



Universiteit
Leiden
The Netherlands

The ICC and Conflict Intensity: An Important Determinant?

Henriksson, Enrico

Citation

Henriksson, E. (2021). *The ICC and Conflict Intensity: An Important Determinant?*.

Version: Not Applicable (or Unknown)

License: [License to inclusion and publication of a Bachelor or Master thesis in the Leiden University Student Repository](#)

Downloaded from: <https://hdl.handle.net/1887/3244370>

Note: To cite this publication please use the final published version (if applicable).



Bachelor Thesis - Political Science

International Judicial Interventions in Conflicts: Balancing Peace and Justice

The ICC and Conflict Intensity: An Important Determinant?

Name: Enrico Henriksson

Student Number: S2224860

Date: 21/05/2021

Professor: Dr. Tom Buitelaar

Word Count: 7,999

Contents

1. Introduction	3
2. Literature Review	5
3. Theoretical Framework	10
4. Methodology and Research Design	12
5. Results of the Statistical Analysis	15
6. Case Studies	19
7. Discussion	28
8. Conclusion	31
9. Bibliography	33

Introduction

The International Criminal Court (ICC), founded in 2002, was framed as a tool designed to decisively tackle impunity and enhance the enforcement and upholding of human rights in ongoing conflicts. Indeed, the ICC aims to bring accountability and proportional punishment to those who commit “the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression” (Rome Statute, 1998, p. 2). Whilst many highlight the great progress which the ICC has provided in the field of international justice, there nonetheless remains widespread debate about what role the ICC has in providing conflict resolution and whether its interventions in conflicts damage such a prospect.

In order to shed greater light on the debate surrounding the effects which the ICC has on conflict resolution, this thesis will seek to answer the following research question: ***How do ICC interventions impact the levels of conflict intensity in the targeted country?*** This question is of relevance to the wider subject of international judicial interventions in conflicts as the ICC aims to promote peace and seeks to provide justice within the contexts of ongoing conflicts. Thus, ICC interventions may have important impacts on the dynamic of a conflict, as they may influence the strategies and decisions made by relevant actors, specifically those who form part of the leadership of belligerent parties and become the subject of ICC arrest warrants. This paper will argue that under specific conditions, the ICC may indeed fulfill its goal of providing conflict resolution through the alleviating of conflict intensity.

In order to answer the research question this paper will begin with a literature review which shall summarize the main perspectives regarding the ICC and the impact which its interventions have on conflicts, alongside a short description of important determinants of conflict intensity.

Following this, a breakdown of the theoretical framework will be presented. I will then present the research design and methodology, prior to summarizing the findings of greatest importance and discussing their relevance towards the research question. This thesis will make use of three distinct case studies in which the ICC has had contrasting effects, with the aim of identifying the external conditions which best facilitate successful ICC interventions. Finally, the thesis will

culminate in a conclusion in which the results of the analysis will be situated within the wider peace versus justice debate and some recommendations will be made in regards to how the ICC may be more effective in contributing towards conflict resolution.

Literature Review

Exploring the more notable negative and positive effects which the ICC carries on conflicts is a good starting point for us to understand the potential effects which the ICC may have on conflict intensity. Following this overview, conflict intensity and its most relevant determinants will be explored. Finally, the theory of rational choice will be presented as the most appropriate in explaining the link between ICC interventions and the subsequent shifts in strategies that arise within the leadership of belligerent parties.

Deterrence is the effect which the ICC most greatly relies on. Specifically, the ICC can count on opportunities to be a mechanism which induces strong prosecutorial deterrence (Jo and Simmons, 2016, p. 444). If there is an international body with the capacities to officially try and punish perpetrators of the crimes under ICC jurisdiction, these perpetrators may change their behaviour in order to no longer be under threat from said international body (Jo and Simmons, 2016, p. 444). A strong enforcement record would also deter future crimes from taking place if punishment seems inevitable to those who may commit such acts in the future. This effect suggests that ICC interventions may impact conflict intensity in the short term by altering the costs of committing crimes under its jurisdiction, but so too in the long term in the context of future conflicts by imposing an effective stance against impunity.

The ICC's deterrence potential is not limited to the prosecutorial however, as it has an important social deterrence potential too. Social deterrence is linked with the informal consequences which come along with the committal of war crimes and crimes against humanity, such as the political and social marginalization of the indicted (Jo and Simmons, 2016, p. 444). However, authors such as Ku and Nzelibe (2007), suggest that the deterrence effect of international criminal tribunals in general is weak, due to a dependence on state cooperation and a lack of strong enforcement mechanisms (2007, p. 47), suggesting that ICC interventions alone may not yield the desired effects.

Nevertheless, ICC interventions may change the incentives and trade-off calculations of leaders involved in conflicts, creating greater opportunities for peace negotiations to be held. Building

on the aspects of social deterrence argued above, leaders of the same warring party may distance themselves from those who committed or ordered the committal of atrocities, leading to lower availability of resources for conflict. This shift in the calculations therefore makes a peaceful agreement seem as a more rational option for the indicted leader(s) (Kersten, 2016, p. 22). However, this positive effect also finds its challenges, where some have suggested that marginalized leaders may respond with violent means in an attempt to reconsolidate their power (Kersten, 2016, p. 23).

Moreover, peace talks with perpetrators, especially indictees, of human rights violations and war crimes will be difficult to successfully conclude (Hayner, 2018, p. 3). Statistical analyses carried out by Duursma (2020) indicate striking differences in the durability of peace agreements stemming from conflicts in which the ICC intervened when compared to agreements concluded in conflicts where the ICC had not intervened. Only 4.1 percent of conflicts which had seen the ICC's involvement were concluded with a durable peace agreement, as opposed to 24.7 percent in which mediation took place without the ICC's involvement (Duursma, 2020, p. 345).

Snyder and Vinjamuri (2003) also critique the ICC's approach, suggesting that obfuscations of important political realities cause shortcomings to arise from the approach of prosecuting perpetrators of atrocities (2003, p. 5). Snyder and Vinjamuri (2003), critique the overly normative position which the ICC promotes, arguing that ICC interventions may cause an increase in atrocities rather than alleviate their occurrence, and that ICC interventions do not truly promote the establishment of solid democratic foundations (2003, p. 44). This contribution reinforces the goal of this thesis, which is that of understanding whether the ICC must posit greater consideration for the political conditions and external factors which the conflicts it intervenes in usher.

The political conditions and external factors most relevant to this research are therefore those which shape conflict intensity. Conflict intensity will be conceptualized following Hultman and Peksen's (2017) work on sanctions; "the number of battle-related fatalities in internal armed conflicts" (2017, p. 1316). Discussing the determinants of conflict intensity will help posit the

effects which the ICC carries in this regard within the wider pool of conflict intensity determinants.

Annan (2014), identifies a plurality of factors which may lead to violent intra-state conflicts, such as bad governance, arms proliferation, and human rights violations (2014, p. 5). The latter factor is that of greatest relevance to the ICC, as a major portion of its cases are based around genocides, described as the specific intent to destroy ethnic, racial or religious groups (ICC, 2021). As identified by Olzak (1994), ethnic segregation levels and inequality levels are amongst the most important indicators in explaining the levels of ethnic collective action (1994, p. 3).

Another important contribution is that by Lacina (2006), who examines why some civil conflicts are more severe than others, utilizing battle-related deaths as the measurement for severity (2006, p. 277). Factors such as the levels of external military assistance a state or a warring party has available, the condition and difficulties presented by the terrain, the regime type in which the war is conducted, alongside ethnical and religious polarization, are all contributing factors towards explaining conflict intensity levels (Lacina, 2006, pp. 280-284). This reinforces the idea that attributing causality for a change in conflict intensity to one variable, such as ICC interventions, would be unrepresentative. This calls for the use of a mixed approach in order to determine correlation and to identify the interaction of various processes and variables case by case.

Both the effects which the ICC has, and the above determinants of conflict intensity, are of the greatest relevance to those who form part of the leadership of belligerent parties. Rational choice theory has been identified as the theory which may best explain the interaction between ICC interventions and conflict intensity, especially in regards to this focus on leadership.

