

Amnesties and International Indictments:  
Evidence from the Case of Northern Uganda

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**Abstract**

This paper examines the political effects of amnesty offers and ICC action in the context of ongoing conflict through a case study of the incidence of violence in the Lord's Resistance Army (LRA) insurgency in northern Uganda from 1996-2006. This time frame allows for a controlled comparison of the incidence of violence before and after three seminal events that pertain to the "peace versus justice" or "amnesty versus accountability" debate—the enactment of the Amnesty Act of 2000, which offered amnesty to insurgents who surrendered to government forces; the Ugandan government's referral of the situation in the north to the ICC Prosecutor in January 2004; and the unsealing of arrest warrants for five LRA leaders, including senior leader Joseph Kony, in October 2005. Broadly consistent with the claims of the "legal optimists," I find that the Amnesty Act had no discernible impact on the incidence of violence and, if anything, may have contributed to an increase in violence as LRA leaders attempted to prevent or punish defections. I also find that the issuance of international arrest warrants for senior LRA leaders was associated with a significant short-term decrease in violence, at least in northern Uganda, as the LRA engaged in fewer operations in the region following the unsealing of the warrants. However, consistent with the arguments of critics of international tribunals, I find that the initial referral of the situation in northern Uganda to the ICC was associated with a significant increase in violence. Collectively, these results suggest that there is no necessary or simple tradeoff between amnesty and accountability or peace and justice and that analysis of the effects of international tribunals should be more attuned to the specific procedures and processes that influence the timing of investigations, indictments, and arrest warrants.

# 1 Introduction

The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993 ignited heated debate about the relationship between peace, justice, and criminal prosecutions in the context of ongoing conflict. Unlike prior international criminal tribunals, such as the post-World War II military tribunals at Nuremberg and Tokyo, the ICTY was founded while war was still raging in the former Yugoslavia, and before the Dayton Accords formally ending the war in Bosnia were signed in December 1995, the ICTY had issued its first indictments and arrest warrants.<sup>1</sup>

The establishment of the ICTY and the indictment of political and military leaders involved in the ongoing war in Yugoslavia immediately raised questions about the political effects of international war crimes prosecutions and the implications of these prosecutions for peace negotiations. Bass notes that even before the tribunal was established, France and Britain “saw the issue of war criminals as a potential impediment to making peace in ex- Yugoslavia, binding the hands of policymakers who might have to cut deals with criminal leaders.”<sup>2</sup> Other skeptics proposed that, rather than prosecuting political and military leaders implicated in war crimes or other atrocities, these leaders should be offered amnesties or pardons in order to facilitate their incorporation into the peace process.<sup>3</sup>

However, other commentators heralded the establishment of the tribunal as an important step toward holding perpetrators of war crimes accountable and hypothesized that the threat of prosecution by an international court could deter political and military leaders from committing

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<sup>1</sup> Payam Akhavan, “The Yugoslav Tribunal at a Crossroads: The Dayton Peace Agreement and Beyond,” *Human Rights Quarterly*, Vol. 18, No. 2, pp. 259-285.

<sup>2</sup> Gary Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton and Oxford: Princeton University Press, 2000), p. 211

<sup>3</sup> For a more complete discussion of these arguments and references, see p. 4-16 of this paper.

further atrocities. As a corollary, these commentators explicitly rejected amnesties or pardons as a normatively or politically desirable means to deal with alleged war criminals.<sup>4</sup>

Framed variously as a debate between peace and justice,<sup>5</sup> peace versus accountability,<sup>6</sup> or political realism and judicial romanticism,<sup>7</sup> questions concerning the political effects of international war crimes prosecutions and amnesties in the context of ongoing conflict gained broader salience with the establishment of the International Criminal Court (ICC) in 2002. The Rome Statute that created the Court established its *jurisdiction ratione temporis* as from July 1, 2002, the date of the Statute's entry into force.<sup>8</sup> Thus, like the ICTY but unlike other *ad hoc* tribunals or special courts established from 1994-2003 such as the International Criminal Tribunal for Rwanda (ICTR) or the Special Court for Sierra Leone (SCSL) which were constituted after conflicts had been effectively terminated or whose authorizing statutes covered only a limited period of past time,<sup>9</sup> the ICC's statute allows it to exercise jurisdiction over crimes committed in ongoing wars. Furthermore, while amnesties or pardons are not explicitly mentioned in the Statute, the first Chief Prosecutor of the ICC, Luis Moreno-Ocampo, has rejected the view that amnesties or pardons can substitute for criminal prosecutions; in a 2009 speech, Moreno-Ocampo made this point explicitly:

[P]eace and justice have to work hand in hand. Multilateral institutions have to create conditions to implement the arrest warrants and to update and harmonize old conflict management strategies with the new reality. Persons indicted by the Court should be arrested. They cannot be partners at the negotiation table.<sup>10</sup>

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<sup>4</sup> For a more thorough discussion of these arguments and references, see pp. 4-16 of this paper.

<sup>5</sup> Payam Akhavan, "Are International Criminal Tribunals a Disincentive to Peace? Reconciling Judicial Romanticism with Political Realism," *Human Rights Quarterly* 31 (2009), pp. 624

<sup>6</sup> Anthony D'Amato, "Peace vs. Accountability in Bosnia," *American Journal of International Law*, Vol. 88, No. 3 (1994), p. 500

<sup>7</sup> Akhavan 2009, p. 624

<sup>8</sup> Rome Statute of the International Criminal Court, in Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2005), pp. 667-699.

<sup>9</sup> The ICTR's temporal jurisdiction covers the period beginning January 1, 1994 and ending on December 31, 1994. cf. Statute of International Criminal Tribunal for Rwanda, in Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2005), pp. 615-621.

<sup>10</sup> Luis Moreno-Ocampo, Keynote Address, Yale Law School Conference on International Justice and Darfur (February 6, 2009), accessed online via International Criminal Court: [http://www.icc-cpi.int/NR/rdonlyres/F04CB063-1C1E-463E-B8FB-5ECE076FB1E0/279792/090206\\_ProsecutorskeynoteaddressinYale.pdf](http://www.icc-cpi.int/NR/rdonlyres/F04CB063-1C1E-463E-B8FB-5ECE076FB1E0/279792/090206_ProsecutorskeynoteaddressinYale.pdf) (last accessed April 19, 2010).

Speaking to the “peace versus justice” debate raised by the establishment of international criminal tribunals with jurisdiction over crimes in ongoing conflicts, the purpose of this paper is to test the arguments proposed by proponents of amnesties and international criminal prosecutions. To this end, this paper presents a case study of the incidence of violence in the Lord’s Resistance Army (LRA) insurgency in northern Uganda from 1996-2006. This time frame allows for a controlled comparison of the incidence of violence before and after three seminal events that pertain to the “peace versus justice” or “amnesty versus accountability” debate—the enactment of the Amnesty Act of 2000, which offered amnesty to insurgents who surrendered to government forces; the Ugandan government’s referral of the situation in the north to the ICC Prosecutor in January 2004; and the unsealing of arrest warrants for five senior LRA leaders—Joseph Kony, Vincent Ottio, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen—in October 2005. Broadly consistent with the claims of the “legal optimists,” I find that the Amnesty Act had no discernible impact on the incidence of violence and, if anything, may have contributed to an increase in violence as LRA leaders attempted to prevent or punish defections. I also find that the issuance of international arrest warrants for senior LRA leaders was associated with a significant short-term decrease in violence, at least in northern Uganda, as the LRA engaged in fewer operations in the region following the unsealing of the warrants. However, consistent with criticisms of international tribunals, this paper also finds that the initial referral of the situation in northern Uganda to the ICC was associated with a significant increase in violence.

This paper is organized as follows: in the next section, I review the scholarly literature pertaining to the “peace versus justice” debate and present a series of hypotheses relating amnesty offers and international criminal prosecutions to the incidence of violence in ongoing conflicts. The subsequent section discusses the methodologies employed to test these hypotheses, and I then

present the results of my analysis. On the basis of these findings, the concluding section suggests several refinements to theories of transitional justice.

## **2 Literature Review**

Although some analysts have noted the problems of conceptualizing the debate over international criminal prosecutions and amnesties as a simple dichotomy between “peace and justice,”<sup>11</sup> this framework has nonetheless been extensively employed to structure discourse about the politics of war crimes tribunals; as such, this dichotomy provides a useful framework for an overview of the literature on the relationship between amnesties, international prosecutions, and peace.

Broadly speaking, the “peace versus justice” debate revolves around the compatibility of peacemaking or conflict resolution initiatives and efforts to hold perpetrators of wartime atrocities, crimes against humanity, gross violations of human rights, etc., criminally accountable for their actions. In the sense implied by this debate, “peace” entails war termination through some negotiated means, normally leading to the end of major acts of violence, while “justice” involves the criminal prosecution of persons accused of various crimes associated with the conflict and, normally, the punishment of persons convicted of these crimes. Crucially, this debate focuses on criminal accountability and prosecution, implying the possibility of formal, judicially mandated punishments following conviction.

