Not a Crime to Talk

Legal Aspects of Dialogue with the Lords Resistance Army

1. In May 2006, at the behest of the Government of Southern Sudan, the government of Uganda announced that it would seek a negotiated settlement of its conflict with the Lords Resistance Army (LRA). After 20 years of war and several gains and setbacks, the LRA war has moved to the Democratic Republic of Congo, and its impacts now extend as far south as Northern and Eastern Uganda and straddle three countries: what started as an offshoot of local insurgency has evolved into a truly regional problem. The authorities in Southern Sudan therefore concluded that they should not, in addition to the immense challenges of rebuilding their country, have to deal militarily with the LRA. For them the LRA/Uganda conflict is not a priority and is capable of a Ugandan solution. Yet Juba's simple idea that the two parties should talk rather than wage war on Southern Sudanese territory has raised a chorus of protest from various international actors, especially human rights organisations and other States Parties to the Rome Statute of the International Criminal Court (ICC).

2. In the light of the ICC's interest in leaders of the LRA, legal obstacles to talks have widely been cited as precluding dialogue with the LRA. One refinement of the objections is that neither country should engage with individuals in relation to whom arrest warrants have been issued; any talks should concentrate on wooing 'middle ranking' members of the LRA. This note analyses the validity of these objections in the light of the Rome Statute, and more broadly considers the duties of the two governments of Uganda and Southern Sudan to establish peace on their territories. It will in particular be contended that there are no legal impediments to pursuing a negotiated settlement to the LRA conflict. Instead, all other imperatives require that the search for peace should be the priority of all parties concerned.

The Rome Statute – A History: Ugandan and Sudanese Obligations

3. In the summer of 1998, over 100 states converged on the Italian capital to negotiate what became the Rome Statute of the International Criminal Court. The treaty came into force on 1st July 2002, following the 60th ratification. Uganda formally deposited instruments of ratification of the Treaty on 14 June 2002 – this was after the 60th ratification and accordingly for Uganda the Statute came into force on 1 August 2002. At the international level, Uganda will be regarded to have ratified the Rome Statute. At the national level, this is the subject of constitutional litigation - the outstanding dispute is whether or not, owing to the constitutional significance of the Rome Statute, it was for the Ugandan Parliament alone rather than the Cabinet to ratify the treaty.

4. In December 2003, acting in accordance with Article 14 of the Statute, and against the background of the situation in northern Uganda and within Sudan, Uganda made a referral of the situation in Northern Uganda to the Prosecutor of the International Criminal Court. The referral was widely criticised as politically motivated (to expose the Khartoum Government's complicity with the LRA) and partial (insofar as it focused only on the LRA). Those matters aside, the referral triggered an investigation (formally commenced in July 2004) at the end of which the ICC Prosecutor applied to the Pre-Trial Chamber (PTC) for issuance of warrants of arrest against five senior members of the Lord's Resistance Army (LRA). On 8 July 2005 the warrants were issued under seal pursuant to Article 58 of the Rome Statute, the Chamber being satisfied as to the evidence adduced in their support. On 13 October 2005, the judges ordered the unsealing of the warrants of arrest. The decision on the arrest warrants was transmitted to the governments of Uganda and Sudan (Khartoum) along with a request for arrest and surrender of the five individuals. In the case of Uganda the request would have been made pursuant to Articles 89 and 91. Under Article 89 (1) States parties shall in accordance with the provisions of the Statute, "and the procedure in their national law, comply with requests for arrest and surrender".

