [Medeghini, 1973].

6.2. The Age of Colonialism

During the mid to late 19th century, Germany and Great Britain struggled for the control of Central Africa. However, in 1885, at the Berlin conference, an agreement was reached and Germany gave up the rights to Britain over what was to become Uganda. Later in 1894, the formal protectorate of Uganda was established under the Imperial East Africa Company, which already the year after became an integral part of the Foreign Affairs Office. Unfortunately, the colonists, excited by their conquests, did not take in consideration the complex political structure and the internal division of their protectorates. On the contrary,

their myths of progress and wishes of exploitations brought them to impose their institutions without regard or Uganda's historical past [Medeghini, 1973].

The borders were designed according to areas of interest and including four historically antagonistic kingdoms: Ankola, Bunyora, Toro and Buganda. Th latter gave origin to the country name, which is the Swahili translation. In fact, British considered Buganda's people the most developed and ethnical superior compared to the rest of protectorate. The Kingdom of Buganda was the largest one and had a good position for market and exportation thanks to its location at the Lake Victoria. Following a materialistic logic of exploitation and ethinical discrimination, the South quickly became the richest province of the protectorate. On the contrary, the less interesting North was always neglected and often humiliated by British domination [Kapuściński, p. 51, 2008].

The North of Uganda was not well delimited by any natural barrier and the population was principally composed of nomads without complex political institutions, as it was the case in the South. The different populations were not part of a common folk, but they lived in a peaceful equilibrium. The largest ethnical group was the Lwo speakers, called Acholi by colonizers since in Lwo "acholi" means "black". Throughout the entire second half of the 19th century, slave traders raided Acholis. In addition, British administration wanted to reform the traditional living structure. In order to do so a sedentary model of living similar to that one present in the South with agriculture and cattle-breeding as a major form of maintenance was imposed, also by wide use of physical force, to locals. In this way, the identity of Acholi people was "constructed" as a real homogeneous ethnicity, geographically and politically dominated by Southern elites. Furthermore, the drawing of border between Sudanese and Ugandan protectorates extremely relevant and marked deeply the entire history of those countries.

In fact, little importance was given to locals. On the contrary, Sudan itself was designed brutally melting together a Northern Arab Muslim community with a Southern black animist society. Following the same indifference for cultural background, as said above, Uganda was designed as a combination of different populations. Despite some elementary logic of ethnically guided delimitation of borders, the Sudanese administrator, who was

considered quite progressive, expressed desire to have some Acholi in his area of control. This questionable whim resulted in considerable exodus from Northern Uganda in order to populate Sudanese Southernest territories. These tragic events helped to create a strict link between the border and emphasise even further the internal heterogeneity [Allen, 2005].

6.3. The Independence

Uganda was one of the last British colonies to reach the goal of independence. In fact, the liberation from British domination took place only in '62. During the year before, as it was customary at the time in the British Empire, Uganda had to show to be a quiet administrative area demonstrating maturity for independence. In this context, tensions among the heterogeneous populations lived a stale period in the name of the greater goal of independence and unity against a common enemy: the British Empire [Kapuściński, p. 50, 2008].

The independence in '62 brought a short period of instability. The first Sovereign of the country was the previously exiled king of Buganda, Sir Frederick Edward Muteesa II, crowned as Kabaka Muteesa, who ruled until '66. At the same time, Benedicto Kiwanuka served as a prime minister. Despite being a man with a wide cultural and intimate familiarity with juridical administration, his policy unfortunately cannot be considered seriously since he held office less than one year when he lost elections against the more and more popular former dissident Milton Obote [My Uganda, *Benedict Kiwanuka*].

Milton Obote was a dissident from the North. He was born in the Acholiland in a wealthy family and he was fairly well educated. In addition, he knew well the country since he spend a long time in Buganda as labour worker. During the troubled period of the Mau-Mau emergency he became a member of Kenyatta's Kenyan National Union and before coming back to his homeland he founded the Uganda National Congress (UNP), openly opposing Buganda's king role. However, he became a full time politician only during the three years Pre-Independent Legislative Council as a representative of his own party. His mix of good education and warrior background was irresistible for many electors [My Uganda, *Milton Obote*].

Following electoral victory on 15th April '62, Obote started an aggressive policy which was only formally oriented toward conciliation. Finally, in '66 the situation changed drastically. The crucial factor was a gold smuggling plot involving Obote and a young general, Idi Amin. Apparently, they smuggled gold which was temporarily stocked in the country from the neighbouring Zaire, whom Uganda was supporting the President Lumumba, during Zairian civil war. In front of the risk of being arrested Obote used military force in order to withdraw the king and as result he became the first president of Uganda [Oxfort Dictionary of National Biography, *Obote, (Apolo) Milton*].

The first years of his presidency are remembered for the declaration of "State of Emergency", the suspension of constitutional rights and increasing role of the state in any kind of economical affairs. This, united with his soft skepticism toward British Commonwealth, and increasing use of violence against oppositions, brought Western powers to consider him a leftist, potentially filo-soviet African leader. Although his aggressive behaviour, the country lived a quite stable period with fairly successful economical results. In addition, Obote was a man from North; this was extremely relevant to help creating a form of coabitation between the centre of political and economical power, the South, and the North, which could anyway being politically defended by the top officers of government [The Guardian, *Milton Obote*]. In addition, Obote's first years were sadly famous for the clearly racist politics of limitation against Asians, which were forced to emigrate in Uganda by British colonisers during the railway constructions as manual workers [Oxfort Dictionary of National Biography, *Obote, (Apolo) Milton*].

Obote was an arrogant self-centric leader and his policy followed his personality. He tried to centralise power on himself and take distance from traditional kingdoms' heritage. In this regard, he abolished all the pre-colonial sovereign institutions even on the hope to isolate their predecessors' supporters. However, his politics took a core step with the emanation of "The Move to the Left" and "the Charter of Common Man" in '69 [Kapuściński, p.152, 2008].

Fashinated by the new African leftism, he clearly designed the way in which he would bring the country to socialism. In few months, at least 51% of all country companies were

nationalised and the frictions with Commonwealth definitally became unfillable [Oxfort Dictionary of National Biography, *Obote, (Apolo) Milton*]. The already high repression was further increased, this was possibile thank to the fact the large majority of soldiers were from the poorer North and therefore supposely loyal to the president [Allen, 2005].

Ugandans did not have time to check the new economic politics, in fact at the same time the Kakwa part of the Army started to be more and more skeptical toward Obote. Even inside the over Northern represented Army, there were internal dissidents. Tendencially, Acholis and Langis considered Kakwas inferior, and the most brutal and dangerious military actions were served by them letting Acholis, whom Obote was from, and Langis for safer and less demanding duties. Among Kakwas, far the higher officer was General Idi Amin. In '69, Obote survived an outrage, although no guilt was found allegations claimed Amin involved in it. Almost two years later in Janury '71 a successful coup d'etat brought Amin in power and obliged Obote to exile [Oxfort Dictionary of National Biography, *Obote, (Apolo) Milton*].

6.4. Idi Amin

It is impossible to speak about Ugandan history omitting Idi Amin. He was a negative example of Africa and its despotic dictators. In particular, if Uganda is not viewed as an isolated case, Idi Amin becomes a core instance to understand this wonderful continent and the post-colonial countries problems.