Rational choice theory broadly holds that actions are fundamentally “rational” in their character (Scott, 2000, p. 126). The implications of such an assumption are twofold. First, one has to treat the leaders and perpetrators of crimes which fall under ICC jurisdiction as rational actors. Such an implication is of relevance because it challenges the dominant narrative which ICC investigations often carry due to an overly westernized focus on the mediums for the attainment of justice and the obfuscation of the true causes of war (Kersten, 2016, p. 74). In fact, indicted

leaders are often labeled as irrational actors as a result of ICC interventions. This may cause a sense of inferiority, delusion, and a loss of respect for ICC interventions in the eyes of the indicted. This weakens the potential for the positive effects which the ICC carries due to the mediums not being appropriate to all domestic contexts, enhancing the negative effects which are likely to increase conflict intensity (Richmond, 2006, p. 393).

The second implication of importance is that we must consider war as an occurrence born out of rational (mis)calculations. Fearon (1995) argues how misleading or unavailable private information, commitment problems and issue indivisibilities may explain why wars break out even if agreements of bargain seems less costly (Fearon, 1995, p. 381). Moreover, war has been historically seen as a continuation of policy by other means where traditional policymaking avenues cannot achieve the same or desired results. Genocides may follow similar explanations, insofar as they are not necessarily fruit of irrational decisions.

In fact, threatening and killing civilians may be seen as war by other means (Valentino, 2014, p. 94). The rationality behind such actions relies on the idea that in civil wars and insurgencies, an important strategic attention must be given to the controlling of civilians or the elimination of civilians in the case where they are suspected of supporting the opposing party (Valentino, 2014, p. 94). ICC interventions would bring important considerations to this, as it would impact the leadership's calculations on whether such strategies remain viable.

Some authors have considered how leaders' incentives may be impacted by the ICC's interventions in conflicts, and thus, how this may alter their strategic decision-making throughout a conflict. Ali (2014) applies game theory to analyse the effects which the ICC's mandate carries. Ali (2014) deduces that a leader's decision to either commit a greater or lesser number of crimes depends on a broad set of variables, which however most greatly rely on the cost to be imposed for acting lawfully vis á vis the costs imposed for acting unlawfully. If the costs imposed for committing atrocities are too high, a leader will refrain from committing them, whilst if a leader can afford to absorb these costs, the atrocities may be more likely to continue (Ali, 2014, p. 443).

From this perspective, we can draw inferences for our expectations, such as that the role which an investigated individual holds may shape the effect which ICC interventions will have on conflict intensity.

Indeed, state leaders will have close to no incentives to hand themselves to the ICC, but would have greater incentives to apprehend non-state leaders if this promotes their domestic position (Meernik, 2013, p. 184). Moreover, Hillebrechth and Strauss (2017), argue how state cooperation is central to ICC success, and that cooperation will not take place if it is not in the domestic interest of the states' leaders (2017, p. 163). This may also be explained by the fact that in many cases in which the ICC intervention targets a head of state, it is unlikely that they will allow themselves to be tried domestically, due to the executive and judiciary being inherently intertwined (Duursma, 2020, p. 340).

The above literature has briefly summarized the main effects which the ICC carries towards conflict resolution and has delineated some of the determinants of conflict intensity. Although a vast amount of scholarly attention has been dedicated to understanding the effects which ICC interventions may have on the chances of achieving peaceful resolutions to conflicts, less attention has been given to how the ICC may impact the dynamics of a conflict. This is also due to the fact that many scholars have highlighted the impacts which external sanctions and international interventions have on conflict intensity. As a consequence, one should seek to verify the impact which ICC interventions, representing a judicial approach to international interventions and sanctions, have on conflict intensity.

Theoretical Framework

This section of the thesis will provide a breakdown of the main variables which are subject to the analyses which shall be carried out. This will allow for the formation of reasonable hypotheses grounded within the theory and the literature which has been examined.

Variable 1 : ICC Interventions

From a conceptual point of view, "ICC interventions" entail the establishment of investigations, which may culminate in arrest warrants and trials in conflicts in which individuals are accused of committing crimes which fall under the ICC's jurisdiction. ICC interventions will be considered to have commenced when an official investigation is opened. Within the statistical analyses, each conflict will have a specific timestamp referring to the opening of an ICC investigation. In the case of Uganda, for example, an ICC investigation will be considered to be opened as of (July) 2004, and therefore that will be the point in time which the ICC may be said to have commenced the intervention. Nevertheless, the entirety of the ICC intervention will be analysed, rather than only what happened immediately after the opening on an investigation, so as to analyse all the aspects of an intervention.

Variable 2 : Conflict Intensity

Conflict intensity is a concept which relates to understanding the nature of a conflict and the ways in which such a conflict is waged. As previously mentioned, conflict intensity equates to "the number of battle-related fatalities in internal armed conflicts" (Hultman and Peksen, 2017, p. 1316). In this instance, an increase in battle-related fatalities will coincide with an increase in conflict intensity whilst a decreasing number of battle-related deaths will coincide with a reduction in conflict intensity.

The literature which has been analyzed, the operationalization of the variables and the implications inferred from rational choice theory has led to the creation of the following hypotheses:

H0. The commencement of ICC interventions in a conflict will have no effect on the conflict's level of intensity.

H1. The commencement of ICC interventions in a conflict will lead to an exacerbation of the conflict's level of intensity.

H1.1. The commencement of ICC interventions in a conflict will lead to an exacerbation of the conflict's level of intensity if the target of the investigation is a state leader.

H1.2 The commencement of ICC interventions in a conflict will not lead to an exacerbation of the conflict's level of intensity if the target of the investigation is a non-state leader.

Methodology and Research Design

This thesis will make use of quantitative approaches and qualitative approaches to answer the research question. The statistical analysis which will be carried out will be utilized as a tool to identify cases with varying results so as to compare and contrast the ICC's effects in differing conditions. These specific cases will then be explored in depth through the use of literature based on the specific case. This will aim to make up for the overly superficial results which the statistical analysis is likely to provide. However, before delving deeper into what analyses will be carried out, a description of the data sources must precede.

Data

In regards to ICC interventions in conflicts, understood as the opening of an investigation in a conflict which may culminate in arrest warrants and trials, the data source will be the ICC's website, which has a section named "situations under investigation", (ICC, 2021). There are 14 conflicts under this section, and those conflicts which do not have the selection criteria below will not be included.

In fact, choosing the correct data for conflict intensity will be an important determinant of what the results will indicate, as there are widespread variations in the accuracy and relevance of datasets. As conflict intensity has been both conceptualized and operationalized as the number of battle-related fatalities per year, a suitable dataset must be found accordingly. The dataset which will be utilized to account for the battle-related deaths per year is that by the Uppsala Conflict Data Programme (UCDP). The dataset of choice will be the UCDP battle-related deaths dataset, which comprises "information on the number of battle-related deaths in the conflicts from 1989-2019 that appear in the UCDP/PRIO Armed Conflict Dataset" (UPCD, 2021).

As mentioned, not all 14 conflicts under investigation may be analyzed statistically, as some have insufficient data, or some have had an investigation opened so near to the start or the end of a conflict that no inferences may be drawn for the effect of the ICC's intervention as a whole. For example, a conflict such as that of Georgia cannot be included since the ICC states that it is investigating crimes "in the context of an international armed conflict which took place between

1 July and 10 October 2008”, whilst the investigation was opened in 2016. Such a conflict cannot fit this analysis since the investigation began outside the timeframe of the conflict.