5. Sudan, however, is not a State Party to the Rome Statute and any invitation to provide assistance would have to be under an alternative arrangement – in this case, reportedly, a bilateral agreement. Such arrangements are governed by Article 86 (5) of the Statute which uses language reflecting the fact that the state in question has not assumed all the obligations under the Statute. Thus the Court 'invites' rather than 'requests', the non-State Party to cooperate in providing assistance. The consequence of a failure by a non-State Party to cooperate with the invitation of the Court is that the Court may then inform the Assembly of States Parties (ASP) or, where the Security Council has referred the matter to the Court, the Security Council (Article 86 (5) (b)). In the light of the above, the Government of Southern Sudan would have to examine the current constitutional instruments as well as the 2005 Comprehensive Peace Agreement (CPA) to determine whether the undertakings to the ICC made by Khartoum constitute binding obligations upon it; and in particular whether other obligations arising in particular out of the CPA take precedence. In making any determination on this issue, it is relevant that the situation in relation to northern Uganda, unlike the case of Darfur, was not referred to the ICC by the Security Council, and has not been based on any resolution of the Security Council.

Justifying Peace Talks

6. Although the invitation by President Salva Kiir to the government of Uganda to participate in peace talks with the Lord's Resistance Army came as a surprise to some observers, this was not the first time the new government of Southern Sudan has intimated that the conflict should be addressed through dialogue. The late President, Mr John Garang, had publicly stated that the expulsion of the LRA from Southern Sudan was a priority but had also added that the group should talk to the government of Uganda. The Uganda government's position on this issue has constantly moved between entertaining the idea of talks and pressing for exclusively military means for

ending the conflict. Although Uganda has often appeared to bolt the door against dialogue, it is fair to note that it has unbolted it several times and sometimes, like now, has left the door slightly ajar.

7. With a seemingly flexible policy on resolving the LRA issue, and in the environment of ICC involvement in Uganda it is not surprising if there has been some confusion as to the government's stance. This flux reflects the complexity of the issues raised by insurgency in Uganda, and which face Southern Sudan as well. In Uganda, perhaps the firmest policy line has been the establishment and the sustenance of the Amnesty Act 2000, which grants a comprehensive amnesty for all crimes relating to rebellion. That Act remains in force, albeit with amendments which exclude repeat offenders. Since May 2006, those whom the Minister endorses and Parliament confirms as ineligible for the amnesty are also excluded (see Section 2A). That is the extent of the changes. The Amnesty Act process remains the most consistent intervention to resolve conflict by promoting reconciliation and offering alternatives to formal prosecutions. Its capacity to address issues of accountability is discussed below.

8. In the light of the difficult issues they face, treating Ugandan and Southern Sudanese dilemmas over the LRA issues as casual attempts to circumvent international law is simplistic and unfair. Certainly neither state can credibly be accused of conspiring to shield members of the LRA from justice; they contemplate talks with the group because their populations, for whom they bear primary responsibility, have suffered and might continue to suffer needlessly the effects of war. Uganda and Southern Sudan deem, at least some of the time, the price of continued war to be too high to pay. The issues they are now grappling with go to the heart of what international justice stands for. Fundamental questions about the nature of state sovereignty, and the nature of the duty states owe to their nationals are thereby raised. How should the two countries resolve these tensions between national interests and apparent international obligations, and what should the role of the international community be as they confront these issues?

Are there International Legal Obstacles to Talks?

9. No national laws prevent talks with the LRA. Indeed the Amnesty Act expressly reflects the policy of promoting dialogue (see new Section 8 – formerly 9). The charge that ICC or other international obligations preclude dialogue with the LRA however requires to be answered by reference to relevant principles of international law and specific treaty texts. In general: in order to determine what obligations a state has assumed under a treaty or agreement, one must look at the provisions of that treaty or agreement; in order to determine what obligations a state can lawfully fulfil one must look at the State's national law and realities; in order to determine what obligations a state should fulfil, that State must consider for itself, in exercise of its sovereign rights, its competing obligations and interests—this is essentially a political question.

10. The first point of law relates to the objects of international legal order. International law has always considered its primary purpose to be the maintenance or peace. The same approach as between states applies by analogy to conflicts between states and non-state actors. The purposes of the United Nations are set out in Article 1 of the United Nations Charter as the maintenance of international peace and in particular to take measures for the prevention and removal or threats to the peace by peaceful settlement (in this respect the agonised debate about Iraq in the lead-up to the invasion illustrates the importance attached to avoiding war). That the LRA insurgency and activity is a threat to regional peace is indisputable, as recognised by Security Council Resolution 1653. Therefore **a state which acts to neutralise a threat to regional peace, through a peaceful settlement, acts to fulfil the purposes of the UN Charter**. There can be no obligation more fundamental than this.