Idi Amin was a *bayaye*, one member of an enormous messy mass of people who came from the countryside to find fortune in African metropolises. His birthplace is not clearly known, but probably it was in some village on the Kakwa area on the Northeast corner of the country. His mother came to Jinja (Ugandan second largest city) when he was a small child and their story is similar to many other *bayaye*s. Without an education and belonging to no local clans, such confused individuals, who lost their grip, form enormous shantytowns without any basic service and spend their lives in a continuous "fight or flight" state without the skills to live in the city nor the possibility to come back to the countryside. In this sort of vicious status of misery, *bayaye*s try to survive with daily expedients.

Despite growing up in such environment without future, his mother managed to give Idi Amin a basic education. In fact, he attended the first four elementary classes thanks to humanitarian missions in the area. They lived close to the Jinja's military barracks and one day the officers noted him for his strong body. He was immediately recruited in the King's African Rifles. For Amin – as well as it would be for any *beyaye* – this was the chance of his life [Kapuściński, p.123, 2008].

This branch of the British Army had been followed Lugard's instructions for decades according to which people with no connections with the territory should be recruited in order to create a form of internal clan with no reluctance to commit crimes in the name of the Empire. On the other hand, officers had to be white in order to maintain a link with London [Kapuściński, pp.123-124, 2008].

Such was the situation directly preceding Ugandan independence. The British military officers, along with their French counterparts in other parts of Africa, wanted to keep control of colonial troops as long as possible. They did not want to lose their privileges, nor their positions and the Africanization of the military was carried out according to these wishses. Obedient but not particularly intelligent subordinateds were appointed to the higher ranks. Amin, as well as for instance Bokassa in the Centre Republic of Africa, were clear instances of this tendency. Amin had been a loyal, strong and brutal soldier against Mau-Mau, Turkana and Karamojong rebels, but neither well educated nor particularly clever. However, at the moment of independence, following the requests of higher officers, Amin was already second-in-command in the newly established Ugandan National Army [Kapuściński, p.125, 2008].

Amin served eight years as a loyal commander of Obote's Army. Furthermore, he was one of those who stopped military revolt in '64 and helped to conquer the King's palace two years later. However, in '69, Obote forced him to sign a confession where he declared to have stolen the gold given by Lumunba to Uganda during Zairian civil war. It seems possible that Obote suspected Amin of having organised the attempt against his life and he tried to arrest Amin for a gold smuggling where they were both involved few years before. Obote knew Amin was a Kakwa, an ethnic minority in the Army, and therefore without a large support and

he left Uganda for the Commonwealth summit in Singapore in 1971 considering the possibility of arresting Amin on the way back [Kapuściński, p.125, 2008].

However, on 25th January '71, Amin anticipated Obote's plan attacking Kampala's military barracks. Since he knew he lacked support of Langis and Acholis, he used a common technique at that time: he exterminated a large part of potentially opposing Acholi and Langi troops. It is now known that in the first year of Amin's presidency, roughly two thirds of Ugandan Army was massacred. However, the Army was needed as a form of control in a country that did not supported its President. Therefore, Amin tried to reintegrate the lost troops with new Northern loyal privates principally ethnically Kakwa [The Guardian, *Idi Amin*].

From 1971 until 1979, year of Amin's withdrawal, Uganda was governed by brutal arbitrary violence. The mere supposition of any kind of conspiracy against the president meant death penalty usually after terrible torture. Amin was not only the president but also "the country"; neither parliament nor any form of opposition was allowed. He governed using his dubious intuition, which resulted, for instance, in expulsion of 30,000 Ugandan citizens because of their Asian ethnical origins, after a vision in his dream. His hyper-aggressive anti-British politics was simply disastrous and far worse than Obote's questionable leftism. The country was brought to starvation and no international leader took Amin seriously.

Only Col. Gaddafi's Libya and Saudi Arabia maintained a certain level of relations with Uganda, principally as a form of Muslim unity. In fact, Amin used to spice his deliriums with Muslim rethoric and open unreserved anti-Semitism, not to mention the hijacking of Air France flight from Athens to Paris committed by Popular Front for the Liberation of Palestine and hosted in Kampala by Amin in '76. The hijacking ended, as known, with a rescue military operation carried out by the Israeli Secrete Services. Even in this case, Amin showed his brutality by killing the wounded passenger, Dora Bloch, guilty of being a British-Israeli citizen. She was brought to hospital and the doctors were literarily forced to kill her [The Guardian, *Idi Amin*].

All this inhumanity was possible only with the arbitral use of the Army, which was glorified and asserted as defender of the African independence. One of the many cases of absurd wasting of money ordered by Amin was the creation of a group trained in order to free South Africa. Amin's loyal troop consisted principally by *bayaye*s, often ethnic Kakwa, who were extremely low educated and unable to speak with the large part of local population. In these terms, Amin used the same technique as British Empire had used for decades: he created a self-legitimised parallel world in the Army, which was allowed to commit the most hienous actions for the sake of Amin and his higher officers. However, the level of arbitrary violence perpetrated by privates were able to use was much higher than in the past. The reasons were obvious, Uganda was bankrupt and the government had no money either to pay the privates or to support the population. In this context, soldiers had to "find" their incomes abusing their power and, – met with total indifference by Kampala's government – committing hienous crimes spurred by the certainty of impunity [Kapuściński, p.128, 2008].

Amin's arrogance was also his condemnation. In fact, his obsession for greatness made him claiming territorial rights over neighbouring country regions, in particular, Northern Tanzania, and an attack on Dar-es-Salaam ensued. Unfortunately for Amin, despite being glorified, the Ugandan Army was quite weak. In addition, the dissident group FRONASA (Front for National Salvation) under the comand of Yoweni Museveni, which included almost all Ugandan ethnic groups but especially Langis and Acholi, fought side by side with the Tanzanian Army and Kampala was reached surprisingly easily. Idi Amin ran away in Libya and then to Saudi Arabia leaving behind a politically and economically destroyed Uganda with a difficult question of future leadership [Kapuściński, p.130, 2008].

6.5. The raising of Museveni

When Tanzanian troops withdrew from Uganda, the question of power succession was still open. Inside the rebels group, there were at least two major strands of thought. The Northern Langis and Acholis supported previous president Milton Obote while Yoweni supported Museveni's militias, which were composed principally of Southerners and united under the name of Uganda National Liberation Front (UNLF). This latter was surprisingly popular as was also its leader, the first Southerner having a concrete possibility to lead the country. [Oxfort Dictionary of National Biography, *Obote, (Apolo) Milton*]

Following the elections in '80, Obote was restored to power. Since the first days serious election fraud allegation were issued by opposition, led by Museveni, which quickly turned into a new guerilla fighting in the South. On the other hand and surprisingly, Obote understood the terrible condition Amin had let the country and he started to follow dutifully the World Bank and International Monetary Found prescriptions forgetting his previous socialist aspirations. In the Cold War logic, this was enough to consider Obote pro-Western and in the blue and red division of the World, Museveni became automatically a Western enemy.

In the light of his previous and Amin's experience, Obote clearly knew the importance of keeping control over the Army. Following this aim, he increased the amount of Acholi and Langi officers and privates drawing large part of FRONASA fighters into military force who started a real form of revange against Kakwa military troops, in general former Amin's supporters. At the same time, they continued to wage war against Museveni's guerilla fighting in the South [Allen, 2005].