On the one hand, scholars and practitioners whom I shall refer to as “legal optimists” or “legalists” reject amnesties as a viable means to prevent further violence and argue that peace and justice are mutually compatible or reinforcing. While many of these commentators have been trained as international lawyers or represent human rights advocacy organizations, the ranks of the “legal optimists” also include political scientists from both the rationalist and constructivist moulds. Arrayed against the “legal optimists” are those who perceive a tension or tradeoff between peace

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<sup>11</sup> Akhavan 2009, pp. 624-659.

and justice, at least in the short-term context of ongoing conflict; these commentators, whom I shall refer to as “legal skeptics” or “pessimists,” argue that efforts to hold perpetrators of wartime atrocities criminally accountable are likely to prolong or exacerbate violence, while amnesties or pardons can frequently be useful in ending conflicts and preventing further violence.

In this section, I review the arguments presented by the “legal optimist” and “legal skeptic” camps, focusing primarily on the posited effects of international criminal prosecutions and amnesties on the incidence of violence. Of course, both legal optimists and skeptics present other arguments in favor of trials or amnesties; for instance, many legal optimists argue that considerations of retributive or restorative justice require that perpetrators of grave atrocities be held criminally accountable and punished for their actions.<sup>12</sup> Nonetheless, as Wippman notes, preventing further violence is the central normative goal for most proponents of both criminal prosecutions and amnesties, and the “peace versus justice” debate has focused principally on the preventive or deterrent effects of amnesties and criminal prosecutions.<sup>13</sup> Therefore, while acknowledging the other claims advanced both *pro* and *contra* amnesties and criminal prosecutions, I purposefully bracket these arguments, and I concentrate instead on the claims advanced by legal optimists and skeptics concerning the effects of amnesties and prosecutions on the incidence of violence and the prospects for peace in ongoing conflicts. Because much of the debate between optimists and skeptics has been framed, at least implicitly, in terms of rationalist accounts of criminal behavior and deterrence, I first introduce a stylized choice-theoretic framework based on Becker’s seminal rational choice model of crime and punishment to model political and military leaders’ decisions to commit atrocities in the context of an ongoing conflict.<sup>14</sup> Then, I apply the arguments advanced by legal optimists and

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<sup>12</sup> Chandra Lekha Sriram, *Globalizing Justice for Mass Atrocities: A Revolution in Accountability* (London: Routledge, 2005), p. 15

<sup>13</sup> David Wippman, “Atrocities, Deterrence, and the Limits of International Justice,” *Fordham International Law Journal*, vol. 473 (1999-2000), p. 474

<sup>14</sup> Gary S. Becker, “Crime and Punishment: An Economic Approach,” *Journal of Political Economy*, vol. 76, no. 2 (1968), pp. 169-217

skeptics to this framework and derive a set of predictions concerning the effects of amnesties and criminal prosecutions on the incidence of violence and atrocities.

### ***The Logic of Atrocity***

Many observers have suggested that perpetrators of atrocities are irrational monsters who maim, mutilate, and murder for purely sadistic or expressive purposes. In this view, “the deadly irrationality”<sup>15</sup> of violence is assumed to have no instrumental purpose or underlying logic. By corollary, this perspective implies that efforts at “restraining the barbarians”<sup>16</sup> by recalibrating the costs and benefits of committing atrocities through amnesty offers or the threat of criminal prosecutions are unlikely to be successful.

While this understanding of the logic—or more properly, the illogic—of atrocity may provide insight into the actions of certain individuals acting from particularly base motives, the view of organized, systematic atrocities or violence as essentially irrational has been rebutted by recent research into the logic of mass killings and wartime violence. Perhaps most notably, recent research into the Rwandan genocide has emphasized the instrumental purpose of the killings as a mechanism by which hardliner Hutu leaders sought to reassert control over the state that they had dominated prior to the 1990-1993 civil war and the Arusha peace accords.<sup>17</sup> More broadly, Kalyvas’ sweeping review of comparative evidence from civil wars dating to the Peloponnesian War of the fifth century B.C. suggests that similar instrumental motives have driven violence against civilians during civil wars throughout history,<sup>18</sup> while Valentino’s study of mass killings in the twentieth century indicates that most of these seemingly irrational acts were motivated by a strategic logic whereby powerful groups concluded that mass killing was “the best available means to accomplish certain radical goals,

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<sup>15</sup> Donatella Lorch, “Heart of Rwanda’s Darkness: Slaughter at a Rural Church,” *New York Times* (June 3, 1994)

<sup>16</sup> Tom J. Farer, “Restraining the Barbarians: Can International Criminal Law Help?” *Human Rights Quarterly*, vol. 22 (2000), p. 90

<sup>17</sup> Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda* (Ithaca: Cornell University Press 2006), p. 44ff

<sup>18</sup> Stathis N. Kalyvas, *The Logic of Violence in Civil War* (Cambridge: Cambridge University Press, 2006), pp. 210-245

counter specific types of threats, or solve difficult military problems.”<sup>19</sup> Furthermore, beyond the leaders who plan and order mass killings or atrocities, it is unclear whether, except in some isolated cases, the actions of individual perpetrators can be entirely explained as irrational, sadistic, or expressive. Individual perpetrators—the so-called “ordinary men”<sup>20</sup> who pull the triggers, swing the machetes, or guard the gas chambers— are likely to be motivated by many factors, including peer pressure, honor, obedience, rituals, revenge, and/or fear, *inter alia*.<sup>21</sup> Finally, Petersen finds that even when emotions such as fear, hatred, or resentment play a central role in motivating civil war violence, these emotions frequently serve instrumental purposes.<sup>22</sup>

By demonstrating that most perpetrators of atrocities are not irrational barbarians or monsters, this research suggests that for most actors, the decision to commit atrocities is subject to a rational, cost-benefit calculus. This, in turn, implies that institutions or policy interventions that significantly alter the expected costs or benefits of further violence or atrocities relative to participating in negotiations; agreeing to peace settlement; or adhering to international humanitarian law while continuing to fight, etc., can affect the incidence of violence or compliance with the laws of war and human rights norms. Moreover, the language of cost-benefit analysis has been implicitly adopted by both legal optimists and skeptics; Akhavan, for instance, has defended international criminal prosecutions by arguing that “the prosecution and related demise of such leaders sends a message that the cost of ethnic hatred and violence as an instrument of power outweighs its benefits,”<sup>23</sup> while Wippman begins his critique of international prosecutions with the assumption

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<sup>19</sup> Benjamin Valentino, *Final Solutions: Mass Killings and Genocide in the Twentieth Century* (Cornell: Cornell University Press, 2004), p. 66

<sup>20</sup> Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (New York: Harper Perennial, 1992)

<sup>21</sup> Kalyvas 2006, pp. 24-25

<sup>22</sup> Roger D. Petersen, *Understanding Ethnic Violence: Fear, Hatred, and Resentment in Twentieth-Century Eastern Europe* (Cambridge: Cambridge University Press, 2002), p. 19

<sup>23</sup> Payam Akhavan, “Beyond Impunity? Can International Criminal Justice Prevent Future Atrocities,” *American Journal of International Law*, vol. 95, no. 7 (2001), pp. 7-8

that “those engaging in atrocities engage in rational cost-benefit calculations.”<sup>24</sup> Building upon this application of cost-benefit calculations to decisions to engage in violence or commit atrocities, I now present a stylized rational choice-theoretic framework in order to derive a set of predictions based on legalist and skeptic arguments concerning the effects of amnesties and criminal prosecutions.

### ***Rational Choice Models of Crime and Punishment***

Rational choice models of crime and punishment predict that an individual will engage in criminal behavior when the expected utility of such behavior exceeds the expected utility of law-abiding behaviors; in turn, a prospective criminal’s expected utility is a function of the expected benefits of the criminal act relative to the expected benefits of non-criminal acts, the probability of arrest and conviction for the criminal act, and the expected costs of punishments following conviction. Becker modeled this intuition more formally in his seminal study of the economics of crime and punishment, expressing the expected number of criminal offenses  $O$  during a given period of time as the function

$$O = O(p, f, u),$$

where  $p$  denotes the probability of arrest and conviction per crime and  $f$  represents the costs of punishment following conviction.<sup>25</sup> Therefore, the multiplicative term  $p*f$  represents the expected ‘criminal punishment costs’ of criminal behavior, exclusive of other ‘non-punishment’ costs of such behavior, such as the opportunity cost of planning a criminal act, etc. Finally,  $u$  is an omnibus term that represents the net expected benefits of criminal behavior relative to the net expected benefits of law-abiding behavior, independent of the punishment costs captured by  $p$  and  $f$ .<sup>26</sup>

This simple framework yields two comparative statics that relate changes in the parameters  $p*f$  and  $u$  to changes in the incidence of criminal offenses  $O$ . Firstly, this model predicts a negative

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<sup>24</sup> Wippman 2000, p. 476

<sup>25</sup> Becker 1967, p. 177

<sup>26</sup> *Ibid.*

relationship between  $O$  and the multiplicative term  $p^*f$ , either through an increase in the probability  $p$  of arrest and conviction or an increase in the criminal punishment costs  $c$ , such that an increase in the expected costs of punishment should lead to a decrease in the incidence of criminal behavior, *ceteris paribus*, as prospective criminals face greater expected losses from criminal behavior. Secondly, this framework implies that decreases in  $u$  should lead to a decrease in the incidence of crime, as prospective criminals reap lesser non-punishment benefits from criminal behavior.