11. The second principle for consideration is the general principle of international criminal law, which attributes criminal liability exclusively to individuals. This approach applies to the Rome Statute as well and is enshrined in Article 25, which limits criminal responsibility to individuals who commit any of the outlawed acts or otherwise contribute to the commission of those acts. Therefore, under the Rome Statute, organisations, such as the LRA, however reprehensible their actions might be considered, cannot be the subjects of criminal processes. **Only specified individuals within the LRA are susceptible to international criminal processes**. Although ICC documents and statements relating to the situation in northern Uganda might refer to the LRA, this is simply to clarify the circumstances of the allegations, and does not detract from the principle of individual responsibility. Five individuals have so far been identified for prosecution. It is in relation to them, and not the organisation to which they are said to belong, that any issues should be raised.

12. In any event, the specific obligations imposed under the Rome Statute is for States and others to arrest and surrender persons in relation to whom warrants of arrest have been issued. Arguably, that obligation is only effective where there is a demonstrable capacity to effect the arrest and surrender. It must then follow that **an allegation of a breach of obligations cannot be made out unless it is demonstrated that there was a realistic possibility of effecting an arrest or surrender**. Are Ugandan officials taking part in talks in Southern Sudan in a legal or practical position to arrest and surrender individuals? It would appear not.

13. The Southern Sudanese position is slightly different. Although the LRA is on its territory, there are still immediate and intermediate obstacles to be examined. It is clear that the leaders of the group are not readily arrestable. Meetings between the LRA and the authorities of Southern Sudan have reportedly been held under elaborate security arrangements which preclude the possibility of arresting the LRA leaders. More substantively, **the Southern Sudanese authorities are entitled to decline to attempt arrests if that invariably leads to war.** They are obliged to factor the humanitarian, economic and political costs of fomenting further violence and political strife on its recovering territory. It is therefore quite unrealistic to simply repeat to

the Southern Sudanese the language of international obligations, without recognising the enormity of the consequences for them.

Is Uganda Planning to Shield Individuals form Justice?

14. Perhaps the more fundamental objection to talks with the LRA stems from the suspicion that a negotiated settlement would lead to the shielding of individuals from ICC justice, and would thus promote impunity for serious crimes. The real issue here is whether Uganda is entitled within its sovereign competence and the provisions of the Rome Statute to assume responsibility for dealing with the LRA at the national level. That choice, if it were exercised in the context of talks, would raise other issues as to the treatment accorded to individuals. It is worth noting that **the Rome Statute gives a primary role to Uganda which has jurisdiction over the alleged crimes to assume responsibility for dealing with the relevant offending**. Thus Uganda, despite making the initial referral to the ICC Prosecutor, may legitimately assume and assert its right to exercise jurisdiction over its own nationals.

Assuming Responsibility for LRA Issue (i)
Complementarity and Admissibility Issues.

15. At the time the Rome Statute was negotiated, many states were keen to retain the principal responsibility for crimes committed within their jurisdiction. They resisted the idea that the prosecutor of the proposed court should be able to initiate or take over proceedings were the state was able and willing to exercise criminal jurisdiction over its own nationals. Thus the principle of complementarity emerged (see paragraph 10 Rome Statute Preamble), which recognised the primacy of the state, but also addressed the concerns about impunity by allowing the Court to proceed where states proved unable or unwilling to exercise jurisdiction themselves. As a result, admissibility criteria have been developed for governing the respective roles of states parties and the Court.