Juvénal Habyarimana had been the Rwandan leader since 1973 when his successful coup d'état took place. As an ethnic Hutu, his regime was harsh against Tutsis, who tended to flee from their homeland to the neighbouring countries, Uganda being one of them. Unfortunately, Obote did not have neither possibility nor wish to take care of this confused and desperate people crossing boarders. On the contrary, he was more willing to push them literally back to their own country. As easily guessable, Uganda did not have the physical force to stop this flow and Obote's Army, as an animal in panic, committed inhuman crimes against random Tutsis and also local Ugandans, which were often simply pushed back to Rwanda together with the actual targets of the military operations. The Rwandan Tutsis and Ugandans saw in Museveni a possible avenger for Obote's violence and increasead the already well trained UNLF [Kapuściński, pp. 151-153, 2008].

As the rebels were getting stronger, the civil war intensified obliging military troops to carry out harder and more dangerous missions. At the same time, according to an Amnesty International report, Obote's difficulties increased human rights abuses of Museveni's troops.

A flagant example of this was the fully-fledged concentration camp established in the area of Luwero in the North of Uganda. However, Museveni did not withdraw Obote [Amnesty International, 1999].

Acholi troops felt uncomfortable on their missions in South against Tutsis and Museveni's guerrilla. Although being an Acholi, Obote had already lost his popularity before Amin; just fortuitous events brought him back to power, but his presidency was unstable and opposed even by his Acholi and Langi colleagues. In the Southern alien environment, officers' and privates' discontent grew stronger and so did the wish for a change in the governance.

In this context, the two brothers Okella, who were both Acholi top officers, staged a successful coup d'état in 1985. Tito Okella was appointed as provisional president and a prompt negotiation was opened with Museveni, resulting in a peace agreement, which was reached extremely quickly. However, the break in fighting was short. Already in February 1986 Museveni's troop marched against Kampala and overthrew the young regime. For the first time in history, economical, political, and thus also military power was concetrated in the South [Allen, 2005].

6.6. Northern Insurgences

As clearly seen above, Ugandan politics was dominated by a wide use of force. Following this logic, the national Army had been an important factor in order to hold power in the country. At the same time, ethnical divisions and internal antagonisms had been often more relevant than concrete political debates.

Despite the fact that it was Kakwas on one side, and Acholis and Langis on the other, who battled for the control of military power, it had always been a Northern question. The Northern dominant military representation was pretty obvious also in the light of the distribution of wealth. In fact, the richer Southerners had always been less interested in starting a military carrier when compared to Northerners. In addition, the political situation had always favoured more Northern-oriented Armies. In such circumstances, Museveni

needed to reinvent the Ugandan Army and he started from the ethinc division as his predecessors did.

Suddenly Acholi soldiers became unemployed and moved from the alien territory back to their own region. Unfortunately, Acholiland's economic situation was not prepared to accommodate such a huge number of low skilled workers. Furthermore, Luwero's extermination camp, which was located in the North, had been scene of a big scandal and many locals were not willing to reintegrate the former soldiers. The situation became definitely irreversible when elders started to reject them publically. Having been rejected by their own people, they migrated to the Southern Sudan where, the Lwo-speaker minority, united in the continuous fighting against the Sudanese Arab North, was more tolerant towards former soldiers from Uganda. There, they started guerrilla warfare against Museveni under the name of Uganda People's Democratic Army (UPDA) [Allen, pp. 25-36, 2006].

In Acholi culture, there is a relevant figure called *Ajwaka.* They are healers but at the same time they keep contacts with spirits having the witch-like role in society. They are usually women and nomads and thus keep them a traditionally low profile in the area. For those reasons, they have been easily tolerated by colonizers and missionaries. In this way, *Ajwaka*s have continued to spread animistic believes, which have been mixed with imported Christian and Muslim values [Allen, 2005].

The political disinterest toward Acholiland and Northern Uganda in general shown by the new government made living conditions of the already poor population even worse. This situation favoured the revival of interest in shamans and healers, particularly *Ajwaka*s. Among those, the following three were the most popular: Alice Auma, called Lukwana ("Messanger" in Lwo), her father Sevarino Lukoya and Joseph Kony. In particular, former Acholi soldiers perceived the possibility to fight for them as a form of revenge and *Ajwaka*s saw the possibility to create new rebel' groups in order to defend Acholiland's rights and gain some political advantage [ICG, report nr. 77].

In the '80s, Alice Lukwana was the most popular *Ajwaka*, She introduced an idea of pure life mixed with Christian values, which she claimed to have received inspiration from

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holy spirits. In addition, she started organising a well-trained guerrilla group, the Holy Spirit Movement Front (HSMF) encouraged by the convinction that pure souls cannot die. Although she did not have particularly good relations with Kony, they had apparently only minor clashes and few battles were fought between them. Unfortunately for her, Lukwana overestimated her force and in '87 she marched against Museveni with a group composed of roughly 10,000 soldiers. The inevitable defeat took place in the Jinja swamps, but she managed to survive and following a confused negotiation she received a large financial support in exchange to forced exile in Kenya. However, she let the North without a strong spiritual leader who could take her place [ICG, report nr. 77].

A similar fate befell the father of Lukwana. After his daugher's defeat, Lukoya continued her mission. Although he was verbally more aggressive and met with antipathy from other *Ajwaka*s, he kept following Lukwana's main ideas; he avoided violence against population and taught a pure way of life claiming an inspiration from positive and negative spirits. In '89, he attacked Museveni's regime with his troops – just like his daughter had done. He was also defeated but he was not as lucky as Lukwana. In fact, he was jailed for quite a while before he was released. However, he also received a generous financial support and has lived since then in Gulu, his hometown, supported by the government [ICG, report nr. 77].

The game was up, Kony, the bloodiest and darkest *Ajwaka*, remained the only charismatic leader who could represent Acholi's interests in front of Museveni's alien government.

7. Kony and the LRA

Kony is an *Ajwaki* from Gulu, coming from an unusual family of male *Ajwaki*s. He has always claimed a family relation with Lakwana, but none has been proved and it does not seem likely he has any. Nevertheless, he believes part of his power come from Lakwana's spirits, which try to continue their fight through him. His popularity reached its peak with the defeat of Sevarino. Despite the fact that he started fighting in '86, the UPDA dissolution was of major importance.

In '88, the UPDA was finally defeated by the Ugandan regular Army. Suddenly thousands of rebels found themselves unable to find a way of reintegration in society and they needed a new fighting activity as a form of sustenance. In this context, Kony's group became the best possibility for them to find a way to continue fighting and thus avoiding poverty. Among those, there was a top officer, Odong Latek, who was an extremely brutal fighter with high commander capabilities and the skills to reorganise Kony's confused movement in a really efficient military system.

The leadership became quickly dual and Latek gained power thanks to his military ability. Kony's loss of power was demonstrated even by the fact that his movement was called Uganda Peoples Democratic Liberation Army (UPDLA) demoting the mystic religious character. However, Kony learnt much from his co-commander and, thanks to him, he was able to sharpen his military skills. In addition, the organisation of the fighting moved definitely to the safer Southern Sudan, well-known by former UPDA rebels. Anyway, this situation did not last long since Latek was killed in a military operation in '90 and Kony become the single leader of the group [Allen, 2005].