As a consequence of the selection criteria, the conflicts which will be included in the analysis are the following: Afghanistan, Central African Republic, Democratic Republic of the Congo, Mali, Sudan and Uganda. Although this may be seen as an early shortcoming, it is worth remembering that this is part of the case selection process. Thus, if data relating to battle-deaths is overly scarce in the conflicts, it will be difficult to truly label conflicts correctly. Below is a table depicting the criteria which needed to be met:

Conflict	Criteria 1: Investigation launched during conflict	Criteria 2: Sufficient data within the UCDP battle-related deaths dataset	Criteria 3: Investigation Launched at least 3 years prior to the end of said conflict
<u><i>Afghanistan</i></u>	✓	✓	✓
<u><i>Burundi</i></u>	✓	×	×
<u><i>Central African Republic</i></u>	✓	✓	✓
<u><i>Democratic Republic of Congo</i></u>	✓	✓	✓
<u><i>Georgia</i></u>	×	×	×
<u><i>Ivory Coast</i></u>	✓	×	×
<u><i>Kenya</i></u>	×	×	×
<u><i>Libya</i></u>	✓	×	✓
<u><i>Mali</i></u>	✓	✓	✓

<u>Myanmar</u>	✓	✓	×
<u>Palestine</u>	✓	×	✓
<u>Sudan</u>	✓	✓	✓
<u>Uganda</u>	✓	✓	✓

Step 1 : Statistical Analysis

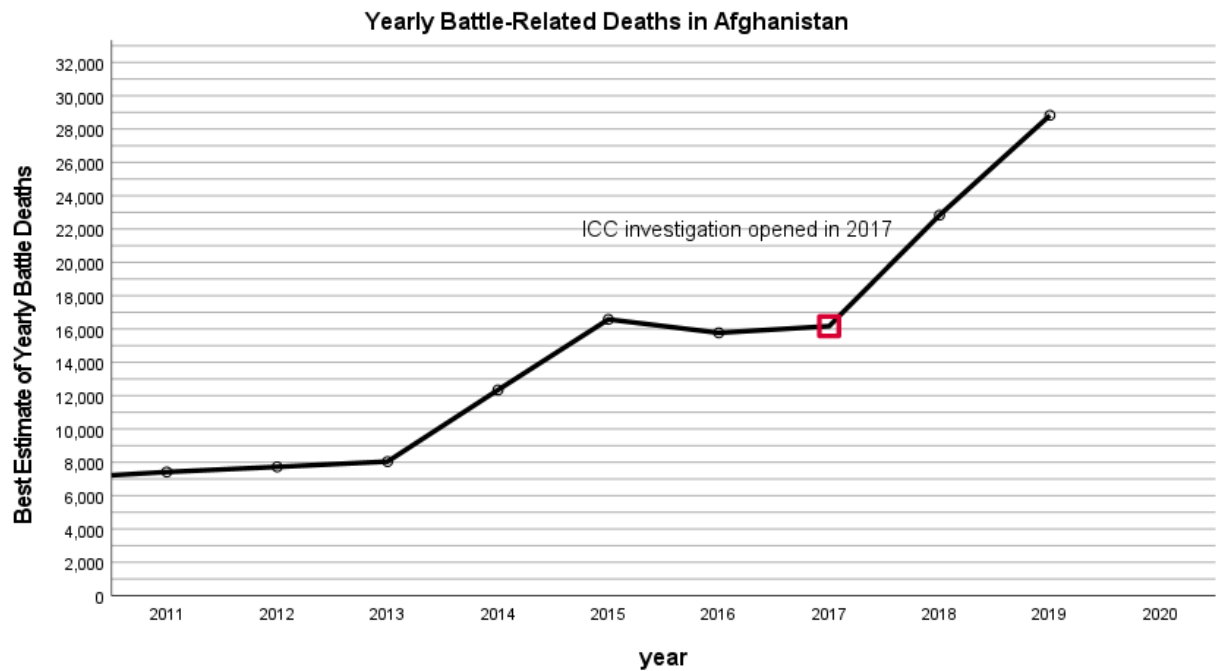
This thesis will provide visual representations for change over time in the cases which met the above criteria through graphs with the year pitted against the number of battle-related fatalities. Within this, there will be a point in time where the ICC intervention will be considered to have commenced through the opening of an investigation. The aim of these simple statistical exercises will therefore be to identify whether the commencement of ICC interventions will be followed temporally by an increased, decreased, or an unchanged level of conflict intensity.

Step 2 : Case Studies

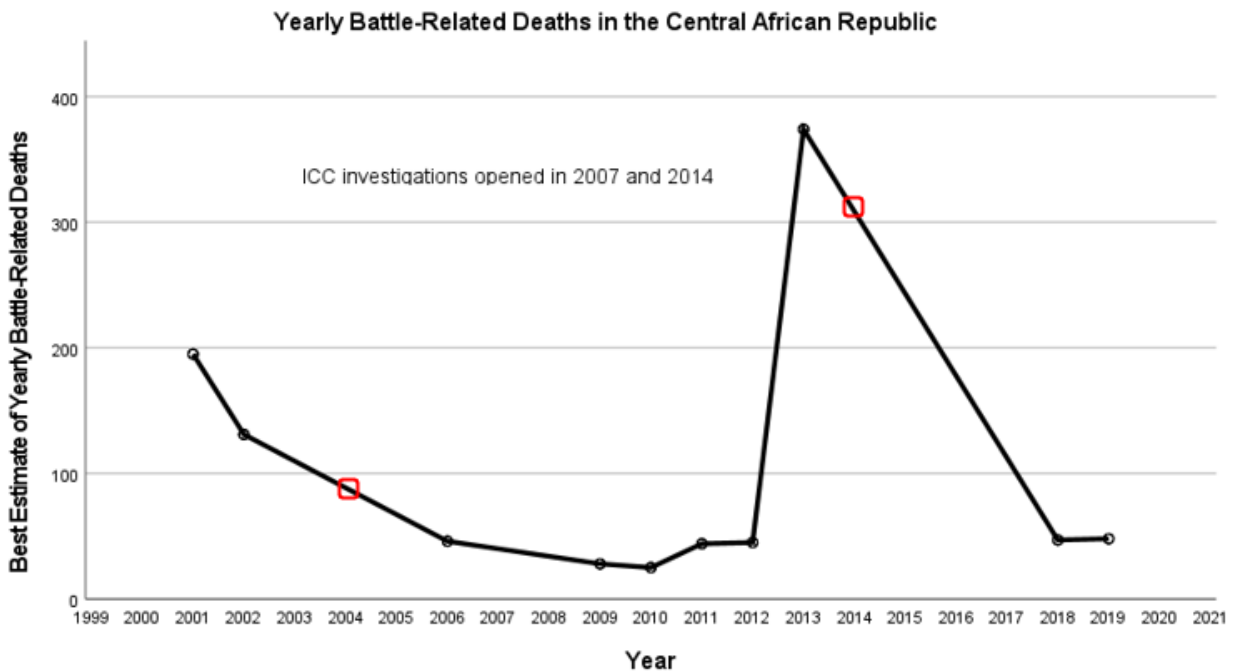
After the statistical analysis is conducted, there will be some further analysis for the specific cases which seem representative for the wider population of cases they represent. One case will be chosen for conflicts in which conflict intensity increased following the commencement of the ICC's intervention, another for conflicts in which conflict intensity decreased following the commencement of the ICC's intervention, and finally another conflict will be analysed where the ICC's intervention had no clear temporal effect on conflict intensity.

In order to discuss the relative impact which ICC interventions have on conflict intensity, going into greater detail for these cases will allow us to understand which factors may have contributed in changing the conflict intensity in combination with the different aspects of the ICC's interventions. The majority of the material which will be utilized to do so will be secondary literature which focuses on the relevant cases. The aim is to carry out a simplified process tracing method for each case which falls in one of the three categories.