16. Admissibility of a case should be distinguished from jurisdiction. The latter relates to the type of crimes the Court may deal with - is this one of the crimes listed in Article 5 (i.e. Genocide, Crimes against humanity or war crimes) and to whether the crimes have the necessary links to the Court through the criteria of Article 12, or through referral by the Security Council under Article 13 (b). On the other hand, **admissibility questions concern which body/forum should exercise jurisdiction over the offending conduct** – should it be the ICC or the authorities of another State with jurisdiction. Thus a state might have jurisdiction over the crimes but lack the will or capacity to deal with the criminal conduct. In those circumstances the case would be admissible before the ICC.

17. Where a state having previously been unable or unwilling to deal with a case regains its capacity and desire to address the offending, the Rome Statute does not prevent it from asserting its jurisdiction. That state's change of stance would certainly be subjected to scrutiny (applying Articles 17, 19 & 20), but the principle is unassailable. Pursuant to Article 17, Uganda is entitled to raise

admissibility issues in relation to the five warrants in three circumstances: (a) on grounds that it is investigating or prosecuting the case; (b) on grounds that it has investigated the case and decided not to prosecute the individual concerned; and, (c) that the individual has already been tried for the conduct in circumstances which would subject them to double jeopardy (ne bis in idem – Article 20) if they were again to be tried again by the ICC.

18. In summary, admissibility is a legitimate question of law, whose parameters are set out in the Rome Statute and for which an adversarial adjudicatory mechanism has been provided for under the Rome Statute. Ultimately it is a question for the judges in the light of the facts adduced by the parties. Thus, although third states and other bodies or, indeed, organs of the Court itself, might be sympathetic to ICC trials, they ought not to pre-empt a judicial process or give the impression of pre-judging the merits of possible applications by Uganda. In preparation for possible arguments, Uganda is entitled to the space and time to reflect more carefully on how to approach what would undoubtedly an involved legal question. The country is within its sovereign rights to prepare to assume responsibility for the crimes. In so doing, it would not be acting inconsistently with the Rome Statute.

Assuming Responsibility for LRA Issues (ii)
Alternative Proceedings; National Regional Interests – Article 53

19. The alternative to assuming jurisdiction under admissibility procedures is for Uganda to pursue a determination that a prosecution would not be in the interests of justice. Under Article 53, the prosecutor has the discretion to discontinue prosecution where he considers that to do so would not serve the **interests of justice**. Where the prosecutor so decides, the Pre-Trial Chamber would almost invariably subject that decision to review using its powers under Article 53 (3) (b). An aspect of this power which deserves to be explored in further detail, is whether and when Uganda can trigger the prosecutor's assessment or the Pre Trial Chamber's review of the interests of justice. It is certainly arguable by that a failure by the prosecutor to discontinue a prosecution, where good grounds exist is justiciable. In practical terms this means that Uganda is entitled to prepare to make submissions along Article 53 lines. That too requires time, in order for the state to be of the greatest assistance to the judges and the prosecutor.

20. Uganda could certainly come to argue quite robustly that prosecutions are not in the interests of justice. This is especially true where the dividends of a settlement are shown against the adverse impacts of war for the region using a range of social, economic and humanitarian indicators. These matters can easily be empirically established. An additional **justification for determining that a prosecution is not in the interests of justice could rely on the efficacy of alternative accountability mechanisms.** Evidence that such national proceedings are able to establish the relevant facts of wrongdoing; the extent of victims' participation; national or regional satisfaction with the proceedings, and the healing outcomes of such procedures are all factors going to the assessment of whether or not ICC trials are in the interest of justice.

21. Furthermore, a national process which addresses the past comprehensively, is arguably a pre-requisite for national reconciliation and stability. It is also in the interests of the region, which experiences the spillover of Ugandan violence, that the country should deal thoroughly with its past. Where the mechanisms adopted by Uganda include a robust accountability process giving opportunity for the widest range of victims to participate in proceedings; this would arguable accomplish immeasurably more than the highly targeted and temporally limited prosecutions envisaged by the ICC - instead of a preoccupation with 2 years, Uganda would be concerned to address 20 years of violence. Excluding the key leaders of the LRA insurgency from a national process arguably subverts the objects of reconciliation and would undermine any impetus for a more comprehensive national accountability.