Although this model can be directly applied to the analysis of wartime atrocities or violations of international humanitarian law, a slight terminological modification allows for a clearer analysis of the effects of amnesties and the threat of criminal prosecution on the occurrence of atrocities, violations of international humanitarian law, etc. For the purposes of this paper, it is useful to redefine the parameter  $O$  as the expected incidence of atrocities, human rights violations, violence against civilians, or violence more broadly, rather than the expected occurrence of *criminal* behavior. This redefinition is useful because, although the international law of armed conflict as delineated in various instruments such as the Genocide Convention of 1948,<sup>27</sup> the Geneva Conventions I-IV of 1949,<sup>28</sup> and the 1977 Protocol I-II Additional thereto,<sup>29</sup> *inter alia*, clearly proscribes certain actions as illegal, the participants in some conflicts may not view themselves as bound by these principles or recognize their legitimacy; this is particularly likely in intra-state wars, where government leaders frequently view counter-insurgency operations as purely domestic matters beyond the jurisdiction of the international law of armed conflict, despite the clear provisions applicable to internal conflicts, or where opportunistic rebel groups disavow the laws of armed conflict. Consequently, certain

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<sup>27</sup> United Nations Convention on the Prevention and Punishment of the Crime of Genocide, in Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2005), pp. 179-195

<sup>28</sup> Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; Geneva Convention III Relative to the Treatment of Prisoners of War; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, in Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2005), pp. 195-370.

<sup>29</sup> Rome Statute of the International Criminal Court, in Adam Roberts and Richard Guelff, *Documents on the Laws of War*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2005), pp. 667-699.

actors may not view atrocities, violence against civilians, etc. as criminal or engage in an explicit calculation of the costs and benefits of *criminal behavior* when determining whether to engage in these actions. Therefore, discussion of the expected incidence of certain acts, such as violence against civilians or violence more generally, is more appropriate in this context than discussion of *criminal behavior*. At the same time, because perpetrators of wartime atrocities, violence against civilians, etc. can be prosecuted and punished for these acts under domestic or international law, a choice calculus that incorporates the expected costs of arrest and punishment remains appropriate and useful, even if prospective perpetrators do not view or recognize their actions as criminal.

Using the terms of this simple model, I now examine the effects of amnesties and criminal prosecutions predicted by legalists and skeptics, respectively.

### ***Legal Optimism***

Legal optimists have welcomed the recent “proliferation of international criminal courts and tribunals”<sup>30</sup> as a significant milestone in the development of a credible body of international criminal law that is capable of holding perpetrators of war crimes, genocide, crimes against humanity, etc. accountable for their actions. Shortly after the conclusion of the 1998 Rome Conference that produced the ICC statute, Wippman summarized the sense of pervasive sense of hope among legal optimists and other “internationalists”:

Enthusiasm for international criminal prosecutions is running high. For advocates of peace through justice, the last decade of the twentieth century marks a turning point in international legal history comparable only to the Nuremberg and Tokyo trials of the 1940s. Many internationalists view the increased use of international criminal law, reflected in the Yugoslavia and Rwanda tribunals, the Pinochet proceedings, and the Rome agreement on a statute for a permanent international criminal court (or "ICC"), as the last, best hope for stemming the tidal wave of atrocities that all too frequently have marked both international and internal armed conflicts.<sup>31</sup>

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<sup>30</sup> Fausto Pocar, “The Proliferation of International Criminal Courts and Tribunals,” *Journal of International Criminal Justice*, vol. 2 (2004), p. 304

<sup>31</sup> Wippman 1999-2000, p. 473

Central to legalist arguments is the assertion that the threat of international criminal prosecution and punishment can deter or prevent further violence or atrocities. This dynamic, according to legalist proponents of international criminal prosecutions, operates at both the global and the local level. At the global level, legalists argue that international prosecutions of leaders implicated in war crimes or other grave violations of human rights demonstrates to leaders in other countries that they will be held criminally accountable for similar crimes and, in turn, deters these leaders from committing similar crimes in concurrent or future conflicts.<sup>32</sup>

According to legal optimists, a similar dynamic operates at the local level, i.e. in the specific context of an ongoing conflict where an international criminal tribunal has opened an investigation or issued indictments; in this setting, legalists argue, the imminent threat of international prosecution significantly raises the expected costs of committing further atrocities or conducting military operations for leaders under investigation or indictment.<sup>33</sup>

In terms of the simple model discussed in the previous section, then, legal optimists presume that the threat of international criminal prosecution will lead to a decrease in violence, atrocities, etc., i.e.  $O$ , by increasing the expected criminal punishment costs, i.e.  $p^*f$ , of these acts.

In addition to the direct effect of action by an international court on the expected costs  $p^*f$  of arrest, conviction, and punishment, legal optimists hold that investigations, indictments, etc., can also increase the non-punishment costs of violence or atrocities, i.e. by reducing the value  $u$  in the simple model discussed above. In particular, by publicizing grave atrocities and attaching the stigma of criminality to these actions, international investigations and indictments may marginalize accused leaders and make it more difficult for perpetrators of atrocities to maintain or secure sources of domestic or international support necessary to continue their military campaigns; this, in turn, raises

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<sup>32</sup> Michael L. Smidt, "The International Criminal Court: An Effective Means of Deterrence?" *Military Law Review*, vol. 167 (2001), pp. 156-240; Akhavan 2001, pp. 7-8; Bass 2000, p. 295; *inter alia*.

<sup>33</sup> Akhavan 2009.

the expected non-punishment costs of further atrocities and therefore contributes to the preventive effect of criminal prosecutions.<sup>34</sup> Moreover, legal optimists argue that this preventive dynamic can operate even if international courts are unable to execute arrest warrants. Gilligan, for instance, argues that the stigma attached to an international indictment lowers the expected value of committing further atrocities, or of committing atrocities in the first place, because persons under investigation or indicted by an international criminal tribunal are less likely to be able to secure further support or asylum from a foreign country.<sup>35</sup>

In the terms of the simple model outlined above, the increased difficulty of securing domestic or international support implies an increase in the expected non-punishment costs of violence. This, in turn, implies a decrease in  $u$ , the ratio of expected benefits to non-punishment costs of violence or atrocities, leading to the expected decrease in the incidence of violence.

At the same time, legal optimists have also employed rationalist arguments to caution against offering either official or *de facto* amnesties to perpetrators of violence, atrocities, etc. According to this argument, failure to prosecute perpetrators of grave atrocities sends a dangerous message to leaders in other countries that they will not be held accountable for similar acts. Scharf, for instance, writes that “evidence presented at the recent tribunals strongly suggests that the failure to prosecute perpetrators such as Pol Pot, Idi Amin, Saddam Hussein, Augusto Pinochet, and Papa Doc Duvalier convinced the Serbs and Hutus that they could commit genocide with impunity.”<sup>36</sup> While this argument focuses on the global effects of amnesties, legalists have argued that amnesty offers are, at the very least, unlikely to prevent or deter violence at the local level and may even provide embolden

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<sup>34</sup> Luis Moreno-Ocampo, “The International Criminal Court: Seeking Global Justice,” *Case Western Reserve Journal of International Law*, vol. 40 (2007-2009), pp. 215-226

<sup>35</sup> Michael J. Gilligan, “Is Enforcement Necessary for Effectiveness?” *International Organization*, vol. 60, no. 4 (2006), pp. 935-967

<sup>36</sup> Michael P. Scharf, “Jostling over Justice,” *Foreign Policy* (May/June 2006), p. 6, also cited in Akhavan 2009, p. 629

perpetrators to commit further atrocities.<sup>37</sup> In terms of the model presented in this section, this relationship can be expected either because amnesties do not affect the expected costs of atrocities, violence, etc., i.e.  $p^*f$ , relative to a prior condition, or because amnesties actually reduce  $p^*f$  relative to the prior state of affairs.