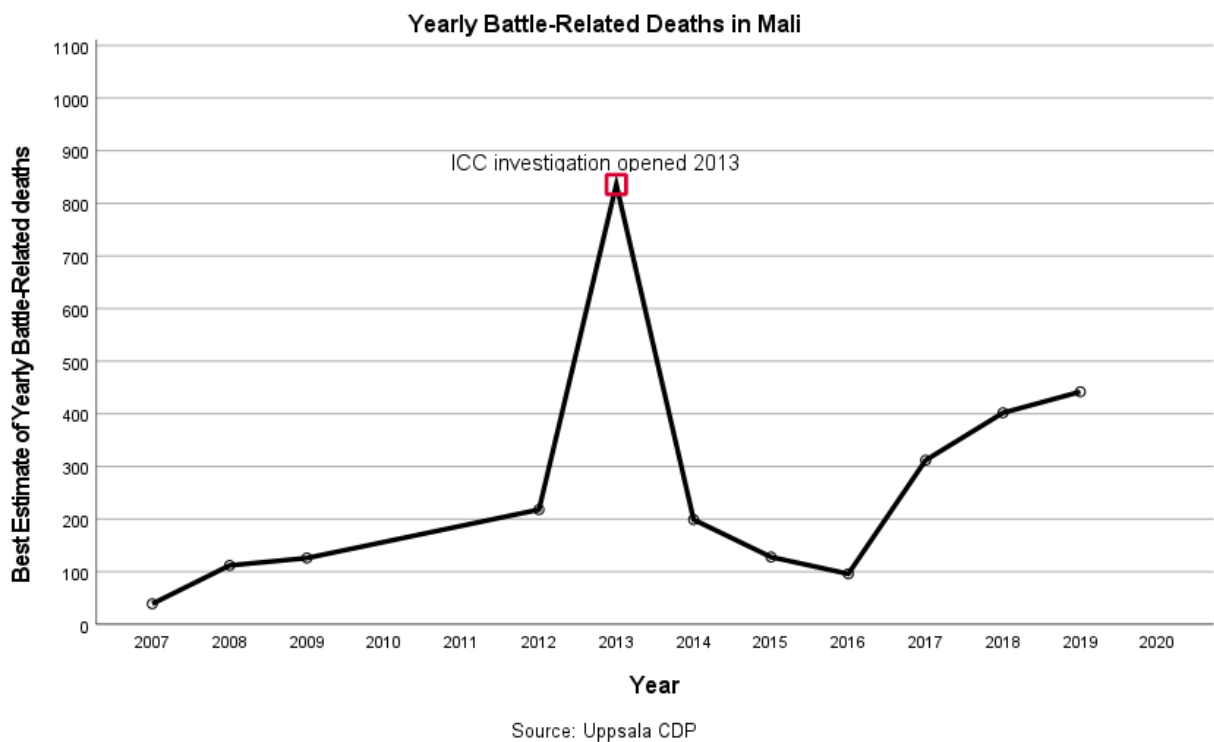
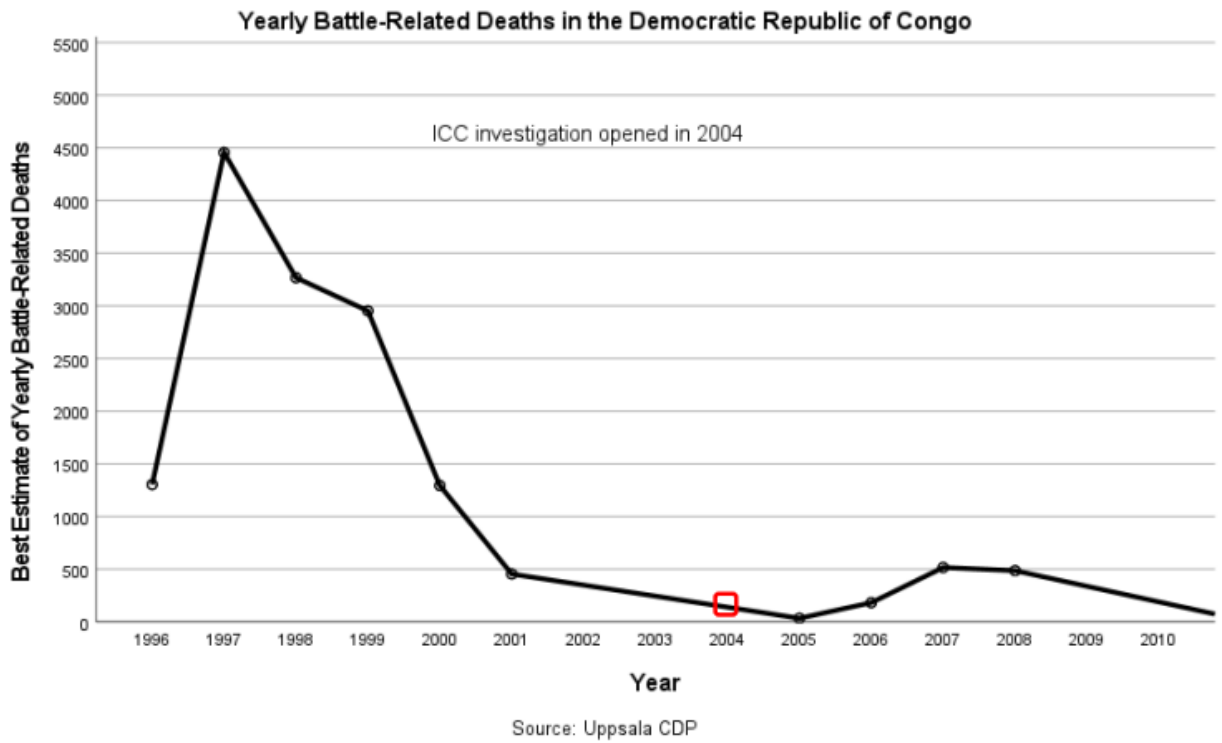
Results of the Statistical Analysis