Under Kony's command, the UPDLA changed its name to the Lord's Resistance Army (LRA) and the spiritual character of the movement re-emerged. In fact, Kony has always claimed to be connected with three major spirits. The first one, Juma Oris, is the spirit of a former Amin's minister and he helps Kony to organise his guerrilla. The other two spirits, Silly Sandy and Who Are You? appear important but less relevant in Kony's military

decisions. However, he claims they guide him to take decision under pressure and to understand the dark side of situation [Allen, 2005].

7.1. Faith on Kony

His rebels tend to genuinely believe in his superior power and they follow him to his holy yards and also treat him as a semi-god. This situation was fairly similar compared to those of Saverino and Lakwena they also had holy yards and they were considered superior. Unfortunately, in the Kony's case, his methods acquired a maniacal approach and his subordinates are genuinely scared of his superhuman powers. Thus, it is more difficult for them to oppose him after the brainwashing they are exposed to after the forced recruitment.

On this point, Allen has presented some clear documentation in his book, I believe can explain much of the situation:

From an interview:

What do you think about Kony?

"Kony has got some spirit in him that reveals to him what other cannot see. For instance, he can foresee what would happen next. You could image Kony is not educated at all but bright and educated people follow him not in fear but rather in obedience to his orders...Kony is a normal man when not under the influence of spirits but when possessed his eyes turn red and his voice also change..." [Allen, p.67, 2006].

From the interview with a former rebel:

What do you think of Kony and his special powers?

"...Later a stone was burnt into ashes with oil '*moo yaa*' and smeared on to our bodies. Also water was sprinkled on us. Then Kony said from that time we are his soldiers...They smeared us this way for protection and to make us strong. It was also to stop us escaping. We were told that if we escaped, the holy spirit [*tipu maleng*] would bring us back...I believed it. When I was still there, this made me so scared that whatever my heart told me to escape I would say to myself that the spirit is looking at me. Then I just gave up..." [Allen, p.68, 2006].

In this context, a total obedience to the commanders can be expected to be more common than in the Museveni's regular Army.

7.2. LRA, Civil Society and Recruitment

LRA has concetrated the most of its fighting in the Northern Uganda in Acholiland (composed of the districts Kitgum, Gulu and Pader) and to a lesser, but still relavant degree in adjacent Southern regions Lango and Teso.

The LRA has demonstrated a violence and brutality since 1986, which has been rarely seen in modern times. In fact, despite their claims of defending the Acholiland interests, enormous suffering has been inflicted upon the population. Fighters looting in local villages and massacring civilians has been the norm. The civilians themselves, coerced by the rebels, have often done the most heinous activities. Among those crimes, I feel the duty to emphasise the systematic killing of babies with clubs and literal burning of toddlers at stake. The reason for such a level of brutality has been justified as a form of punishment for being aligned with the government side. In reality, the overwhelming majority of victims are simple citizens with the only guilt of not openly opposing Museveni, but they often dislike Ugandan governance, President and his general policies. However, here again I assume no better explination can be done if not with the words of the victims:

From the interview with a former rebel:
Why were rebels cutting off people's legs, lips, and other body parts?
"That's happened when I was still in Sudan, but I learnt from some friend that it was some spirit that order Kony to do that; for instance, cutting legs of those caught riding bicycles and cutting lips of those who tried to make alarm" [Allen, p.68, 2006].

This text come from the story of Alice, 14 years old girl at the time: "…Alice's sister was brought forward with her hands tied and asked to make her last confession. She was then gagged and pushed flat on the ground. As Alice recalled, 'They [the LRA] then went ahead and asked me whether I would mind if my sister was killed. I answered them that I would not mind the death of my sister. [Such was] the answer I had to give if I wanted to save my life.' Alice was forced by the commanders to watch

as three of the new captives came forward and stabbed Joy. She was then given the knife and told to stab her sister until she was dead. Alice recalls the blood and tears of her sister vividly: 'We stabbed [her] until her body was totally shattered. This was the ugliest experience of my life … I had a hand in killing my own sister.'"…[Baines, 2007].

The following interview is from a boy, who was about 17 years old in Atiak displacement camp: "…They also forced me killing so many…So many times I cannot remember how many…If you refused to do the killing [with a club or panga] they would cut off the head and make you carry it. They would say the *cen* [the polutting spirit] of the dead would possess us that it would mean we would never go home…None of us wanted to carry the head, so we all had to kill…When the killing was done, each of us had to swallow the blood…this was a kind of cleaning…The head was pass around and we all had to taste the blood…Some of the people we killed were people who had tried to escape…" [Allen, 2005].

From a third interview:
Why did you kill your mother?
"…I was abducted from Pabbo in April 1990 over the weekend as I was going to the garden to help my mother. It was around 7.30 in the morning when I was abducted together with my mother. When only moved a short distance away and I was asked to kill my mother. I first refused, but I was told my mother will be asked to kill me. They kept insisting. They tried to force my mother to kill me, but she would not. They said they would kill both of us, but my mother told me that I must kill her to survive. I did it, but I loved my mother. I wanted both of us to die…" [Allen, p.67, 2006].

As seen from those appalling testimonies, abductions and human crimes are extemely common tool for repression, major recruitment tool and in order to find wives for higher officers. However, in order to better understand the scale of dramatic phenomena I would like to list down some statistic data collected in camps for internally displaced people, where about two millions Acholis lives. According to the International Centre for Transitional Justice (ICTJ), around 40% of camps' population suffered some level of abduction, 31% had

at least one abducted child, 58% witnessed children abductions, 45% witnessed a family member killed, 48% witnessed a friend or neighbour killed, 25% witnessed sexual abuses, 49% were threatened with death, 23% were physically mutilated, maimed or seriously injured by the LRA and 33% were forced to carry load for the LRA. The cold brutality of these numbers is so incredible that any other explanation would be superfluous. In addition, I want to report also the extreme level of depression this situation brought. In fact, the rate of suicide is surprisingly high in the area, as well as alcholism and domestic violence. These factors clearly express how the situation has gone out of control [ICTJ, 2005].

Similarly, the ICC has emphasised the wide use of child soldiers by the LRA. This practise has certainly been used but for the sake of scientific honesty, it has to be considered lower than claimed. In fact, UNICEF studied the case from 1997 until 2001 with a sample of 28,903 abductions. It resulted that a substantial majority of abductions were adults (above 18), i.e. roughly two thirds; 45% were between 18 and 35 years old; 70% were male; fewer than 13,000 were still missing and among them 5,555 were thought to be children, almost 80% of the returns had been in one year from kidnapping. [USAID&UNICEF, 2006] On the other hand, more recent data from the World Health Organisation, claims that 46.6% of abductions were committed involving children under fifteen. Although the scale of the problem is enormous and the LRA has clearly used this kind of hienous tool as recruitment system, there are no evidences concerning ICC claiming that 85% of LRA soldiers are abducted children [Allen, p. 63, 2006].

As supposed above, I clearly want to express my belief that this use of violence is applied principally to submit and humiliate population suppressing any kind of internal revolt. Similarly, the LRA rebels alleviate their poor living conditions in the bushes by committing atrocities and looting. Therefore, although hard to imagine, this indescribable actions have to be regarded as rational behaviours with clear purposes.

7.3. Internally Displaced Camps
Due to the extemly dangerous situation for locals, in 1997 Museveni's government forced a large part of Acholis to move to protected camps. Initially, the were no plans to make those facilities on such a huge scale but the camps programme went out of control also

because of inefficeint and corrupted public, and military officers involved in it. In fact, the Army has had the major duties of defending the camps against the LRA. Following an impressive increasing of camps, those in Northern Uganda probably have represented the largest internal displaced population in the World.