Hypotheses: These arguments, in turn, imply two hypotheses concerning the effects of criminal prosecutions and amnesties on the incidence of violence or atrocities:

*Hypothesis 1a:* Amnesty offers, pardons, or immunities do not affect the incidence or violence or atrocities, or should lead to an increase in the incidence of violence or atrocities.

*Hypothesis 1b:* Action by an international criminal court or tribunal, i.e. opening of an investigation or the issuance of indictments or arrest warrants, should lead to a decrease in the incidence of violence or atrocities.

### ***Legal Skeptics***

Whereas legal optimists have welcomed the establishment of international criminal courts and tribunals, legal skeptics have cautioned against excessive confidence in the power of these institutions to deter atrocities and warned that, in many cases, the threat of international criminal prosecution may generate perverse incentives for leaders accused of war crimes to prolong conflicts or to commit further atrocities. Instead, skeptics argue, amnesties, pardons, or simply ignoring past crimes are often more effective means to address atrocities and promote peace in the context of ongoing conflict.

The skeptics' argument that criminal prosecutions are unlikely to deter atrocities in the short-run is based on a rationalist cost-benefit analysis that uses the same implicit choice-theoretic framework employed by legalists to model the decision to commit atrocities. Skeptics, however, derive quite different comparative statics from this framework. Firstly, legal skeptics argue that

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<sup>37</sup> Leila Nadya Sadat, "Exile, Amnesty and International Law," Washington University in St. Louis- Faculty Working Papers, No. 05-04-03, p. 9

because international courts have limited enforcement capacity, i.e. these courts lack an independent police force to execute arrest warrants, the effect of an international indictment on the probability  $p$  that a perpetrator will be arrested and convicted is marginal at best and therefore unlikely to influence the decision calculus of perpetrators except at the margins.<sup>38</sup> Goldsmith expresses this view less formally:

[T]he ICC is unlikely to punish the Husseins and future Milosevics of the world because it is unlikely to get a grip on them. The ICC has no enforcement powers. It depends completely on member states to arrest and transfer defendants. So the efficacy of...prosecutions depends on the uncertain resolve of nations to use military or economic force to extricate the oppressive leader from his country.<sup>39</sup>

At the same time, skeptics argue, even a substantial increase in the probability of being arrested, prosecuted, and convicted by an international court is unlikely to alter the decision calculus of perpetrators in such a way as to discourage the commission of further atrocities. As Wippman points out, leaders who order or encourage systematic atrocities normally do so because they derive some political, military, or psychological benefit.<sup>40</sup> Because these benefits are typically quite substantial, frequently entailing gains in political power or strategic military advantage, even large increases in the expected punishment costs  $p*f$  are unlikely to significantly alter these leaders' incentives to use systematic atrocities as a political or military strategy. Consequently, Wippman concludes, "it may be that even a significant risk of future prosecution will have relatively little impact" on the incidence of atrocities.<sup>41</sup>

Beyond the prediction that international indictments are unlikely to deter further atrocities, legal skeptics argue that the threat of international prosecution may actually prolong or exacerbate

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<sup>38</sup> Michael L. Smidt, "The International Criminal Court: An Effective Means of Deterrence?" *Military Law Review*, vol. 167 (2001), pp. 156-240; Jack Goldsmith and Stephen D. Krasner, "The Limits of Idealism," *Daedalus*, vol. 132, no. 1 (2003), pp. 47-63

<sup>39</sup> Jack Goldsmith, "The Self-Defeating International Criminal Court," *University of Chicago Law Review*, vol. 70, no. 1 (2003), p. 92, also cited in Gilligan 2006, p. 936

<sup>40</sup> Wippman 2000, pp. 476ff

<sup>41</sup> Wippman 2000, p. 479

violence. According to this “intensification hypothesis,”<sup>42</sup> international indictments reduce the incentives for leaders accused of atrocities to participate in peace talks, peacefully cease hostilities, or in the case of government leaders, voluntarily relinquish power. Applying this logic to the case of Yugoslavia after the establishment of the ICTY, D’Amato wondered whether “it is realistic to expect [leaders accused of war crimes] to agree to a peace settlement in Bosnia if, directly following the agreement, they may find themselves in the dock?”<sup>43</sup>

In addition to prolonging conflicts or the rule of autocratic leaders, the intensification hypothesis predicts that international indictments are also likely to exacerbate violence by encouraging a “winner-take-all mentality” among combatants. Burke-White and Boyle summarize the logic of this argument:

Aware that ending the war without a decisive hold on the coercive apparatus of the state might make ultimate prosecution more likely, the combatant might expand his or her war aims, deciding that nothing short of total victory will lower his risks of arrest and prosecution. Despite the fact that the ICTY is not barred from prosecuting government officials, sitting government officials are far more likely to avoid ultimate capture and extradition. Thus an indictment may kick off a “winner take all” mentality among the combatants, which will lead to the war expanding in scope.<sup>44</sup>

Building upon the argument that criminal prosecutions are more likely to exacerbate than to deter violence, legal skeptics point to the need for alternate mechanisms to address war crimes and other grave atrocities in the context of ongoing conflicts. To this end, skeptics have focused principally on three such mechanisms—amnesties, truth and reconciliation commissions, and ignoring prior crimes—that legal optimists have rejected as incompatible with both short-term and long-run considerations of peace and justice. Legal skeptics, however, have argued that these non-judicial mechanisms can more effectively prevent further atrocities in the short run and promote respect for the rule of law over the long run by facilitating the political bargains necessary to resolve

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<sup>42</sup> William Burke-White and Michael Boyle, “War Crimes Indictments and Conflict Strategies,” Paper presented at the Annual Convention of the International Studies Association (2008), p. 8

<sup>43</sup> D’Amato 1994, p. 500

<sup>44</sup> Burke-White and Boyle 2008, p. 8

conflicts and establish a stable political order. According to this logic, perpetrators of war crimes or other atrocities are more likely to engage in peace talks and peacefully lay down their arms if they are guaranteed effective immunity from judicial punishment than if they face the threat of criminal prosecution.<sup>45</sup>

In terms of the simple model presented in this paper, the promise of immunity from criminal punishment reduces the expected costs of agreeing to a peace settlement by removing the possibility of criminal prosecution or imprisonment; this, in turn, causes an increase in the parameter  $\mu$ . Consequently, according to this argument, it can be expected that the incidence of violence  $O$  will decrease, as leaders who are offered amnesties lay down their arms and join the peace process. At the same time, immunities can also contribute to the foundations for the rule of law and a stable political order by providing peaceful political space for the emergence and development of effective administrative and judicial institutions. Therefore, according to this argument, justice and the rule of law can be expected to follow from the initial establishment of peace through a political bargain with perpetrators of atrocities.<sup>46</sup>

Hypotheses: These arguments advanced by legal skeptics imply two hypotheses concerning the expected effects of criminal prosecutions and amnesties on the incidence of violence or atrocities:

*Hypothesis 2a:* Amnesty offers, pardons, or immunities should lead to a decrease in the incidence of violence or atrocities by prompting accused perpetrators to engage in peace negotiations or agree to a peace settlement.

*Hypothesis 2b:* Action by an international criminal court or tribunal, i.e. opening of an investigation or the issuance of indictments or arrest warrants, should lead to a decrease in the incidence of violence or atrocities.

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<sup>45</sup> Jack Snyder and Leslie Vinjamuri, "Trials and Errors: Principle and Pragmatism in Strategies of International Justice," *International Security*, vol. 28, no. 3 (2003-2004), pp. 5-44; John Dugard, "Dealing with Crimes of a Past Regime: Is Amnesty Still an Option," *Leiden Journal of International Law*, vol. 12, no. 4 (1999), pp. 1001-1015

<sup>46</sup> Snyder and Vinjamuri 2003-2004, p. 6

### 3 Empirical Methodology

Despite the heated debate between legalists and skeptics, there have been relatively few attempts to systematically examine the effects of amnesty offers and international criminal indictments on the incidence of violence or atrocities in ongoing conflict, and with a few notable exceptions, researchers and commentators on both sides of the debate have relied principally on anecdotal evidence to support their arguments.

