

THE JURY IS STILL OUT ON INTERNATIONAL JUSTICE

BY JAMES RON
AND OSKAR N.T. THOMS

International criminal prosecutions, it seems, are higher than ever before on the global agenda.

This week, the Serbian government arrested Radovan Karadzic, the Bosnian Serb leader indicted for war crimes in 1995. By finally nabbing one of the world's most wanted men, Serbia sought to close the book on its role in the brutal Bosnian war, and secure its entry into the European Union.

Mr. Karadzic's dramatic Belgrade capture came only days after the chief prosecutor of the International Criminal Court (ICC) requested a warrant to arrest Sudan's ruler, Omar al-Bashir, for his role in atrocities in Darfur. Both the African Union and Russia have strongly protested, and Mr. Bashir's indictment is still not a done deal, as the ICC's judges still need to review the evidence.

Meanwhile, international justice is also making headlines in Canada. Last week, a prominent group of foreign policy figures castigated the Harper government for undermining international efforts to arrest Joseph Kony, leader of the Lord's Resistance Army, a brutal Ugandan rebel force.

One of the group's best known voices was Lloyd Axworthy, foreign minister under the Chrétien government and a long-time proponent of international justice. By supporting a deferral

of Mr. Kony's indictment, Mr. Axworthy argues, Stephen Harper's government is undermining the ICC's work and trashing Canada's reputation as a leader for justice.

What is the debate really about?

According to the ICC's critics, the Ugandan and Sudanese indictments are likely to derail ongoing peace talks and may even trigger renewed rounds of more intense fighting. Well-meaning human rights activists, critics argue, should not meddle in other peoples' wars, especially when they themselves will not suffer the consequences if things go awry.

According to ICC proponents, however, any attempt to tamper with its indictments will only reinforce the impunity that lies at the root of the problem. War crimes occur because military and political leaders have no fear of accountability, and the ICC is one of few institutions capable of creating real change. Moreover, failure to follow through with the indictments could set a dangerous precedent for the ICC's future work.

Who is right?

In a recent study supported by a Canadian government agency, we reviewed every piece of cross national social science evidence we could find on the effects of "transitional justice" in the aftermath of authoritarianism and armed conflict, including the type of international justice efforts now underway in Uganda and Sudan.

To our surprise, we found that there is scant evidence to support claims about transitional justice's positive, negative, or null effects. Although there is anecdotal evidence to support any number of claims, there is still little reliable, cross-national evidence based on appropriate comparative research methods.

Indeed, the very best studies acknowledge this state of affairs, explaining that it is difficult to reach any strong conclusions based on available research, due in part to limitations of existing data.

Given the intensity of the debate and its obvious policy significance, this conclusion came as a shock. Indeed, we were struck at how so many knowledgeable commentators had expressed such strong positions on the basis of so little reliable evidence. While the moral and legal rationales of international criminal justice are undeniable, the current impassioned debate deals in untested assumptions about effects.

What, then, should the Canadian government do?

Rather than adopt this or that policy, we must first recognize that we still don't have the answers, and that well-meaning policies could have harmful consequences. The government should encourage and support careful research efforts aimed at building up the international knowledge base on this crucial issue.

With only a modest investment of resources, government agencies and Crown corporations could initiate a series of Canadian and international studies, using state of the art methods to examine the effects of international justice across cases and regions.

This work should be done by multidisciplinary teams of scholars and practitioners, including political scientists, lawyers and anthropologists. And it must be done rigorously and impartially, avoiding the stridency and emotion that has coloured the debate until now.

The studies should be as carefully peer-reviewed and triple-checked as medical research studying the effects of new drugs. After all, thousands of lives hang in the balance, and many more civilians may die if we get this wrong.

At a time when its commitment to peacebuilding has been put into question, Canada could strengthen its reputation by becoming a world leader in the creation of policy-relevant knowledge.

The jury is still out on whether international justice helps, hinders, or has little discernable effect, but the question is absolutely vital. Canada can contribute here and now by advancing the debate in concrete ways, moving the international policymaking community in a more responsible and informed direction.

JAMES RON is associate professor at the Norman Paterson School of International Affairs (Carleton University), and a former Canada Research Chair of Conflict and Human Rights at McGill University. **OSKAR N.T. THOMS** is a visiting research associate at the University of Ottawa's Centre for International Policy Studies.