Unfortunately, these camps have not turned out to be a suitable solution for the problems related to civil war. Above all else, no economical activity is possible inside the camps. Even agriculture has become extremely dangerous; in fact, for obvious economical reasons, the camps have been usually located on cheap and unfertile lands, which are often mined. In these conditions, not only the risk to be abducted, but also to be seriously injured prevents the possibility of developing a social live in the area, making camp life poor and alienating. In addition, the lack of an efficient defence system has done nothing but worsened the living standard even further [ICG, report nr. 22].

The national Army has implemented IDP camps' defence. As seen above in different circumstances, the Army represents the dominant ethnic and at the moment Museveni's one, therefore the South. For this reason, privates have tended to ignore local population or even worst exploit it. Furthermore, they have not been able to defend the camps but they have usually run away in from of stronger and more diligent LRA rebels.

Difficult to believe, appear the situation concerning Crude Mortality Rate (CMR) in the camps. According to MSF-Holland, in 2004 this data flew from 2,79/10,000/day until an astomish 10,46 depending to the camp. In order to understand the enormity of this tragedy we can remind that 1/10,000/day is generally considered as a limit to define human crisis. Moreover, the Severe Malnutrition Rate is in a average of 4,4% and Global Acute Malnutrition rate 8,23% for children aged 8-59 months [Allen, p.55, 2006].

A real daily exodus has affected all IDP camps' youngsters, in order to avoid LRA violences, children move daily for the night to the major town near by the camps. In 2004, a research implemented in Gulu showed roughly 20,000 children were commuting before sunset and they came back on the early morning. These numbers usually vary according to the temporary distance from the last LRA attack. However, some LRA retaliation is marked by

fired on Acholis' memories and it pushes child communters to take their daily walks. Probably the most sadly famous of them is that one in Atiak, closed to Gulu, where 200 people were brutally killed with pangas and clubs. What I believe, it is important to underline, those events have been common in Acholiland and not terrible sporatic cases in a fair played war [Allen, p.61, 2006].

7.4. Relations with Sudan

Southern Sudan has been theatre of important part of operations led by the LRA. This has been possible and even supported by the Sudanese government itself. Although difficult to believe, Karthoum has fought its traditional enemies in the South of the country using also Ugandan rebels. Arab Muslim North has always ruled the country and the Black Animist Southerners have waged a guerrilla war under the name of Sudan People's Liberation Army (SPLA). In order to mantain Sudan's low regional profile, Uganda supported SPLA for decades. On the other hand, for the same reason Sudan has supplied LRA with food and weapons since its inception.

The situation has rapidly changed in the last years. In fact, two factors have improved the situation. Firstly, the war in Southern Sudan finished in 2005 with the creation of the autonomous region of Southern Sudan ruled by locals and led by the president Salva Kiir Mayardit. Although the Government of Southern Sudan (GoSS) has supported Ugandan fight against LRA, Khartoum continued to supply weapons to Kony but in an obvious highly problematic situation [ICG, Africa Report nr. 77]. The second relevant factor has been the ICC influence in the area. As said above, one member of government, one rebel leader, and since recently also the president of the country are all under ICC international warrants. Similarly, five LRA higher officers, nowadays three after the death of Raska Lukwiya and Vincent Otti, are charged by the court. Although it does not formally recognise any authority from the Court, Sudan had to comply with the situation.

7.5. The *Res Nullius* of Congo

The First and the Second Congolese are one of the longest and most brutal conflicts in Africa. Following the collapse of Mubuto's regime in 1996, the negotiations in order to redistribute power were fruitless a war ensued, which involved all political powers in the area

and it is nowadays remembered as the first African War. In fact, thanks to its row material resources, Congo is an extremely attractive area in the absence of any clear political power. This has made basically all the neighbouring countries along the Congo's east border to take part in the conflict and control the area to some extent. This pervert system of destruction and loss of sovereignty brought no good, but instead created a *Res Nullius* controlled by weak foreign armies and rebel groups until the arrival of UN.

Also Kony has tried to use the situation for his personal advantage. Following the collapse of Congolese governance, the LRA set up a new base in the Virunga National Park in the Northeast part of the country close to Ugandan Acholiland. For a long period of time, the LRA found virtually free land in Congo where they were able to perpetrate any kind of crime in total impunity due to the complete absence of any authority able to implement rule of law in the country.

After the ceasefire in 1998, the UN felt more confident sending peacekeeping force to the area. As well known after Somalia disaster, UN has been reluctant to send international peacekeeping mission around the World. However after the ceasefire, the UN organised in Congo the largest international mission ever called MONUC (Mission de l'Organisation des Nations Unies en République démocratique du Congo; in English, Mission of the United Nations Organisation in the Democratic Republic of the Congo), which reached the astonishing amount of about 30,000 military units. Since then, his number has been reduced by almost half, but it is still relevant [ICG, Africa Report nr. 84].

Since that time, LRA has had a slightly more difficult life. In fact, the area had been more patrolled by MONUC. Nonetheless, LRA rebels have been still able to hide themselves and wage war in the area. In fact, although in a better situation, Congo continues to be an area with extremely low governance and possibility of hiding are still relatively high.

8. Political Situation

8.1. Negotiations in 1994

In 1994, a weak negotiation was opened between the LRA and the Museveni government. The then Minister of State for Pacification of Northern Uganda, Betty Bigombe, was probably the most relevant person in this desperate attempt to establish peace.

Ms. Bigombe was appointed minister already in '88. In this regard, it is easy foresee the wish to humiliate Acholis for appointing a woman as a key figure for the peace. However, contrary to predictions, Ms. Bigombe was and she still is one of the most positive and brave people, who has ever taken part in Ugandan conflict. She acted with maturity and a sense for duty rarely seen before [ICG, Africa Report nr. 41].

Not being only an Acholi, but also having been born in Gulu, she quickly gained Kony's confidence. Already at the very beginning of the '90s, she was the only intermediary between the government and the LRA. She took a bit of fame with her daring visits in the bushes where she went by herself to visit the territories controlled by Kony. She went alone because her bodyguards were too terrified from their previous experiences in the area. However, her braveness brought Kony to describe her as the only reliable person of the governmental rank. This reliance was strong mostly thanks to the enormous capability of Bigombe to defend government positions, and to show express great respect for her opponents [ICG, Africa Report nr. 41].

During 1993-1994 Bigombe convinced Museveni to declare a unilateral ceasefire, which was mostly respected also by Kony. However, the Ugandan president did not give time to Bigombe for negotiating and he declared a highly questionable ultimatum to LRA requiring disarmament in nine days. The LRA was neither prepared to comply with such kind of request nor willing to be humiliated by Museveni. In this context, the continuation of the war was inevitable. In other words, Museveni was behaving as a hardliner uncontrolled by a passive international community [ICG, Africa Report nr. 41]. In my point of view, Museveni was interested to carry on with the war on in order to keep a strong power and support high

expenditure for the corrupted Army, which, as seen above, has always had a great relevance in Ugandan internal issues.

Since that time, Bigombe's criticism against government increased. The relations with the government concluded definitely in 1996 when, she quit her position after losing the election. However, since then, she has continued to work for peace and been a relevant character.

