

Law & Justice

Justice versus politics in the



By Louise Arbour

To put ICC proceedings on hold in Darfur would send a dangerous signal to would-be war criminals that justice is negotiable and the UNSC can be held hostage to their threats

WHEN I announced the indictment of Slobodan Milosevic on May 27, 1999, at the height of the armed conflict between Serbia and NATO troops in Kosovo, many were dismayed. The conventional wisdom at the time was that the indictment by the

International Criminal Tribunal for the former Yugoslavia, where I was chief prosecutor, would make the situation in Kosovo worse. Some said it would likely prove fatal to the prospect of any compromise by Milosevic - that I had killed the chance for peace.

Predictably, Milosevic was

accepted the terms of a peace agreement and the war ended that month. Eighteen months later, a popular uprising swept Milosevic from office and he arrived in The Hague soon thereafter to face justice. If the United Nations Security Council had had the authority to stop my indictment, things might have ended

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contemptuous of the indictment and vowed that he would never face trial in The Hague. The Russian envoy to the Balkans said I had "pulled the rug out from under the negotiating process". Yet only a week later, Milosevic

differently. And that's precisely the issue now at the centre of a storm of controversy at the Security Council. How it is resolved will have serious implications for the International Criminal Court and for the cause of

international justice. Not long after the ICC prosecutor announced he was seeking an arrest warrant against Sudan's President Omar Al Bashir for orchestrating a genocidal campaign in Darfur, diplomats and political observers predicted the worst. President Bashir denounced the prosecutor's request and rejected the authority of the ICC altogether.

Within days the African Union and Organisation of Islamic Conference called on the Security Council to defer the case against Bashir, claiming it thwarted prospects for peace. They also feared retaliation against peacekeepers and humanitarian workers in Sudan. Nearly half of the Security Council has expressed support for a deferral.

The ICC statute does empower the Security Council to defer the ICC process. But such power was intended to be used extremely rarely, and then only to promote justice, not to prevent it from running its course. The ICC was founded on the principle that accountability for the world's most

serious crimes is a prerequisite for long-term peace and security. It is presumably with that in mind that the Security Council referred the Darfur case to the ICC in the first place in 2005. The assumption should be, as the Milosevic precedent has illustrated, that judicial and political processes can be

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To use a deferral for mere political convenience - or worse, to appease the threats of tyrants - would undermine the fledgling court. There is little hope for the promotion of the rule of law internationally if the most powerful international body makes it subservient

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The past decade has seen tremendous advances in showing abusive leaders that their crimes will have consequences. Since the mid-1990s, for the first time in history,

former heads of state have actually been brought to trial for human rights crimes.

To put ICC proceedings on hold in Darfur would send a dangerous signal to would-be war criminals that justice is negotiable and the Security Council can be held hostage to their threats.

The ICC has the ability to bring charges in real time, while conflicts are ongoing. This is not the first time, nor is it the last time, that we will face the question of whether justice interferes with peace. Indeed, these issues will arise more and more frequently. And it will often be very tempting to suspend justice in exchange for promises to end a conflict.

But if the Security Council decides in the coming weeks to interfere with court proceedings, it will vindicate those who believe politics can trump justice. That will undermine the progress the world has made so far in bringing the most powerful human rights abusers to justice for their crimes. COURTESY KHALEEL TIMES

The writer is former United Nations High Commissioner for Human Rights