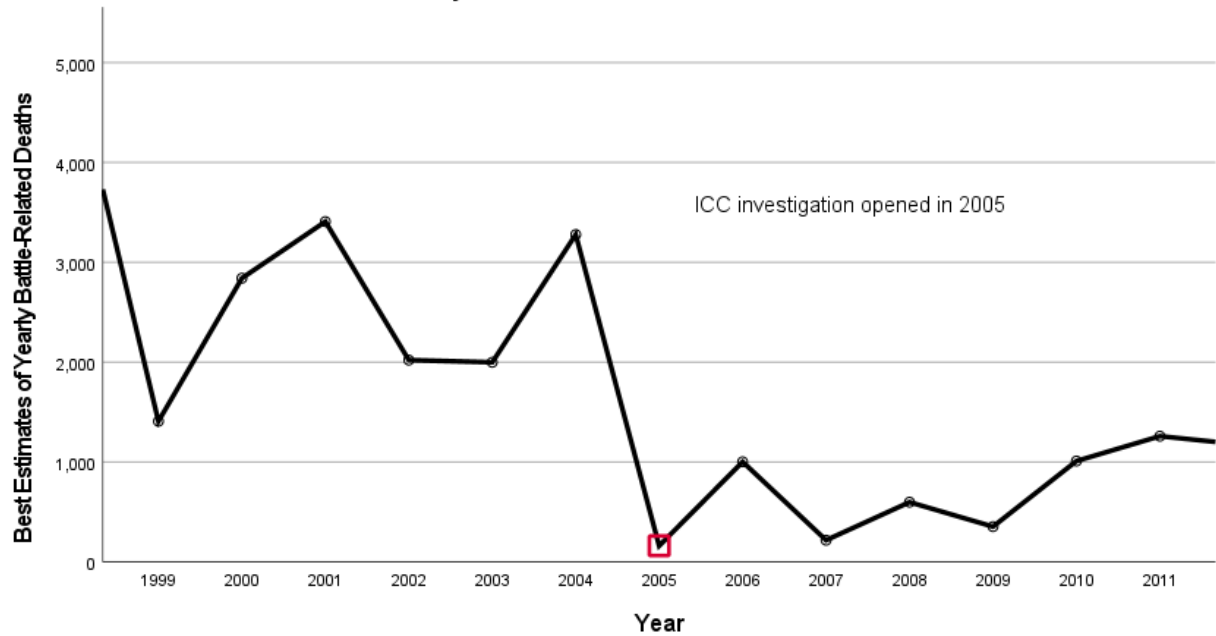
Source: Uppsala CDP



Source: Uppsala CDP

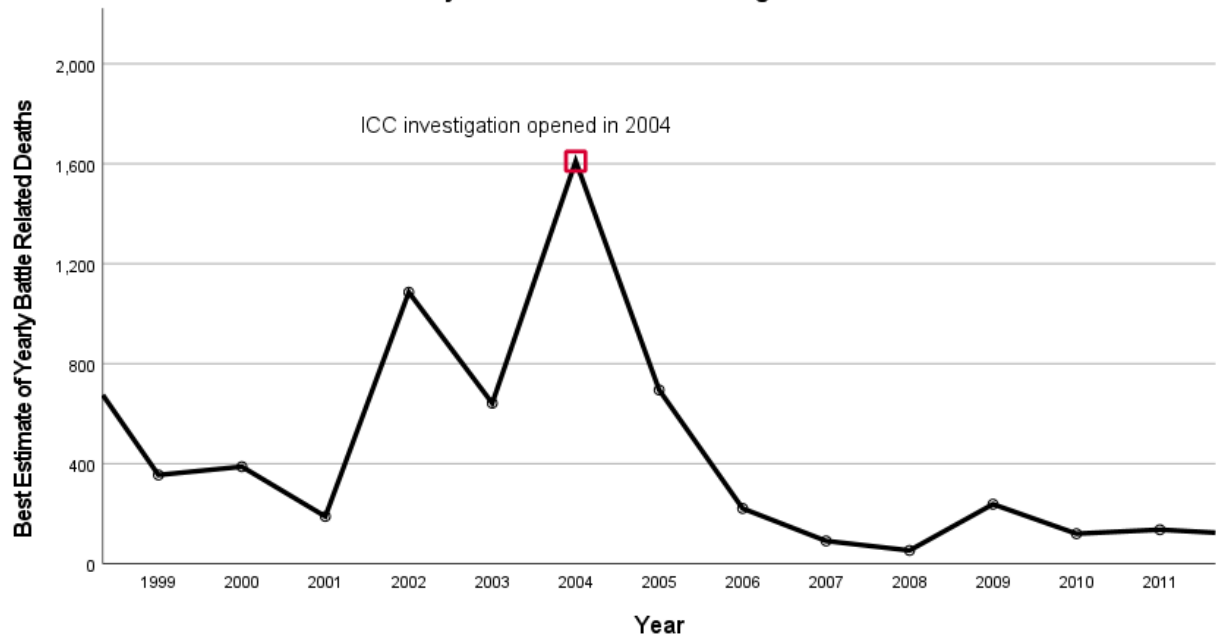


Yearly Battle-Related Deaths in Sudan



Source: Uppsala CDP

Yearly Battle-Related Deaths in Uganda



Source: Uppsala CDP

Although the above graphs are each quite different from one another, general patterns may be attributed throughout. For example, the cases which seem to indicate that ICC interventions may have contributed toward an immediate reduction of conflict intensity are those of Uganda, Mali, and the Central African Republic. Conversely, the conflicts in which ICC intervention seems to coincide with an immediate increase in conflict intensity are those of Afghanistan and Sudan. In the remaining case, that of the Democratic Republic of Congo, the ICC's intervention does not seem to coincide with a shift in conflict intensity overall.

For each different type of case identified through the above statistical analysis, delving deeper and analysing a specific case will highlight which external factors explain such a variance case by case. An important factor to note is that the whilst above statistical analysis depicts the immediate effect of ICC interventions, the case studies will analyse the intervention more broadly, in order to satisfy the conceptualization presented above.

The case chosen for the cases in which we saw a reduction in conflict intensity will be that of Uganda. For the type in which we saw an increase in conflict intensity, the case chosen is that of Sudan. Finally, as the case of the Democratic Republic of Congo is the only case in which the commencement of an ICC intervention did not seem to have a temporal impact, it will be the one analysed for this type.

Case Studies

Uganda

Based on the results of the statistical analysis, we may begin with the premise that on a purely temporal basis, the opening of an ICC investigation coincides with a decreasing conflict intensity in the immediate and following years. Nevertheless, we must understand which other factors facilitated this decrease in conflict intensity, in order to identify the conditions in which ICC interventions are likely to be of greatest assistance, not only in tackling impunity, but also in contributing to the peaceful resolution of conflicts. Below, I will begin with a short background to the Northern-Ugandan conflict, after which I shall present an examination of the role which the ICC had in contributing towards a reduction in conflict intensity. Such a format will be consistent throughout all cases.

The Northern-Ugandan conflict is much broader than the clashes between the National Resistance Army (NRA) and the Lord's Resistance Army (LRA) led by Joseph Kony. The LRA was not the first organisation who challenged the NRA, but it was the organisation which best used terror tactics to disrupt the NRA's power (Allen, 2005, p. 3). The terror tactics utilized by the LRA included guerrilla warfare against the NRA, child abduction to bolster their military capabilities, alongside the committal of atrocities on those who were suspected of supporting the government (Allen, 2005, p. 3). The Ugandan government submitted their referral to the ICC in response to the increasing challenges that were being faced in successfully concluding attempts of peace agreements and long lasting ceasefires in January of 2004 (ICC, 2021).

Importantly, the ICC's intervention in Uganda was borne out of a self-referral by the Government of Uganda to the ICC (ICC, 2021), and the investigation subsequently created led to the first ever arrest warrants issued by the ICC. Thus, the LRA was the first party in a conflict to be issued ICC arrest warrants against them in 2005. To begin understanding what led to such a sharp decline in conflict intensity since 2004, one must identify the effects which the ICC can be said to have clearly caused.

The most obvious effect which the ICC's intervention had on the prospects for the diminution of violence is that of the further encouragement of peace talks. Indeed, as mentioned in the literature review, the encouragement of peace talks was identified as a positive effect which the ICC has. In the case of the Ugandan conflict, the opening of an ICC investigation led to diminished support for the LRA from neighbouring Sudan, as well as providing the LRA with an opportunity to challenge the dominant conflict narrative, as it was not only the LRA who committed human rights violations (Kersten, 2016, p. 82).

This is of importance to conflict intensity as the current international liberal order creates greater pressures for the creation of peaceful agreements and the stable ceasing of conflicts, generating greater costs for the parties who decide to not partake in peace talks compared to those who do (Min, 2020, p. 623). In fact, before the ICC's intervention, the LRA received substantial support from Sudan, including freedom of operations in Sudan and supplies of weapons. Following the announcement of the investigation, Sudan stopped supporting the LRA in order to avoid being associated with the crimes which the LRA was being investigated for (Kersten, 20156, p. 80). As pointed out prior, the amount of external military assistance a warring party has available is another important determinant of conflict intensity, where lower availability coincides with lower conflict intensity.

In fact, this shift in support cannot be wholly attributed to the ICC's intervention. Rather, Sudan's shift in position had begun prior, as it had been affected by the Nairobi agreement of 1999, and by the United States of America's decision to declare the LRA a terrorist organisation (Weezel, 2017, p. 5). Although this process was accelerated by the ICC's intervention, one cannot discount the effect which international actors may have on conflicts independently. Moreover, the large increase in conflict intensity which occurred throughout 2002 may also be linked to the launching of Operation "Iron Fist", which had the aim of damaging the LRA to a point where they could no longer wage war (Weezel, 2017, p. 5). However, not only did the operation fail in its goal (as the LRA remains active today) but, as shown in the graph, it has also led to an increment in conflict intensity as a result. The operation forced the LRA to flee to the North, causing the displacement of 2 million people at its peak and a sharp increase in atrocities in the region (Schomerus, 2012, p. 128). This failure has been attributed, in part, by

poor practices and morale within the NRA, alongside corruption and general unpreparedness of the army (Van Acker, 2004, p. 353).