8.2. Democratisation

For different reasons, Museveni followed the world trend of democratisation, the so-called third wave of democratisation. Above all else, he was perceived as a successful leader, one of the new men of Africa. In fact, his policies had clearly developed the situation in the country stimulating long economic growth with annual average of 5%. In addition, also his fight against HIV and development of health care had been hailed as one of great successes of Uganda [BBC, *Uganda's Yoweri*]. In this context and in the beginning of '90s, Museveni wanted to maintain credibility in front of Western powers, which considered him a valuable leader.

At the two last national elections in Uganda, the major Museveni's opponent had been Kizza Besigye. He is a well-educated Ugandan, who fought together with Museveni for a short time. Thanks to his high education, he then became an important figure of Ugandan politics and national Army. However, at the beginning of democracy, he started accusing Museveni of corruption and inefficiency. As a harsh opponent, he lost his political rules and he quit the Army, but he stayed in the political arena and was all the time the most popular politician after Museveni. As foreseeable, in 2001 he was the most dangerous candidate against Museveni. When the latter won, Besigye accused the government of rigging. However, the Supreme Court of Uganda did not nullify the elections preventing him to run again for the presidency. In the same year, he was shortly arrested for treason and then he left to the USA claiming persecution in Uganda. However, he came back in 2005 in order to stand again for Ugandan presidency. Unfortunately for Besigye, judicial institutions attacked him by starting trials for various crimes, among those raping, national treason and corruption. As

easily foreseeable, this situation affected again his electoral campaign and Museveni won easily [BBC, *Besigye undaunted by court cases*].

8.3. Amnesty Act and Iron Fist Mission

In 2000, the government introduced a full amnesty act for all the rebels who were interested in leaving the bushes and starting a law-abiding civilan life. However, two major problems partly undermined the, nevertheless quite successful programme. Firstly, it was necessary to convince the rebels that government was sincere. In fact, national institutions lost much of their credibility in front of the LRA after the suddenly interrupted peace talks in 1994. In addition, there was an objective problem of communication. Only the higher officers have been allowed to listen to radio, which was used as a major, if not the only, form of communication. Unfortunately, the most likely targets for amnesty, the lower ranks, were not easy to reach. Despite those difficulties, the Amnesty Act managed to reintegrate thousands of former rebels. Moreover, despite bureaucratic inefficiencies and unclear procedures, let not more than 25% of them with formal documents of recognised amnesty. The surrendered have been able to live in Acholiland, although some obvious distrust from the population still affects their lives. Anyway, Museveni had made clear more than once this act had no validity for Kony, which he hopes to catch and bring him to court [Allen, 2006, pp. 72-74].

In Northern Uganda, the first years of the 2000s meant also the time of the Iron Fist missions. With a thaw in relations between Uganda and a new independent region of Southern Sudan, the Ugandan government could fight the LRA more efficiently in the bordearing area. In particular, Southern Sudanese government allowed the Ugandan Army to enter its territory fighting against rebels. In 2004, this operation started under the name of Iron Fist and it was widely supported by the US, which supplied a large amount of weapons. However, similarly to the disastrous Operation North, which took place from '90 until '92, the Operation Iron Fist was also a failure. Although the Ugandan Army was able to destroy many LRA bases, it did not manage to defeat Kony as hoped. In addittion, the large amount of ammunition held by the LRA was not seriously damaged. On the contrary, LRA retaliations against civilians, both in Uganda and Sudan, were really harsh and painful for the population [ICG, Africa Report nr. 124].

8.4. ICC influences

In January 2004, Museveni and the ICC Chief Prosecutor, Moreno-Ocampo, officially announced the referral from Ugandan government for human crimes committed in the Northern part of the country. The ICC probably did not think the situation would be so complex it appears now. However, knowing the previous negotiation, the ICC acted very cautiously.

The Court found itself in a difficult situation. On the one hand, it had to demonstrate to the World its capability to issue and implement international warrants against the most hienous crimes as described above. On the other hand, it had to try not to undermine the ongoing peace process. In this context, the ICC, although following its investigation, tried to remain underexposed and it has rarely appeared in the media or together with government officers, publishing hardly any information on the progress of its work [Allen, 2005].

Despite the low level of exposion in the area, the ICC has been able to investigate and collect evidences about the crimes committed by the LRA. On the bases of this work, it has issued five international warrants against five rebels: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, Raska Lukwiya. Afterwards, Otti's and Lukwiya's warrants have been dropped due to Lukwiya's death and the Otti's executio. [ICC web-site]. As foreseeable, ICC did not issue any kind of warrant against regular Army officers. This has created a certain level of complaining regarding the partiality of the Court. This is of course a relevant point and the Court has undoubtedly paid more attention to the rebels than National Army's officers. However, this had been widely expected since the beginning of investigation for two major reasons: the Court has been asked to investigate crimes against humanity by Ugandan government and the horrible crimes committed by the regular Army cannot be compared, neither for gravity nor for dimension, with those perpetrated by the LRA.

Nevertheless, criticisms have arisen since the very beginning. One of the major concerns has regarded the possibility that international warrants can prevent Kony and top officers to reach peace. In particular, Betty Bigombe was very critical concerning ICC intervention claiming Kony was willing to find a solution, but he insisted on impunity and she even threaten to resign in case the Court would proceed with its work. In any case, Museveni

has clearly shown his interest in not making the rebels' leader free just like in the case of Lakwane [ICG, African Briefing nr. 22].

As seen above, neither brutal dictators nor any rebel has ever been tried in the country. On the contrary, they have spent a long and enjoyable life after their withdrawal or defeat. In this context, Kony wants to reach the same treaty as his predecessors. Particularly, Lakwane is probably seen as an example. Unfortunately for them, internal and international conditions have changed. In fact, democratisation has made more difficult for Ugandan authority to grant impunity in such a free way without a formal act. On the other hand, as already described, the world tolerance toward impunity has drastically decreased in the last twenty years and it has become more difficult to grant amnesty for hienous crimes.

8.5. Matu Oput

During the last decade, an Acholi ancient tradition has been reutilised in order to help reaching the reconciliation, the so-called *Matu Oput*. Unfortunately, this rite fizzled chaotically in an attempt to reintroduce it in the previously existing Council of Elders Peace Committee, Council of Chiefs and the Acholi Religious Leaders Peace Initiative established in Gulu. The *rwot*s (elders) had been selected according to criteria similar to Western traditions and linked with local Curches. A Belgian Catholic priest, Dennis Pain, who had studied it for a while, came up with the original idea about the reintroduction of *Matu Oput* [Alle, 2005].

Pain claimed the wars had destroyed Acholi pure culture, and there was need to reconstruct it in order to develop peace and justice in the area. Thanks to his theory, often openly mixed with a high level of Catholic mysticism, he was able to get financial support from Belgian government in order to study and recreate the lost tradition of *Matu Oput*. In reality, no *Mato Oput* seems to have been traditionally performed for at least a century; thus, it was necessary to find a way to "reinvent it" [Allen, 2005].

In 2000, Acholi traditional chief was formally restored to the figure of the *rwot*, Payera. He was supposed to give *Matu Oput* to repented rebels. This tradition has been widely supported by both Anglican and Catholic Curch. Unfortunately, traditional *Matu Oput* was far

from the one re-established in the 21st century and although supported by relevant and valuable leaders of local community, the idea of forgiveness has only partially been accepted by the population, which still appears more willing to see the punishment for those highly responsible for crimes against humanity. However, the population tends to prefer peace to justice if asked, and they are reluctant to admit their wish for justice. Here again Allen [2005] provides some great testimony from his dissertation:

From an interview in Gulu IDC camp:
Some people say even the top commanders should be forgiven?
"But I don't want to forgive them. We have to make them know it is wrong. We don't want to forgive. My brother was killed by Kony. And my sister. He tried to abduct them. They escaped, so he killed them."