Legal optimists have cited various historical cases where threats of criminal prosecution appear to have deterred further violations of the law of armed conflict. For instance, Scheffer argues that threatening Croat and Serb leaders with war crimes prosecutions after revelations of systematic atrocities in Bosnian prison camps led to a significant improvement in the conditions in these camps.<sup>47</sup> More recently, Akhavan argues that the mere threat of ICC action in Côte d'Ivoire in 2004 prompted supporters of President Laurent Gbagbo to tone down virulent radio broadcasts that could have been construed as incitement to genocide.<sup>48</sup>

Legal skeptics counter these examples with cases where the threat of criminal prosecution appears to have been ineffective in preventing further violence or amnesties seem to have contributed to peace. For instance, skeptics have pointed out that perhaps the most heinous atrocity of the Yugoslav wars—the massacre of over 7,000 Bosnian Muslims at Srebrenica in July 1995—occurred over two years after the establishment of the ICTY and shortly after it had become clear that the court would soon indict Ratko Mladic, one of the central leaders of the massacre.<sup>49</sup> More broadly and systematically, Snyder and Vinjamuri present evidence indicating that official or *de facto* amnesties have been generally effective in facilitating peace processes and curbing violence.<sup>50</sup>

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<sup>47</sup> David Scheffer, "International Judicial Intervention," *Foreign Policy*, vol. 102 (1996), also cited in Bass 2000, p. 293

<sup>48</sup> Akhavan 2009, pp. 636-641

<sup>49</sup> Jan Willem Honig and Norbert Both, *Srebrenica: Record of a War Crime* (London: Penguin, 1996), also cited in Bass 2000, p. 292

<sup>50</sup> Snyder and Vinjamuri 2003-2004

The extensive reliance on anecdotal evidence by both optimists and skeptics, with certain exceptions, is broadly reflective of several methodological difficulties inherent in the study of wartime violence, atrocities, and deterrence. Firstly, data on the incidence of wartime violence and atrocities is frequently of poor quality and subject to multiple potential biases that limit its utility for analysis.<sup>51</sup>

Thirdly, official action, i.e. the initiation of an investigation or the issuance of indictments, by international criminal tribunals or courts has been relatively rare; since 1990, international courts or tribunals have initiated investigations and prosecutions in only six conflicts during this period (Yugoslavia, Rwanda, northern Uganda, Central African Republic, and Darfur). This suggests at least two problems for a systematic analysis of the effects of international criminal prosecutions. Firstly, it provides for only limited variation on the primary independent variable; secondly, the limited extent of official action by international criminal tribunals points to the possibility that these courts may influence the incidence of atrocities in considerably more subtle or indirect ways than through official actions. For instance, as Akhavan's example of Côte d'Ivoire suggests, international courts may influence conflict actors' decision calculus even in the absence of formal investigations, indictments, or arrest warrants;<sup>52</sup> this, in turn, suggests that studies that do not take into account informal or subtle mechanisms of influence by international courts are likely to under-estimate the effects of court action.

Finally, and perhaps most problematically, measuring deterrent or preventive effects is notoriously difficult, as it is impossible to identify the cases of violence that could have occurred but did not occur due to amnesty offers or the threat of international prosecution. Consequently, even if amnesty offers or international court action are associated with an increase in incidence of violence, it is not possible to infer that deterrence or prevention failed, nor is it possible to measure the extent

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<sup>51</sup> Kalyvas 2006, pp. 32-51

<sup>52</sup> Akhavan 2009, pp. 636-641

of deterrence or prevention in cases where amnesty offers or international court action are associated with a decrease in the incidence of violence.

Bearing in mind these caveats, it is still possible to assess whether cross-temporal patterns of violence are broadly consistent with the hypotheses implied by legal optimist and legal skeptic arguments. To this end, this paper presents a case study of the incidence of violence in the Lord's Resistance Army (LRA) rebellion in northern Uganda from 1996-2006. The LRA, led by a self-proclaimed spirit medium named Joseph Kony, has waged a brutal insurgency campaign in against the Ugandan government of Yoweri Museveni in the northern portion of the country since 1988, although the frequency and intensity of violence escalated sharply in the mid-1990s after the Sudanese government of Omar al-Bashir began supplying the LRA with weapons, material, and territory for bases and training camps. Although the LRA's leaders have repeatedly invoked religious principles in their rhetoric, the movement is rooted in the deep-seated north-south cleavage in Ugandan politics. For over two decades following independence, northerners (including the Acholi, to which most of the senior members of the LRA belong) dominated Uganda's military and government until Museveni's National Resistance Army (NRA) based primarily in southeastern Uganda, seized power in 1986 following a series of bloody civil wars and brutal dictatorial regimes. In turn, the NRA's triumph prompted a series of small rebellions in the north; although these rebels groups were mostly defeated or incorporated into a peace settlement within several years of Museveni's victory, a small group of rebels that refused the government's peace overtures formed the LRA under Kony's leadership in 1988. The LRA has directly targeted civilian populations in northern Uganda and surrounding territories, including southern Sudan, the eastern Democratic Republic of Congo, and the Central African Republic, and the LRA has been implicated in several large-scale massacres of civilians. In addition to large-scale violence against civilians, the LRA has also engaged in forced recruitment of youth to serve as fighters, porters, or sex slaves, and recent

studies indicate that anywhere from 60,000 to 80,000 youth were abducted by the LRA for at least one day from 1995 to 2004.<sup>53</sup>

An in-depth focus on the LRA insurgency in northern Uganda is useful for assessing the effects of amnesty offers and international court action for several reasons. First of all, the case of northern Uganda is unique among recent civil wars insofar as it allows for analysis of the effects of both a comprehensive amnesty offer—the Amnesty Act of 2000, which offered full amnesty from prosecution to all insurgents who surrendered to government forces—and action by an international court following the Ugandan government’s referral of the situation in the north to the ICC Prosecutor in December 2003 and the unsealing of arrest warrants for five senior LRA leaders—Joseph Kony, Vincent Ottio, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen—in October 2005.

Secondly, while there is cross-temporal variation on several factors that likely affect the incidence of violence, including government army strength, foreign support, peace negotiations, government offensives, etc., in the Ugandan case, there are also significant cross-temporal continuities in this case that facilitate a controlled comparison of the effects of amnesties and international court action. These continuities include, most obviously, the geographic context of the conflict, but also the identity of major government and rebel leaders—Museveni has been President of Uganda since 1986 and Joseph Kony has commanded the LRA since its founding in the late 1980s, as well as the basic political and ethnic cleavages underlying the LRA rebellion.

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<sup>53</sup> This overview of the LRA rebellion and the estimates of abductions are based on accounts in Christopher Blattman, “From Violence to Voting: War and Political Participation in Uganda,” *American Political Science Review*, vol. 103, no. 2 (2003); Tim Allen, “War and Justice in Northern Uganda: An Assessment of the International Criminal Court’s Intervention,” Crisis States Research Centre, Development Studies Institute, London School of Economics (2005); Jeannie Annan, Christopher Blattman, and Roger Horton, “The State of Youth and Youth Protection in Northern Uganda: Findings from the Survey of War Affected Youth,” UNICEF (2006); Bernd Beber and Christopher Blattman, “The Industrial Organization of Rebellion: The Logic of Forced Labor and Child Soldiering,” Yale University Unpublished Working Paper.

Of course, focusing solely on the northern Uganda case raises potential problems of external validity and points to the need for caution in generalizing results from this study to the broader universe of cases. Nonetheless, an in-depth focus on one case is useful for testing the specific causal mechanisms underlying the arguments advanced by legal optimists and skeptics and identifying potential modifications to theoretical models of transitional justice.

This case study is organized around a quantitative analysis of the incidence of violence associated with the LRA insurgency from 1996-2006; the unit of analysis is the month, and I measure the incidence of violence for the 132 months encompassing this period. However, I also employ qualitative evidence from secondary sources, media reports, etc. in order to supplement the quantitative analysis and to examine the causal processes underlying the quantitative results.

I analyze the effects of three events—the enactment of the 2000 Amnesty Act, the public announcement of the referral of the situation in northern Uganda to the ICC Prosecutor in January 2004 (following the unpublicized referral in December 2003), and the unsealing of arrest warrants for five senior LRA leaders, including Joseph Kony, in October 2005—on the monthly incidence of violence in Uganda, controlling for a variety of other factors, including the relative strength of the belligerents, foreign support, peace negotiations, government offensives, that are also likely to affect the incidence of violence. In the next sub-section, I discuss the measurement and modeling strategies employed for the quantitative analysis presented in this paper.