Moreover, the LRA has spread across different territories and countries, meaning that some of the battle related deaths outside of Uganda are unaccounted for. The spillover of the LRA into neighbouring countries may be understood as a factor which helped alleviate conflict intensity within Uganda. The fact that the LRA moved through Sudan and into the Democratic Republic of Congo had two repercussions. It made the holding of peace talks and meditation to be more difficult, but it also transferred a lot of the fighting abroad. As a result, the Government of Uganda encountered difficulties to send forces into the neighbouring nations, whilst the LRA was weakened as it had to depart from its original bases, creating many smaller factions unable to organize themselves as effectively without the access to heavy weaponry (Le Sage, 2011, p. 1).

In sum, the ICC's investigation contributed to important military vulnerabilities due to the shift it caused in Sudan's position regarding the conflict, leading the LRA to be weakened, thus increasing the risks and costs which may have been incurred had the LRA decided to not partake in the "Juba" peace talks. This weakening of the LRA led them to have less resources and material to wage war at the same intensity as prior to the ICC's intervention. Nevertheless, other factors also played a role in contributing towards a decrease in conflict intensity, namely an important international momentum surrounding the conflict prior to the ICC's intervention, and a gradual weakening of the LRA through military operations which led to the LRA being excessively spread out in numerous territories.

Sudan

In contrast to the above case study, the statistical analysis suggests that following the opening of the ICC's investigation into the conflict of Darfur, conflict intensity increased. Sudan has been plagued by conflict, like many other countries in the region, since their independence of 1956 (Mans, 2004, p. 291). Whilst tensions in the southern region seemed to be abating, a new conflict was fermenting in the Darfur region between local Muslims and pro-government militias (Mans, 2004, p. 291). The motivations behind the main belligerent parties against the government, namely the Sudan People's Liberation Army, the Sudan People's Liberation Movement, the Beja Congress, and the Sudanese Justice and Equality Movement, arose from years of "marginalisation, poverty and backwardness" (ReliefWeb, 2004).

Strives for equality and democracy were also coupled with an important disparity in development between regions within Sudan. Sudan has been described as overly centralized, where the centre of power in Khartoum has been neglecting the interests of those settled in the periphery of the country (Prunier, 2006, p. 136). Moreover, religious divides over power emerged through the peace agreements of 2003, in which Darfuri Muslims were set to be excluded further from power, resulting in revolts (Prunier, 2006, p. 196). Nevertheless, the government pitted the Arab Muslims against the Black Muslims in the region, resulting in mass rape and killings in black villages (Prunier, 2006, p. 196).

An important disparity in comparison to the above case study is that whilst the Ugandan situation was referred through Uganda's own government, the situation in Sudan arose from the referral by the United Nations Security Council. Another difference of great importance compared to the Ugandan case is that the ICC's intervention culminated in an arrest warrant for Al Bashir, the then President of the Republic of Sudan (ICC, 2021). This point builds on the inferences that one may derive from rational choice theory, namely hypothesis 1.1; that if the indicted is a state-leader, conflict intensity is likely to increase. This rests on the idea that the incentive restructuring mechanism which was strong in the case of Uganda towards Joseph Kony, was much weaker in the case of Sudan due to the targets of the arrest warrants. Nevertheless, this effect has been further exacerbated by the fact that Sudan itself is not a signatory of the ICC's

Rome statute, meaning questions of sovereignty were also important in the situation in Sudan (ASP-ICC, 2021).

In fact, evidence supporting the hypothesis made under the inferences garnered from rational choice theory come from the warring parties against the Sudanese government such as the Sudanese Justice and Equality Movement, whose leadership stated that they would support the ICC's efforts to arrest Al-Bashir and other culprits, declaring that a lack of cooperation from Bashir would lead the conflict to intensify (Nouwen and Werner, 2011, p. 957). An important factor to note here however is that the arrest warrant for Al-Bashir was released in 2009, a year which, in the statistical analysis, coincides with another sharp increase in conflict intensity. Therefore, although this instance of a rise in conflict intensity may be attributed to the warrant rather than the investigation, it nonetheless gives us an indication of the long term effects which an ICC intervention may carry on conflict intensity.

Indeed, whilst the increase in 2009 is most clearly related to the culmination of the ICC's investigation through the arrest warrants for Al-Bashir and other high-ranking leaders, there are other factors which may explain change over time in conflict intensity in Sudan. Firstly, one must consider how the Comprehensive Peace Agreement (CPA) altered the dynamics of the conflict. It was hoped that the CPA, although it being mainly targeted towards the South of Sudan, would help alleviate conflict intensity in Darfur too (Brosché, 2008, p. 234).

The basis for this alleviation was that distinct rebel forces, having cooperated before against the National Congress Party in other regions alongside the SPLM, would be able to alleviate violence due to the integration of the SPLM within power (Brosché, 2008, p. 234). However, due to the relocation of governmental forces, and the poor implementation of the CPA, no such alleviation was achieved, and greater frustration arose within various belligerent parties (Brosché, 2008, p. 234).

In fact, not only did the Sudanese government relocate many of its forces, it also moved arms and other heavy military equipment into Darfur through disguised airplanes in 2007 (Hoge, 2007). Indeed, as stated prior in the literature review, and by a study by the International

Committee of the Red Cross (ICRC), “the widespread availability of arms... facilitate(s) the violations of human rights and conflicts within society” (1999, ICRC, p. 24).

Moreover, competition over land and cattle, coupled with the great segregation levels present in Sudan has led to a great number of communal conflicts to emerge (Brosché and Elfversson, 2012, p. 50). Indeed, between the years 1989 and 2010, there have been 28 communal conflicts, resulting in just under 8,000 deaths (Brosché and Elfversson, 2012, p. 46). As argued by Brosché and Elfversson (2012), communal conflicts may directly lead to the emergence of rebellions such as that in Darfur, and the failure to address the true scale and variety of conflicts with overly superficial peace agreements may help explain the fluctuations in conflict intensity within Sudan.

Overall, the ICC faced a wider range of challenges in the case of Sudan compared to that of Uganda. Firstly, strong rejection of the jurisdiction of the ICC augmented through the unveiling of the arrest warrant for Al-Bashir, a head of state, which helps explain why conflict intensity did not decrease when the ICC intervened, but rather increased as a result. Moreover, the commitment offered by belligerent parties to capture Al-Bashir may also coincide with increased violence to achieve such a goal. Finally, a combination of inadequate peace agreements and strong ethnical, religious and developmental cleavages hindered a successful alleviation of conflict intensity even when one does not consider the controversial effects which the ICC’s intervention carried in Sudan.

Democratic Republic of Congo

The case of the Democratic Republic of Congo (DRC), stands out due to the difficulties in drawing inferences from the analysis of the yearly battle related deaths, as no clear effect from the ICC's intervention may be identified when analysing the related graph. Whilst this has already been somewhat explained before, it nonetheless warrants further attention to understand why this specific case did not see the same effects which took place in Uganda or Sudan.

Similar to the cases of Uganda and Sudan, the DRC has also been plagued by violence as a result of colonial rule and the independence it gained in its aftermath. The DRC itself was formed in 1996 by Kabila, following the fall of Mobutu's oppressive government in the First Congo War (Davis and Hayner, 2009, p. 8). However, external influences such as those of Rwanda and Uganda led to the strengthening of the Congolese Rally for Democracy, an Eastern rebel group. When this group split, however, so too did the Ugandan and Rwandan support, who each supported smaller rebel factions. With such internal and external competition and cleavages, the country was divided into zones, controlled by the strongest group in the region (Davis and Hayner, 2009, p. 8).

This conflict seemed to have culminated in Kabila's assassination, whom was then succeeded by his son, who held peace talks and established a common army comprising the more influential rebel groups. However, new eastern rebel groups have continued to emerge, where conflicts over resources and identity have not been appropriately addressed by a weak and demoralized Congolese army. This has led to two main factions, the Democratic Forces for the Liberation of Rwanda (FDLR), and the National Congress for the Defense of the People (CNDP), to enter conflict against each other with the army supporting the FDLR more explicitly. All three groups, Congolese army included, made use of child soldiers and rape strategies to advance their interests, resulting in numerous violations of human rights (Davis and Hayner, 2009, p. 9).