From a second interview:
"According to me the people are very open to the ICC because Kony has committed atrocities. He has refused to come back home when people have tried to talk to him. Some people say they should kill such people. Some want to forgive them. Most people think they should go to court...When people keep extending the amnesty, people just go on killing. The ICC makes them think they will go to court if they don't stop…"

"Those people (the LRA officers) fear to come back. They don't fear the government. They fear the civilians. For example Vincent Otti. He fears to come back because he killed hundreds of people in Atiak. He fears the civilians. Other commanders killed in Lira district. Sam Kolo killed in Alero. He made many atrocities. They now fear to come back. It is the young commanders who have done the really bad things. They cannot come back. They fear what the civilians will do."

From a 3rd interview:
Have you heard about the ICC?
"We heard about international bodies in other places but not here. The Amnesty has done a lot – although the Army claims that it is they who have really done it (by

forcing LRA soldiers to surrender). Now the LRA is like a wounded buffalo. When they hear about the ICC. When they hear that they will be prosecuted. They will use guns. The ICC has to be quick, with international warrants of arrest for the biggest commanders…I do not forgive Kony or Otti – why should they kill people? Me personally, I don't forgive. These Acholi are killing their own people. There are also notorious commanders on the government side. They also committed inhumane acts…" [Allen, 2005].

Those interviews have been made with high respect of privacy. Apparently people do not like to express their disappointment against Kony and the LRA and they prefer to keep a more conciliatory approach in public, maybe because they do not like to contradict major leaders' ideas.

9. Negotiations

Despite scepticism, the ICC has guided the political situation in a more consensual approach for both sides. As foreseen, the international arrest warrants have re-shuffled the equilibrium inside the two major actors of the conflict and created a new platform of work on the international community level.

Since the establishment of the ICC in the area, large debate has been spread about the risk of collapse of the peace process. In 2004, the situation appeared fairly quiet and there was a reasonable possibility of peace talks. Even Betty Bigombe, who had worked for peace since the end of her political mandate, condemned the ICC as one of the most negative factors preventing the end of the conflict. Similarly, elders from different Acholi areas were considering it as an interference of the West in an Ugandan internal affair [Allen 2005]. Finally, many concerns were voiced over the already mentioned allegation of partiality of the Court.

9.1. The Changing of International Context and Juba Peace Talks

As reported by different sources, in 2005 the LRA started to run out of ammunition supplies. There were two major reasons: the creation of Southern Sudan, which was interested, unlike Khartoum, to stabilise Ugandan border and it was no longer willing to assist the LRA. The second relevant event were ICC warrants not only against Sudanese officers but also against those from the LRA. As it was hypothesised above, the internationalization of the conflict due to the warrants has changed the situation and the Sudanese government has been less willing to support a terrorist group, whose members are internationally indicted for serious crimes against humanity [ICG, Africa Report nr.46].

The situation developed in a very successful way as far as the international environment is concerned. The pressure applied by the ICC in Sudan and Uganda helped the new autonomous region of Southern Sudan whose vice-president became Riek Machar. The peace talks were organised in Juba, capital of the region, with the support of various African leaders and the Community of Sant'Egidio at the beginning of 2006 [ICG, Africa Report nr.

41]. Of course, a part of this result has been achieved thanks to the newly declared independent region. However, it would be unfair not to recognise the importance of influence from the ICC.

At the first moment, the situation appeared quite fluid and Kony seemed surprisingly open to negotiate. Even Museveni's criticism toward the first LRA delegation, which was led by Ojul and accused of being not well representative of Acholiland, were accepted and a new one, led by the more authoritative Vincent Otti, was set up. Similarly, the government attended the talks with a maturity like it had never been seen in the previous twenty years of war.

In June 2006, Otti declared a unilateral ceasefire. However, the government did not confirm it and in a battle on 12th, August Raska Lukwiya, one of the five indicted by the ICC, was killed. Nevertheless, the peace process continued and LRA soldiers were transferred to camps organised by Caritas– the world biggest Catholic Church donour – in an area close to Garamba in the Democratic Republic of Congo. There around 5,000 combatants rallied together with potentially abducted women and children were accommodated. However, no exact number was released since the LRA always refused to be submitted to a census in the camp. The possible reason for this behaviour is due to the objective of being overestimated for both reasons linked with negotiation and the possibility to get extra food to stock for future purposes [ICG, Africa Briefing nr. 46].

Following Museveni's visit in Juba in October 2006, the process appeared revitalised. Firstly, the UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland, was able to speak directly with Kony and Otti. Similarly, in November 2006, UN Secretary-General Kofi Annan, appointed Joaquim Chissano, former president of Mozambique, as a UN envoy to the conflict. However, a low level of violence continued especially between the LRA and the UPDF, the Southern Sudanese local Army [IRIN, web-site, *UGANDA: Most rebels have…*].

Joaquim Chissano, who helped also with the entrance of the US and the EU as observers, did an excellent job and in one year, he was able to bring back momentum to the

negotiation. One core point was in February 2008 when the mutual decision to bring criminals to the High Court of Uganda was made utilising the ICC principle of Complementarity. The formal ceremony to sign the peace agreement was organised twice in March and April, but on both occassions Kony did not show up giving various excuses. At that point, Juba process collapsed and the LRA soon left the organised camps and started back their criminal acts. However, Chissano clearly continued to defend the ICC and expressed a wish for a possible future restarting of the mediation [IRIN, web-site, *UGANDA: Museveni optimistic...*].

Despite the unsuccessful conclusion of negotiation, as hypothesised above, the international actors have been more concerned with the Ugandan conflict since the ICC involvement. Furthermore, humanitarian organisations, such as Caritas and the Community of Sant'Egidio, have been more interested in investing finances in the area. The situation is similar is as far as the big powers are concerned, like the US and the EU, which have increased their participation in the peace talks.

9.2. Soft- and Hardliners

Here I find finally myself speaking again about soft- and hardliners. Then I want to clearly demonstrate how the behaviour of the two major actors changed toward a more softliner approach. In fact, I can see clear evidences of hypothesis formulated above.

As briefly mentioned above, the first peace process was attempted in 1994. On that occassion, Betty Bigombe made an excellent work trying to maintain good relations with Kony and she managed to reach a short ceasefire. Unfortunately, at that time, Museveni insisted on a unilateral disarmament, which the LRA was obviously unwilling to fulfil. The reason of this irresponsible behaviour seems to me to be linked with the advantages which Museveni gained by maintaining a belligerent status in the area. Especially, a political interest to carry on with the war can be seen in order to comply with capricious demands of the Army. The most emblematic case can be seen in the "Junk Helicopters" scandal where corrupted officers and suspicious family relations made Uganda buy two demaged and unusable helicopters from Belarus [ICG, Africa Report nr. 77]. Similarly, Museveni can present himself as the liberator of the Southerners from the "barbarian Northerners". In fact, Museveni is aware that after more than 20 years in office (at the moment of writing, in

February 2009, he has been in power for 23 years), population would most probably not being so close to him if not for the fear of the LRA. In fact, although, the credit should be given to Museveni for implementing generally successful policies, but his leadership would have been probably more harshly challenged without the Acholiland guerilla issue.