### **Measurement and Operationalization:**

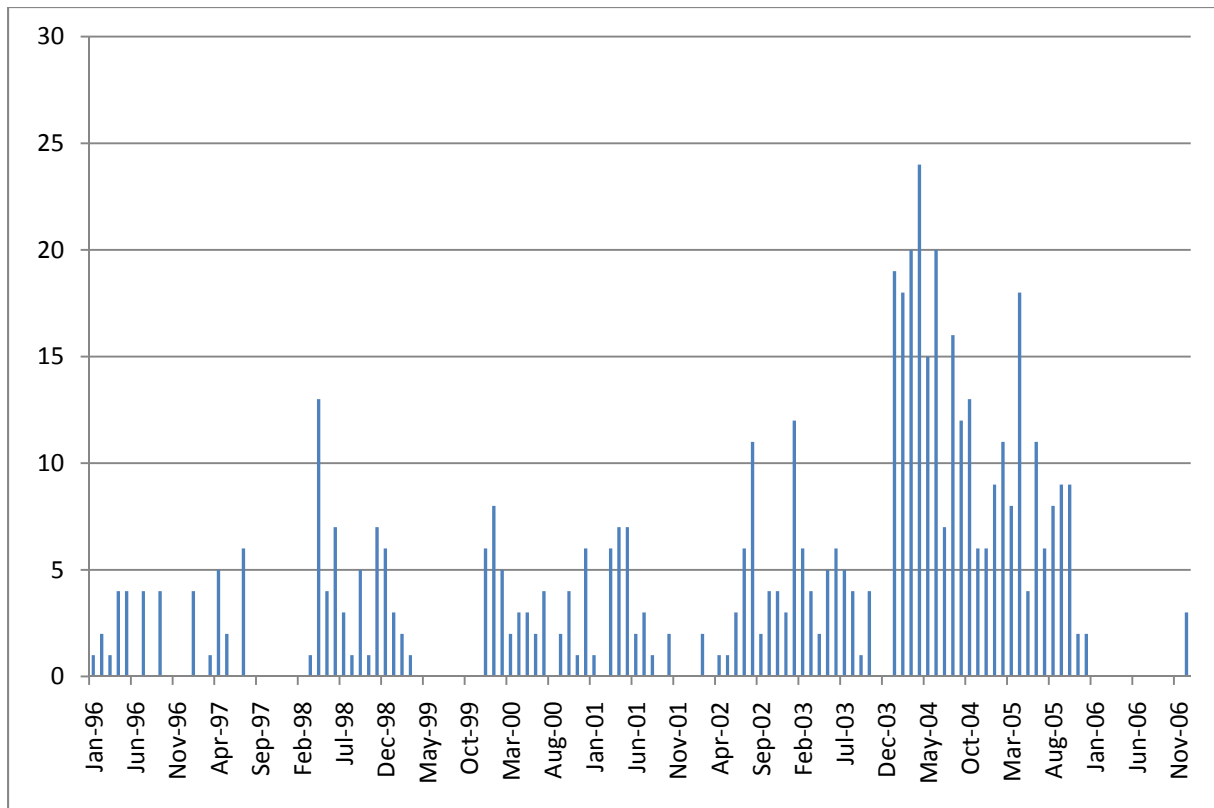
#### Dependent Variable:

*Violence:* The dependent variable—incidence of violence—is measured as the total count of armed conflict events per month. To generate this variable, I use the Uppsala/PRIO Armed Conflict Location and Event Database (ACLED), version 1, which records the dates of individual violent events in civil wars from 1946-2006 based on media coverage, reports by inter-governmental

organizations and non-governmental organizations, etc. Violent events include one-sided violence against civilians and battles between governments and rebels that result in 1) no territorial transfer, 2) rebels gaining control over territory, or 3) the government regaining control over a territory.<sup>54</sup>

ACELD also includes non-violent events such as rebel presence or movements in a given area or the establishment of a rebel base or headquarters; however, because this paper is focused on violence, rather than rebel activity, I do not include these non-violent events in my analysis. In total, there were 529 violent civil war events in northern Uganda from 1996-2006. Figure 1 illustrates the monthly incidence of violent events over this time period.

**Figure 1: Monthly Incidence of Violent Civil War Events in Northern Uganda, 1996-2006**



<sup>54</sup> Clionadh Raleigh and Havard Hegre, “Introducing ACLED: An Armed Conflict Location and Event Database,” Paper presented to the Conference on “Disaggregating the Study of Civil War and Transnational Violence,” University of California Institute of Global Conflict and Cooperation, San Diego, CA (March 7-8, 2005); Clionadh Raleigh, “Creating a Conflict Manuscript,” Center for the Study of Civil War, The International Peace Research Institute (2005).

While ACLED provides useful information about the incidence of violence, there are a number of limitations to these data for the analysis of the deterrent or preventive effects of amnesties and criminal prosecutions. Firstly, ACLED records only the occurrence of violent events and does not indicate the magnitude or intensity of violence, or whether the event amounts to an atrocity or war crime. Consequently, it is not possible to infer whether either amnesty offers or international court actions are associated with changes in the incidence of atrocities *per se*. However, because atrocities presumably constitute a sub-set of violent events within any conflict, i.e. atrocities normally occur as part of a violent event, it is still possible to arrive at some estimate of the upper limit of atrocity events during any time period from analysis of the ACLED data.

Secondly, while ACLED records the outcome of each violent event, i.e. territorial transfers, it does not record the initiator of each event; consequently, even though it is possible to estimate the upper limit on the incidence of atrocities as the total count of violent events, it remains impossible to determine which belligerent party initiated a particular violent event. However, because the ICC has jurisdiction over war crimes committed by *all* parties to a conflict, it is still possible and useful to assess the effects of action by international courts on the overall incidence of violence, even if it is not possible to directly evaluate the effects of such actions on specific conflict actors.

Finally, because ACLED is compiled from media coverage, government reports, NGO and IGO documents, etc., use of these data raises the possibility of measurement error in the dependent variable due to poor quality or biased data sources. While it is difficult to correct for this potential source of bias, as its direction and magnitude remains unclear, the possibility of measurement error points to the need for caution in interpreting and generalizing from the results presented in this paper.

### Independent Variables:

*Amnesty:* The Ugandan Parliament passed the Amnesty Act in November 1999, and the law was enacted effective January 1, 2000. The Act provided for a comprehensive amnesty for any Ugandan who engaged in armed rebellion against the government from January 26, 1986 onward. To receive the amnesty, the Act stipulated that individuals should report to the nearest Army or Police unit, a religious leader, a member of the local government Executive Committee, or a local magistrate and 1) renounce involvement in war or armed rebellion and 2) surrender any weapons.<sup>55</sup>

To capture the effects of this general amnesty offer, which has remained in force since the enactment of the Amnesty Act, I generate the dichotomous variable *Amnesty* and code all months in the time series prior to January 2000 as 0 and all months including and subsequent to January 2000 as 1. This period encompasses 84 of the 132 months included in the sample (63.64%). For this variable, it is not necessary to generate a lagged value to capture delays in implementation or public notification, as the Amnesty Act was passed and publicized in November 1999 before it took effect at the start of January 2000.

*ICC Referral:* In December 2003, the Ugandan government secretly referred the situation in the north to the ICC Prosecutor, and in January 2004, the Prosecutor issued a public statement announcing the referral.<sup>56</sup> To model the effects of this action, I generate the dichotomous variable *ICC Referral* and code all months in the time series prior to February 2004 as 0 and all months from February 2004 to November 2005 (one-month after the announcement of the issuance of arrest warrants, see below) as 1. This period encompasses 21 of 132 months included in this analysis (15.91%). I code this variable on the basis of a one-month lag from the date of announcement in order to model the effects of delays in dissemination of information regarding the referrals.

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<sup>55</sup> Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (London and New York: Zed Books, 2006), p. 74

<sup>56</sup> *Ibid.*, pp. 78-82

*ICC Arrest Warrant*: On October 13, 2005, the ICC unsealed arrest warrants for five senior LRA leaders—Joseph Kony, Vincent Ottio, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen—effectively making these men international fugitives.<sup>57</sup> To model the effects of this action, I generate the dichotomous variable *ICC Arrest Warrant* and code all months in the time series prior to November 2005 as 0 and all months in the time series including and subsequent to November 2005 as 1. This period includes 14 of the 132 months in the overall sample (10.61%). I code from November 2005 in order to allow for lag time in dissemination of information about the arrest warrants.

*Controls*: I also include controls for several additional factors that are also likely to affect the incidence of violence in any given month.

Firstly, I include *Lagged Events*, an indicator of the number of violent events in the prior month, in order to control for the effects of violence in the immediate time period under review. Secondly, I include monthly fixed effects to capture the effects of seasonal climate variations that make military operations more or less feasible in certain months. Thirdly, I include the variable *Government Military Expenditure* as a proxy for the relative strength of the government's military, the Uganda People's Defense Force (UPDF). This variable is coded as the natural logarithm of the national government's annual defense expenditures (in constant 2005 USD), lagged one year, as reported by the Stockholm International Peace Research Institute's (SIPRI) Facts on International Relations and Security Trends (FIRST) database.<sup>58</sup> Unfortunately, measures of the relative manpower strength of the UPDF were unavailable for the entire time period covered in this study, and estimates of the LRA's manpower strength are uncertain. Therefore, I use the Ugandan government's spending on defense as an admittedly weak proxy for the UPDF's relative strength, on

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<sup>57</sup> Kasaija Phillip Apuuli, "The ICC Arrest Warrants for the Lord's Resistance Army Leaders and Peace Prospects for Northern Uganda," *Journal of International Criminal Justice*, vol. 4, no. 1.