The DRC's government formally referred the situation to the ICC in April 2004, and an investigation was established in June of the same year (ICC, 2021). The arrest warrants that arose from the investigation include warrants for FDLR and CNDP leaders, but also include

leaders of other rebels groups such as the convicted Thomas Lubanga, former leader of the Patriotic forces for the Liberation of Congo, and Germain Katanga, former commander of the Patriotic Resistance Forces of Ituri (ICC, 2021). Thus, when compared to the cases analyzed prior, the case of the DRC encompasses a much greater number of belligerent parties which are investigated, which may account for the diminished effects which the ICC's intervention seems to have had temporally.

Indeed, the impacts which the ICC intervention had on the DRC's levels of conflict intensity may be of a more long term nature than in the case of Uganda, mirroring the case of Sudan. Authors such as Broache (2016), have suggested that to truly identify the effects which the ICC's intervention had on conflict intensity in the DRC, one must look further than the years directly following the establishment of the ICC's investigation, which is where our statistical analysis stops. The arrest warrant released in 2008 for Ntaganda, for example, seemed to have little repercussions on the CNDP, leaving little fear within their leadership (Broache, 2016, p. 402).

In contrast to the two cases previously analyzed, the greatest contribution to a change in conflict intensity did not come as a result of the opening of an investigation, like in Uganda, or of the unsealing of arrest warrants for the state leader like in Sudan. Rather, it surrounds the verdict for Lubanga (Broache, 2016, p. 403). An important note here is that in Broache's analysis, civilian deaths are analyzed rather than battle related deaths, where following the verdict, the civilian mortality rate increased significantly (Broache, 2016, p. 399).

In contrast to the ideas previously presented by Jo and Simmons (2016), the successful arrest and trial of Lubanga did not lead to deterrence for the other belligerent parties, such as Ntaganda's CNDP, but instead coincided with the suggestions pointed out by Kersten (2016), whereby fear for arrest and attempts of power consolidation may result in increased violence as a result of ICC investigations, and in this case the culmination of the verdicts as a result (2016, p. 23). Indeed, as in Uganda, the successful verdict against Lubanga generated greater international momentum in seeking the arrest of other perpetrators, namely Ntaganda, and for a wider range of crimes than those tried in Lubanga's case (Human Rights Watch, 2014). The fear of arrest borne out of the proof that the ICC could successfully try and convict perpetrators of crimes against humanity in

the DRC led Ntaganda and defectors from the national army to create their own violent movement, that of M23, resulting in the taking of arms in an effort to protect themselves from arrest, leading to greater violence subjected upon civilians (Broache, 2016, p. 405).

Nevertheless, external factors such as the failure in the correct implementation of peace agreements may be said to have played an equally important role in generating greater violence in the DRC, as stated by the M23's founding statement, whereby a primary objective is to address said failed implementation (Human Rights Watch, 2012). Moreover, another external factor which contributed to a shift in conflict intensity, in this case a reduction, relates to the long-term internal divisions within M23 leadership, leading to the surrender of Ntaganda in the American embassy of Uganda (Human Rights Watch, 2021), subsequently weakening the M23 movement, and achieving the removal of a perpetrator of human rights violations from its command.

Therefore, in the case of the DRC, we can indeed see how the ICC's investigation, although not immediately, led to an important increase in conflict intensity as a result of the verdicts of the trial of Thomas Lubanga. Consequently, the proof that the ICC could indeed tackle impunity caused fear in other parties' leadership, who protected themselves through an escalation of violence. Nevertheless, un-implemented peace agreements may be said to have equally contributed to this rise in conflict intensity, whilst the eventual surrender of Ntaganda which was borne out of internal divisions within M23 leadership, helped alleviate conflict intensity.

Discussion

In this section of the thesis I will summarize the findings of the three case studies above, and attempt to highlight commonalities and key differences throughout the three case studies which may translate into conditions in which ICC interventions may have more or less impact on conflict intensity.

The conditions in which the ICC seems to thrive are cases in which the indicted is not a state leader, as the cases of Uganda and the DRC outline. Another important and related factor shared by both these cases is the fact that both countries are signatories and ratifiers of the Rome statute, which was not the case with Sudan. This would suggest that the ICC should target conflicts in which their jurisdiction is less likely to be opposed as this may create less alienation and violent reactions by the states who feel that their sovereignty is under threat.

A factor which perhaps helps explain why the intervention in Uganda was of greater success is the fact that Uganda had a lower number of communal conflicts, and a lower number of belligerent parties and fragmentation compared to those which were present in the cases of Sudan and the DRC. As a consequence, if the ICC seeks to contribute towards conflict resolution, it must also ensure that it can effectively cover the scope which the conflict it intervenes in provides. In addition to this, the ICC can attempt to release a greater number of unsealed warrants, in which the accused is not directly named, so to ensure that all parties in the war are aware of the court's threat, but without directly inflicting fear into leaders as was the case in the DRC with Ntaganda or in Sudan with Al-Bashir.

Another factor the ICC must consider is the international momentum which surrounds a case prior to its intervention. The case of Uganda shows how international cooperation, although not always straightforward, can help make up for the lack of enforcement mechanisms which the ICC possesses. In fact, when neighbouring states and other powerful nations create momentum around a case, it is more likely that the ICC can further weaken their target, rather than simply opening an investigation with little external support, in which the target of the investigation still maintains the military capabilities to retaliate violently. This may also be extended to the military

weakness of the target, even without external cooperation. As the case of Ntaganda in the DRC shows, when the leader is marginalized from their faction it is more likely for them to be willing to cooperate with the ICC. However, it is still hard to explain how this marginalization can take place without the ICC's intervention.

The above considerations lead the crux of the argument surrounding ICC interventions to become the following. The ICC must concede that political considerations hold an important place in determining how successful the court can be in contributing towards conflict resolution. Of course, whilst tackling impunity remains the primary goal of the court, and any attempts to help achieve such a goal must be encouraged, the ICC must consider to a larger extent the impacts its interventions have on conflict intensity. It is also important to recognize that it is difficult to truly posit the effect which the ICC carries vis á vis other determinants of conflict intensity. Nevertheless, the three case studies above delineate conditions in which it is more or less likely for the ICC to contribute in alleviating intensity in a conflict.

In conclusion, based on the three case studies above, the conditions in which an ICC intervention may help alleviate conflict intensity are various. The chances of alleviating conflict intensity are indeed greater when the indicted is not a state leader, leading hypothesis 1.1 to be accepted. Nevertheless, if a state leader is the target of an investigation, their membership within the ICC, and the use of unsealed arrest warrants, may help diminish the potential violent repercussions which such an intervention may cause. Furthermore, important international momentum must exist prior to the ICC's involvement, as the ICC alone does not have strong enough enforcement mechanisms to apprehend the indicted. Finally, the military strength and the extent to which a leader is marginalized plays a key role in determining whether the ICC will alienate or deter perpetrators of gross human rights violations and other crimes under the ICC's jurisdiction.

As a consequence, although not straightforward, I reject hypothesis 1, that ICC interventions exacerbate conflict intensity. In fact, I believe that under certain conditions, the ICC can achieve both goals within its mandate, and as a consequence it may maintain a greater track record. If the ICC concentrates on interventions which bring greater assurances regarding external conditions,

it will also be able to project greater prosecutorial deterrence, as a lesser percentage of its cases will go unsolved, and a stronger message against impunity will arise in ramification.

Conclusion

The above discussion enables me to answer my research question: *How do ICC interventions impact the levels of conflict intensity in the targeted country?* Under the conditions described above, namely in which the ICC targets interventions in countries which have not signed or ratified the Rome Statute, where the indicted is a state leader, where the ICC is unable to cover the entire scope of the conflict, and where little pre-existing international momentum is present, the ICC may contribute towards the increase of conflict intensity. Nonetheless, if such conditions are not present, there is a greater likelihood that the ICC may contribute towards alleviating conflict intensity, thus promoting its own goal of providing peace.