After Museveni's investigation request, addressed to the ICC for crimes committed in Northern Uganda, he became more moderate. I believe he realised there were no international conditions anymore to follow his old path, but the ICC influences made him and his staff take a more pragmatic approach. In this context, Museveni could be seen willing to negotiate in a foreign country for years as opposed to the nine-day process in 1994 [BBC, web-site, *Museveni meets...*]. Moreover, at the beginning of the process, he promised – probably with a certain level of naïvity – impunity for Kony and his officers if peace had been made. Furthermore, in October 2006, when the process was clearly stalled, the Ugandan President went to Juba in an attempt to revitalise the talks.

The shift of the LRA from hard- to softliner has been more confused. Kony and his top officers have enjoyed a situation of power and privileges. They have fought for a long time and they potentially feel the right to impunity, also in the light of previous Ugandan rebel groups. Nevertheless, the ICC warrants have been the instigation for the longest peace talk ever and they have created a situation for a possible conclusion of the war.

Along with the Amnesty Act, the ICC intervention in the conflict gave further confidence concerning the possibility to reach a peace without serious punishment for the LRA officers of lower rank. This confidence can be seen in the participation at the LRA camps in Congo organised by Caritas. In these camps, only the higher officers, and particularly Kony and Otti, refused to join their subordinates.

Kony himself has clearly taken softer approaches for the large part of the negotiation process. At the very beginning of the peace talks, after the ICC warrants, he actively interacted with media. In fact, the overwhelming majority of direct material about Joseph Kony was collected after 2005. Similarly, although Kony never attended negotiation for fear of being arrested, he sent to Juba his most loyal commander, Vincent Otti. Unfortunately, as it

is known, Otti challenged Kony's power and he was executed in a power struggle within the LRA in mysterious circumstances [BBC, web-site, *Ugandan rebel deputy feared dead*].

After Otti's death, negotiation continued for another year. However, as mentioned before, Kony found various excuses not to sign a peace agreement, probably in an attempt to be granted impunity, which never came to be. This point can be discussed as an ICC failure, but here again I believe no such kind of long peace talk would had ever existed without the ICC contribution to reshuffle the situation and, as Allen claims [Allen, 2006], it is not clear if Kony was honest in his attempt to reach a peace since the beginning.

After the collapse of peace process, other tragic attacks were carried on by the LRA in Congolese territories [BBC, web-side, *Ugandan LRA 'in church massacre'*]. However, nowadays LRA appears like a wounded beast and it does not look capable of continuing its terrible fight for long.

The collapse of peace talks was widely due to immature behaviour of LRA top officers. Similarly, Kony and his partners had demanded impunity during the entire negotiation without realising that the ICC cannot be overriden by the Uganda government. However, this childish behaviour has been accompanied by the most concrete attempt to reach peace since the beginning of the war.

9.3. Recent Days

From Christmas 2008 until the end of the writing of this paper in March 2009, Kony's fight was concetrated in the Congolese region Garamba and approximately 900 victims were reported dead. His brutal fighting methods seem to be the same as in previous years.

On the other hand, the LRA human resources look limited to no more than 1,000 well-trained soldiers and the area controlled by guerilla is extremely small. In addition, the Congolese government, in an unprecedented military cooperation with Sudan and Uganda, has launched a military operation in the area and thus restricting LRA activities. Another relevant result has been the arrest of Thomas Kwoyelo on 6th March 2009 who is believed to be fourth in command of the LRA. Unfortunately, the regular Armies have committed war

crimes in the area and many civilian casualties have been reported. On the other hand, I believe, the coalition is successfully fighting the LRA, also thanks to international pressure, which is clearly in a difficult situation [BBC, *Uganda to continue Congo LRA hunt*].

10. Conclusion

In my work, I tried to consider how transitional justice influences peace processes. In particular, I have constrasted the idea that transitional justice is a barrier, since it limits negotiation possibilities, especially in terms of impunity.

As described in depth in the fifth chapter, I believe international influences can destabilise internal environment and create better conditions for peace talks thanks to the higher attention, which international community pays in the area and the consequent higher international intervention in the crisis context. In my core case of Uganda, this phenomenon seems to appear quite clearly. In fact, the international community, spurred by ICC investigation, has reconstructed a different environment compared to the situation before. Obviously, many different inputs for such development can be found; however, the significance of transitional justice in developing friendly surroundings of peace talks should not be underestimated. It was demonstrated by the moderator role of Southern Sudan and especially the Khartoum non-interference in the decision to host peace talks in Juba. In addition, different international donours have changed their aptitude, among other Caritas, being more willing to invest in the area since ICC involvement. Similarly, the USA, the UK and later the EU as a whole have increased their financial support and logistic help for the peace negotiations.

At the same time, I hypothesised a change of negotiators' behaviour, both of them becoming more willing to discuss. In this regard, I defined and defended the idea of rational choice behaviour played by both belligerent sides in consciously committing crimes and negotiating peace. Specifically, I utilised Sandler and Arce's concept of hard- and softliners as the two major political views inside both government and rebel leaders. This has permitted me to see negotiation in a similar way to an economical transition and utilise game theory. In addition, I have been able to create a mathematical formula in order to explain this change in the political situation, which helps to strengthen softliners' rank.

In the case of Uganda, the development appears extremely evident on the governmental side. In fact, Museveni's executive has clearly shown a much higher will to

reach a peace compared to the previous mediation experiences. In particular, considering the previous brief negotiation, bravely organised by Betty Bigombe, which lasted nine days as opposed to almost three years of looking for a conflict solution during Juba peace process. Especially, Museveni had been more patient and willing to cope with LRA request, and the situations of tension were neither many nor prolonged.

As already clearly stated, the LRA moving toward more softliner positions has not been as obvious as was the Ugandan government's one. However, since the first moment, Kony had been unpredictably cooperative in the peace talks and he had even complied with Museveni's request to change LRA delegation at the peace table. In addition, also on the LRA side, I saw an enormous step ahead in attending two years and a half of negotiation after a horrible conflict, which had lasted for more than twenty years. Moreover, if the peace talks clearly collapsed principally because of LRA immature behaviour, certainly I have seen a much better experience compared to the previous harsh interruption of negotiation in 1994. Furthermore, as clearly stated by the UN special envoy in Uganda, Joaquim Chissano, the conclusion of formal peace talks has still let hope for peace and possibilities for further evolution of the situation.

In conclusion, I can definitely state transitional justice influences can affect a negotiation debate recreating the field where the negotiations take part due to the internationalization of the conflict. In the specific case of Uganda, it is certainly possible to see an incremental improvement of the situation compared to the pre-ICC investigation period. Unfortunately, in this specific case, the natural result of a peace agreement has been dismissed; however, the current condition seems to favour the possibility of a LRA defeat in a near future thanks to the greater cooperation between Uganda, Congo and Sudan due to international pressure and regional political re-equilibrium.

In addition, my thesis can be applied in many different crises. In particular, in those cases from post-colonial countries, which are highly dependent to international environment and donations. In fact, one core point of my theory is based on the different context where negotiators can play their games on the basis of actions of the different international actors, and especially international financial supporters, in the area. Therefore, it is necessary to be

aware of the mutation of rational choice logic on the basis of the constructed reality where it is applied in.

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