<sup>58</sup> Stockholm International Peace Research Institute, Facts on International Relations and Security Trends Database, version 3.0 (2010), accessed online: <http://first.sipri.org/> (last accessed April 11, 2010)

the assumption that higher levels of defense spending normally translate into greater military capabilities.

I also include the binary variable *Iron Fist* to capture the effects of a series of massive UPDF military offensives under the code name Operation Iron Fist, which was first launched in March 2002. Although the UPDF conducted operations against the LRA throughout the entire period under review, Iron Fist was by far the largest and most aggressive series of offensive operations mounted by the Ugandan military during this period. While it is difficult to specify the exact length of Iron Fist, as it consisted of a series of continuous operations, including a second phase (Operation Iron Fist II) launched in 2004, secondary sources and independent NGO reports indicate that the UPDF continued to conduct large-scale offensive operations through at least July 2004, if not longer.<sup>59</sup> Therefore, as a conservative estimate of the length of the offensive, I code the months from March 2002-August 2004 inclusive as 1 on this variable and all other months 0.

Finally, I include the dichotomous variable *Naivasha* to proxy foreign support for the LRA. As noted previously, beginning in 1994, the Sudanese government provided direct support to the LRA in the form of weapons, funding, and supplies. On several occasions, Khartoum has announced that it was cutting off official assistance to the LRA; in 1999, for instance, Sudanese President Omar al-Bashir and Ugandan President Yoweri Museveni signed the Nairobi Agreement, wherein Sudan pledged to cut off support to Ugandan rebel groups, including the LRA, operating in Sudanese territory. Despite this agreement and further pledges, considerable evidence suggests that Khartoum has continued to channel support clandestinely to the LRA.<sup>60</sup> Because of this, it is not possible to develop a direct measure of foreign support for the LRA. However, the end of the Sudanese Civil War with the signing of the Comprehensive Peace Agreement (CPA) at Naivasha in

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<sup>59</sup> Human Rights Watch, "Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda," vol. 17, no. 12A (September 2005), p. 12-13; Allen 2006, pp. 53-96

<sup>60</sup> Kevin C. Dunn, "The Lord's Resistance Army," *Review of African Political Economy*, vol. 31, no. 99 (2004), p. 141

January 2005 did significantly affect the LRA's support base in southern Sudan and, at least in the short run, increased the logistical costs of conducting operations in northern Uganda. The Naivasha Agreement granted *de facto* autonomy to southern Sudan under the Southern People's Liberation Movement (SPLM), which maintained close ties to the Museveni regime in Kampala, and the SPLM government announced its intention to expel the LRA from southern Sudan soon after it came into power. This, in turn, made it more difficult for the LRA to maintain bases and secure direct support from southern Sudan.<sup>61</sup>

### **Modeling Strategy:**

Because the dependent variable is an overdispersed event count, I use negative binomial regression to estimate the effects of the independent variables discussed in the previous section of this study on the incidence of violence, as event count data normally violate central assumptions of OLS or standard logistic models.<sup>62</sup>

## **4 Results and Discussion**

Table 1 presents seven negative binomial models of the monthly incidence of violence in northern Uganda from 1996-2006. Models 1-2 focus on the effects of the Amnesty Act of 2000, while Models 3-4 specify the effects of the referral of the situation in northern Uganda to the ICC in December 2004, and Models 5-6 focus on the effects of the unsealing of arrest warrants for senior LRA leaders in October 2005. The odd-numbered models (1, 3, 5) include only the respective explanatory variables, i.e. *Amnesty*, *ICC Referral*, or *ICC Warrant*, monthly fixed effects, and the lagged incidence of violence from the prior month, while the even-numbered models (2, 4, 6) include the full battery of controls outlined above. Model 7 includes all three explanatory variables, monthly fixed effects, the lagged incidence of violence from the previous month, and the full battery of controls. In this

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<sup>61</sup> Human Rights Watch, "Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda," vol. 17, no. 12A (September 2005), p. 13

<sup>62</sup> Colin A. Cameron and Pravin K. Trivedi, *Regression Analysis of Count Data* (Cambridge: Cambridge University Press, 1997).

section, I analyze these results and their implications for the hypotheses concerning the deterrent or preventive effects of amnesties and criminal prosecutions previously introduced in this paper, focusing specifically on the effects of the three independent variables most directly relevant to the “peace versus justice” debate—*Amnesty*, *ICC Referral*, and *ICC Warrant*.

**Table 1: Correlates of Violence in Northern Uganda, 1996-2006**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Prior Events	.124 (.021)***	.127 (.023)***	.079 (.027)***	.027 (.030)	.125 (.019)***	.093 (.021)***	.039 (.029)
Amnesty	.341 (.226)	.593 (.557)	---	---	---	---	.856 (.510)*
ICC Referral	---	---	.911 (.328)***	1.710 (.398)***	---	---	1.268 (.476)***
ICC Warrant	---	---	---	---	-1.677 (.472)***	-2.367 (.541)***	-1.461 (.621)**
Military Spending	---	-.741 (1.414)	---	-0.079 (.638)	---	.910 (.619)	-1.652 (1.383)
Iron Fist	---	.162 (.277)	---	.520 (.257)**	---	.248 (.244)*	.417 (.248)**
Naivasha	---	.009 (.444)	---	-.674 (.375)*	---	.403 (.388)**	.220 (.447)
Month Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes
N	131	131	131	131	131	131	131
$\chi^2$	52.61	54.08	57.99	70.57	64.45	73.60	81.28
Pseudo-R <sup>2</sup>	.081	.083	.090	.109	.099	.114	.125

Standard errors in parentheses, Significance levels denoted as \*:  $p < .1$ , \*\*:  $p < .05$ , \*\*\*:  $p < .01$

*Amnesty:*

Models 1, 2, and 7 indicate a positive relationship between amnesty offers and the incidence of violence; however, this correlation is statistically significant only in Model 7. At first glance, these findings are broadly consistent with the legal optimist claim that amnesties, at best, do not lead to a significant decrease in violence and, at worst, may actually exacerbate violence. However, closer analysis suggests that the observed effects of the Amnesty Act were due, at least in part, to particular features of the amnesty program, rather than more general properties or effects of amnesty offers.

Although the Amnesty Act formally offered immunity to all insurgents who renounced involvement in the rebellion and surrendered their weapons, the Ugandan government repeatedly indicated that the amnesty would not apply to senior LRA leaders; as Allen notes, Museveni remained unwilling to apply the Amnesty Act to LRA commanders until at least mid-2006, and the Ugandan Anti-Terrorism Act of 2002 set implicit limits on the application of the Amnesty Act.<sup>63</sup> In addition, the Museveni regime had a tenuous record of following through on amnesty offers or conditional surrenders, having previously reneged on an amnesty offer in 1988 when Uganda People's Democratic Army (UPDA) rebels were killed after surrendering.<sup>64</sup> In short, the Ugandan government's amnesty program faced a severe credibility problem with senior LRA leadership arising from the exclusion of LRA leaders from the amnesty and its past record of reneging on amnesty offers. In this context, senior LRA leaders had little incentive to surrender or order a ceasefire, and lower level commanders who did accept the government's amnesty offer reported that Kony directly threatened LRA soldiers with violent reprisals if they accepted the amnesty; anecdotal evidence suggests that Kony followed through on this threat; in May 2004, for instance, the LRA

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<sup>63</sup> Allen 2006, pp. 74-75

<sup>64</sup> *Ibid.*, pp. 74-75

attacked and brutally killed over 50 defectors and their family members in a raid on the town of Pagak.<sup>65</sup>

This analysis suggests that the Amnesty Act of 2000 may have been ineffective in curbing violence not because amnesties in general are ineffective in deterring violence but because the Ugandan government repeatedly signaled that senior LRA leadership—those who likely had the most to gain from continuing to fight—were to be effectively excluded from the amnesty and because of distrust of the Ugandan government’s willingness to follow through on its promises. Furthermore, an analysis of the dynamics leading up to the 2006 Juba peace talks suggests that the prospect of amnesty may have played an important role in bringing senior LRA leaders to the negotiating table and at least temporarily curbing violence. In May 2006, Museveni issued a public statement that the Ugandan government would “guarantee [Kony] safety” if he agreed to a peace settlement, effectively reversing the government’s prior policy of denying amnesty to key LRA leaders soon thereafter, Kony issued a video recording in which he appeared to call for an end to the conflict.<sup>66</sup> In early June, LRA leaders initiated preliminary peace talks through the government of southern Sudan, which convened negotiations between the LRA and the Ugandan government in Juba beginning on July 14, 2006.<sup>67</sup> Shortly before the formal opening of the peace talks, Museveni issued another statement, this time indicating that Kony would be offered a full amnesty if the LRA agreed to a settlement.<sup>68</sup> The parties eventually agreed to a temporary ceasefire in mid-September 2006, and as Figure 1 illustrates, the incidence of violence remained significantly lower than in prior years through the end of 2006.