Nevertheless, the conclusions of this thesis have some limitations. Of greatest importance is the scope of the research itself. Whilst this thesis seeks to understand the impact of ICC interventions, it would be of greater value to be able to analyse different aspects of ICC interventions in their entirety, such as individually analysing the effect of arrest warrants on conflict intensity. Moreover, another limitation I encountered concerned data availability. Whilst this analysis focused on battle-related deaths, the data surrounding this indicator is sometimes lacking, and as the case of the DRC suggests, civilian deaths may be a better indicator for conflict intensity in some instances. As a consequence, merging these two types of data may provide a more complete picture in regards to the effects which ICC interventions carry on conflict intensity.

This leads me to suggest possible paths for future research. As this research outlined important indications of the effect which ICC interventions have on conflict intensity, it would be of interest to be able to posit this within the wider context of judicial interventions. Many have discussed the applicability of the ICC's western justice model, and how other forms of justice may be more fruitful in providing justice for victims. As a consequence, different forms of justice should be compared in their impact on conflict intensity, so as to be able to identify whether the ICC may be truly understood as the most appropriate form of judicial interventions in providing conflict resolution. Lastly, ICC interventions should also be compared to other forms of interventions such as economic sanctions and military interventions, in order to

understand which forms of interventions may best complement the international judicial interventions carried out by the ICC.

Bibliography

Allen, T. (2005). War and Justice in Northern Uganda: an assessment of the International Criminal Court's intervention. *London: Crisis States Research Centre, Development Studies Institute, London School of Economics*, 6.

Ali, N. (2014). Bringing the guilty to justice: Can the ICC be self-enforcing? *Chicago Journal of International Law*, 14(2), 408.

Annan, N. (2014). Violent conflicts and civil strife in West Africa: causes, challenges and prospects. *Stability: International Journal of Security and Development*, 3(1).

Broache, M. (2016). Irrelevance, Instigation and Prevention: The Mixed Effects of International Criminal Court Prosecutions on Atrocities in the CNDP/M23 Case. *The International Journal of Transitional Justice*, 10(3), 388-409.

Brosché, J. (2008). CPA–New Sudan, old Sudan or two Sudans? A review of the implementation of the Comprehensive Peace Agreement. In *Dahre, UJ Ed., Post-Conflict Peace-Building in the Horn of Africa*, 231-252.

Brosché, J., & Elfversson, E. (2012). Communal conflict, civil war, and the state: Complexities, connections, and the case of Sudan. *African Journal on Conflict Resolution*, 12(1), 9-32.

Davis, L., & Hayner, P. (2009). Difficult peace, limited justice: ten years of peacemaking in DR Congo. New York, USA: *The International Center for Transitional Justice*.

Duursma, A. (2020). Pursuing justice, obstructing peace: the impact of ICC arrest warrants on resolving civil wars. *Conflict, Security & Development*, 20(3), 335-354.

Fearon, J. D. (1995). Rationalist explanations for war. *International organization*, 49, 379-379.

Hayner, P. (2018). *The peacemaker's paradox: Pursuing justice in the shadow of conflict*. Routledge.

Herby, P. (1999). Arms availability and the situation of civilians in armed conflict-Summary of an ICRC study for the 27th International Conference of the Red Cross and Red Crescent. *Int'l Rev. Red Cross*, 81, 669.

Hoge, W. (2007, April 16). *Sudan Drops Objections to U.N. Aid in Darfur*. The New York Times. <https://www.nytimes.com/2007/04/16/world/africa/16cnd-nations.html>

Hultman, L., & Peksen, D. (2017). Successful or counterproductive coercion? The effect of international sanctions on conflict intensity. *Journal of Conflict Resolution*, 61(6), 1315-1339.

Human Rights Watch. (2021). *Bosco Ntaganda*. HRW. Retrieved on May 19, 2021, from <https://www.hrw.org/topic/international-justice/bosco-ntaganda>.

Human Rights Watch. (2012, September 11). *DR Congo: M23 Rebels Committing War Crimes*. HRW. <https://www.hrw.org/news/2012/09/11/dr-congo-m23-rebels-committing-war-crimes>.

Human Rights Watch. (2020). *ICC: Landmark Verdict a Warning to Rights Abusers*. HRW. <https://www.hrw.org/news/2012/03/14/icc-landmark-verdict-warning-rights-abusers>.

ICC: Landmark Verdict a Warning to Rights Abusers. (2012, March 14). Human Rights Watch. <https://www.hrw.org/news/2012/03/14/icc-landmark-verdict-warning-rights-abusers>.

International Committee of the Red Cross. (1999). *Arms availability and the situation of civilians in armed conflict: a study presented by the ICRC*.

International Criminal Court. (2021). *Situation in Uganda*. ICC-CPI. Retrieved May 19, 2021, from <https://www.icc-cpi.int/uganda>.

International Criminal Court. (2021). *Situations under investigation*. ICC-CPI. Retrieved May 19, 2021, from <https://www.icc-cpi.int/pages/situation.aspx>.

International Criminal Court. (2021). *Situation in the Democratic Republic of the Congo*. ICC-CPI. Retrieved May 19, 2021, from <https://www.icc-cpi.int/drc>.

International Criminal Court. (2021). *Darfur; Sudan*. ICC-CPI. Retrieved May 19, 2021, from <https://www.icc-cpi.int/darfur>.

International Criminal Court. (2021). *The States Parties to the Rome Statute*. ASP-ICC. Retrieved May 19, 2021, from <https://bit.ly/3v6RnXF>.

Jo, H., & Simmons, B. A. (2016). Can the International Criminal Court Deter Atrocity?. *International Organization*, 443-475

Kersten, M. (2016). *Justice in conflict: the effects of the International Criminal Court's interventions on ending wars and building peace*. Oxford University Press.

Ku, J., & Nzelibe, J. (2007). Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?. *Washington University Law Quarterly*, 84, 06-27.

Lacina, B. (2006). Explaining the severity of civil wars. *Journal of Conflict Resolution*, 50(2), 276-289.

Le Sage, A. (2011). *Countering the Lord's Resistance Army in Central Africa*. INSS.

Mans, U. (2004). Briefing: Sudan: the new war in Darfur. *African Affairs*, 103(411), 291-294.

Meernik, J. (2013). Justice, Power and Peace: Conflicting Interests and the Apprehension of ICC Suspects. *International Criminal Law Review*, 13(1), 169-190.

Min, E. (2020). Talking While Fighting: Understanding the Role of Wartime Negotiation. *International Organization*, 74(3), 610-632.

Nouwen, S. M., & Werner, W. G. (2010). Doing justice to the political: The international criminal court in Uganda and Sudan. *European Journal of International Law*, 21(4), 941-965.

Olzak, S. (1994). *The dynamics of ethnic competition and conflict*. Stanford University Press.

Prunier, G. (2006). The Politics of Death in Darfur. *Current History*, 105(691), 195-202.

Richmond, O. P. (2006). Patterns of peace. *Global Society*, 20(4), 367-394.

Rudolph, C. (2017). *Power and Principle : The Politics of International Criminal Courts*.

Schomerus, M. (2012). “They forget what they came for”: Uganda's army in Sudan. *Journal of Eastern African Studies*, 6(1), 124-153.

Scott, J. (2000). Rational choice theory. *Understanding contemporary society: Theories of the present*, 129, 671-85.

Snyder, J., & Vinjamuri, L. (2003). Trials and errors: Principle and pragmatism in strategies of international justice. *International security*, 28(3), 5-44.

Sudan: Western and eastern rebels forge alliance - Sudan. (2004, January 16). ReliefWeb. <https://reliefweb.int/report/sudan/sudan-western-and-eastern-rebels-forge-alliance>.

Uppsala Conflict Data Programme. (2021). *UCDP Dataset Download Center*. UCDP. https://ucdp.uu.se/downloads/index.html#ged_global.

Valentino, B. A. (2014). Why we kill: The political science of political violence against civilians. *Annual Review of Political Science*, 17, 89-103.

Weezel, S. V. (2017). The effect of civil war violence on aid allocations in Uganda.