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<sup>65</sup> *Ibid.*, p. 76

<sup>66</sup> “Ugandan rebel chief in peace plea,” *BBC News* (May 24, 2006), accessed online: <http://news.bbc.co.uk/2/hi/africa/5014520.stm> (last accessed April 9, 2010)

<sup>67</sup> “LRA rebels arrive for Sudan talks,” *BBC News* (June 8, 2006), accessed online: <http://news.bbc.co.uk/2/hi/africa/5060666.stm> (last accessed April 9, 2010)

<sup>68</sup> Peter Nyanzi, “Lawyers slam Museveni’s LRA amnesty offer,” *Daily Monitor* (July 19, 2006), accessed online via [allafrica.com](http://allafrica.com): <http://allafrica.com/stories/200607190213.html> (last accessed April 9, 2010)

Of course, without more in-depth insight into the factors underlying Kony's decision to negotiate, it is impossible to determine the extent to which Museveni's direct amnesty offer influenced Kony's decision-making calculus. Nonetheless, the evidence suggests that properly targeted amnesty offers can lead to at least a short-term reduction in violence by providing incentives for leaders to engage in peace negotiations. However, a word of caution is in order. Although Museveni's amnesty offer may have helped bring Kony and the LRA to the negotiating table, it was not sufficient to produce a lasting peace settlement or to prevent subsequent atrocities; after the Juba talks collapsed in March 2008, in part due to lingering, unresolved distrust between senior LRA leaders and the Ugandan government over the implementation of Museveni's amnesty offer, the LRA resumed operations in southern Sudan and eastern DRC. These recent operations have included several large-scale atrocities, including the murder of over 320 civilians in an attack on Makombo, DRC, in December 2009.<sup>69</sup>

#### *ICC Action—Referrals and Arrest Warrants*

Models 3, 4, and 7 each indicate a positive, statistically significant relationship between the referral of the situation in northern Uganda to the ICC and the incidence of violence in the region. Contrary to Hypothesis 2b but consistent with Hypothesis 2a, this finding implies that the ICC referral was associated with an increase in violence. This finding is broadly consistent with the “intensification hypothesis” posited by legal skeptics who argue that the threat of international criminal prosecution is likely to generate perverse incentives for accused leaders to escalate violence. At the same time, however, Models 5, 6, and 7 indicate a negative, statistically significant relationship between the unsealing of ICC arrest warrants and the incidence of violence, implying that public notification of the issuance of arrest warrants for senior LRA leaders was associated with a decrease in violence, at least in the short term.

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<sup>69</sup> Human Rights Watch, “Trail of Death: LRA Atrocities in Northeastern Congo,” (March 28, 2010), accessed online: <http://www.hrw.org/en/reports/2010/03/29/trail-death-0> (last accessed April 9, 2010).

These findings are puzzling, as they suggest that two ICC actions – the announcement of the initial referral and the unsealing of the arrest warrants – produced contradictory effects.

Unfortunately, publicly available information does not permit a conclusive determination of the causes of these contradictory effects; however, an examination of anecdotal evidence does suggest some plausible explanations for these findings. First of all, as Branch notes, the Ugandan government’s referral of the situation in the north to the ICC was part of a broader effort, including increased diplomatic pressure on Khartoum and the launching of the second phase of Operation Iron Fist in 2004, to weaken the LRA and call international attention to the conflict.<sup>70</sup> A field report by the Gulu District NGO Forum Justice and Reconciliation Project suggests that at least one major instance of violence in 2004—the February 21 LRA attack on the Barlonyo IDP camp in which 300 civilians were killed—was at least partially intended as retaliation for increased government pressure on the group.<sup>71</sup> This, in turn, suggests that the increased incidence of violence associated with the ICC referral may have been, at least in part, retaliation by the LRA for the government’s attempts to further weaken the rebel group.

Secondly, it is possible that the post-referral spike in violence was due, in part, to preemptive or retaliatory violence against potential witnesses or informants by the LRA. As noted previously, the LRA has built a reputation for violent retaliations against defectors and informants; moreover, both the ICC Office of the Prosecutor and the Pre-Trial Chamber charged with the Uganda case have repeatedly expressed concerns about the possibility of retaliation against witnesses.<sup>72</sup> Of course, prior LRA actions does not prove that the LRA actually engaged in preemptive or retaliatory violence against witnesses following the referral of the case to the ICC. Nonetheless, previous

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<sup>70</sup> Adam Branch, “Uganda’s Civil War and the Politics of ICC Intervention,” *Ethics and International Affairs*, vol. 21, no. 2 (2007), pp. 179-198

<sup>71</sup> Gulu District NGO Forum-Justice and Reconciliation Project, “Kill Every Living Thing: The Barlonyo Massacre,” Field Note IX (February 2009), p. 3

<sup>72</sup> International Criminal Court, Pre-Trial Chamber II, Warrant of Arrest for Joseph Kony Issued on 8 July 2005 as Amended on 27 September 2005 (public redacted version)

patterns of LRA activity suggest that the referral of the case to the ICC and the opening of a preliminary investigation may have prompted a wave of preemptive or retaliatory violence against potential witnesses or informants.

While these accounts offer plausible explanations of the positive relationship between the ICC referral and the incidence of violence, they do not account for the negative relationship between the unsealing of arrest warrants and the occurrence of violence in northern Uganda. Once again, however, currently available information does not permit a conclusive determination of the causes of this finding; nonetheless, an examination of anecdotal evidence does suggest a plausible explanation for this result that points to the importance of the credibility of threats of international prosecution for preventing or deterring violence.

Despite the upsurge in violence after the initial referral of the case to the ICC, the Office of the Prosecutor was nonetheless successful in establishing a significant field presence and gathering sufficient evidence to secure arrest warrants for senior LRA leaders. This, in turn, may have demonstrated both the capacity and resolve of the ICC to conduct an effective investigation, despite fears of LRA retaliation against witnesses and informants; in other words, the ICC's ability to gather sufficient evidence to secure warrants for Kony and other LRA leaders may have signaled that the court was unlikely to be deterred or intimidated by threats of violence or retaliation and that the ICC had sufficient capacity to conduct an effective investigation. In terms of the simple model discussed presented in this paper, it may be argued that this demonstration of the ICC's capacity and resolve increased the subjective probability  $p$  that senior LRA leaders would be arrested, tried, and convicted thereby raising the expected costs  $p*f$  of committing further acts of violence and exposing themselves to capture. In turn, this may explain the large-scale movement of LRA forces in October 2005 out of their area of operations in northern Uganda, where the ICC was active in gathering evidence and the UPDF was active in pursuing ICC leaders, and into eastern Congo, where the

probability of arrest was significantly lower. However, the influence of the court's actions should not be overestimated, as there were numerous other factors that likely contributed to the decreased incidence of violence in northern Uganda following the issuance of the arrest warrants, including increased pressure from the government of southern Sudan, an increased UPDF military presence in the north, and the eventual opening of peace negotiations in Juba in July 2006, as discussed previously in this section. Nonetheless, the results presented in this paper do suggest that the issuance of arrest warrants may serve as a more credible indicator of the capacity and resolve of international courts' abilities to conduct effective investigations than the opening of a case or investigation.

## **5 Conclusion**

*Contra* the typical framing of debates over transitional justice in terms of a simple dichotomy between amnesty or accountability or peace and justice, the findings presented in this paper suggest there is no simple or easy tradeoff between amnesty offers and international criminal prosecutions in the context of ongoing conflict. More specifically, this paper's findings suggest that the effects of both amnesty offers and international criminal prosecutions are contingent on specific features of particular amnesty programs or the sequencing of court procedures. With respect to amnesties, the case of northern Uganda illustrates the importance of targeting and credibility in conditioning the effects of amnesty offers on the incidence of violence, as the Ugandan government's initial amnesty offer appears to have failed to bring the LRA to the negotiating table because senior LRA leaders did not believe that they would be covered by the amnesty, whereas a subsequent offer directed specifically toward the LRA leadership seems to have facilitated the opening of the 2006 Juba peace talks and a decrease in the incidence of violence. At the same time, the case of northern Uganda also offers suggestive evidence of the importance of the credibility of international courts in conditioning the deterrent or preventive effect of referrals, investigations, and arrest warrants, as the initial

referral of the situation in Uganda was associated with an increase in violence but the subsequent issuance of arrest warrants for senior LRA leaders was associated with a marked decrease in violent events. More broadly, however, these findings suggest that while the “peace versus justice” debate may provide a parsimonious framework for structuring inquiries into the effects of amnesties and international criminal prosecutions, there is a strong need for both more nuanced theoretical approaches to the study of transitional justice and more systematic empirical analysis of the contingent or conditional effects of amnesty offers and international criminal prosecutions.

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