Relevance of Southern Sudan Interests

22. Uganda, like many other members of the international community, has historically supported the aspirations of the people of Southern Sudan. At the time the referral of the northern Uganda situation was made, the political situation in Southern Sudan was quite different. Khartoum remained the de jure authority in that territory. After the signing of the Comprehensive Peace Agreement in January 2005, the political dispensation and priorities in Southern Sudan are now markedly changed. For reasons beyond the control of either government, the stability of Southern Sudan now depends on how the LRA issue is handled. Because of the manner in which its interests are affected by the handling of the LRA issue, the government of Southern Sudan would be entitled to make appropriate representations to the ICC on this issue, if it so wished. The calls to the Southern Sudanese to arrest and hand over LRA leaders mask their real menace: they amount to a summons to war. Can it be right that international obligations should require the fledgling government of Southern Sudan to go to war against the LRA at this time? How does it serve the purposes of international law to prolong conflict in Southern Sudan? Shouldn't consolidating the Comprehensive Peace Agreement be the overriding priority for Southern Sudan today?

Alternatives to formal Prosecutions – Accountability and Amnesty Procedures

23. Despite popular impressions, the Rome Statute is silent on the question of amnesties. This derives from the lack of consensus on the issue during the negotiation process. While some states argued that truth and reconciliation processes would satisfy the requirements of justice, others pressed for strictly prosecutorial approaches. Although the preamble refers to a duty to exercise criminal jurisdiction, the Rome Statute does not impose an obligation to prosecute any crimes, unlike, for example, the UN Convention Against Torture (which Uganda has ratified but has not incorporated into national law). There is as yet no consistent state practice, despite decisions of international courts and tribunals or legal views (opinio juris) from which a duty to desist from introducing amnesty laws could be inferred. Commentary on this issue often consists of bald assertions that all amnesties violate international law. Neither customary international law nor the Rome Statute provides an authoritative conclusion on this issue.

24. All this means that the work of the Uganda Amnesty Commission cannot, without scrutiny of the treatment of individual cases and circumstances, be faulted on international law grounds. The Amnesty Act requires that those who seek amnesty must come in good faith, having genuinely abandoned rebellion and crimes related to rebellion. They must be prepared to formally renounce their activities. In addition, it is a core function of the Commission to promote dialogue and appropriate mechanisms of reconciliation in areas affected by rebellion. The Commission is also charged with the task of reintegrating former combatants into the community. These **three broad requirements of: good faith; reconciliation; and, reintegration, provide a sufficient basis for the Amnesty Commission to require individuals seeking reconciliation to undergo specific and thorough accountability procedures**.

25. An independent process overseen by the Amnesty Commission should therefore provide an adequate mechanism to held Ugandans to confront and address the legacy of the violence and the feelings of political exclusion in northern Uganda which triggered conflict. An alternative process with thorough fact-finding; a participatory in approach; and, a conciliatory effect on communities should provide a solid basis for seeking the deference of the ICC to national procedures. Already, the Amnesty Commission has developed some thinking on this issue and the government should actively support those efforts to advance these vital aspects of the Commission's mandate.

Conclusion

26. States which like Uganda and Southern Sudan experience destructive and intractable war, face legal, moral and political dilemmas in dealing with the situation. Their duties to protect their nationals invariably conflict with ostensible legal obligations to prosecute or cooperate with the prosecution of those suspected of committing crimes. They have to weigh the costs and benefits of each intervention, even that of international justice, against the widest range of criteria. Although initially making the referral, the Rome Statute nevertheless entitles Uganda to assert its right to exercise jurisdiction over crimes affecting and committed by its nationals. That is a legal question to be determined in accordance with Article 17 and 19 of the Statute. The country might also legitimately contend that prosecutions do not serve the interests of justice, in the light of Article 53, taking into account a broad range of issues internal to Uganda and affecting the region, particularly Southern Sudan. That too is a submission it is entitled to prepare and make. None of these avenues is inherently unlawful and should not be treated as such. All those who consider that the pursuit of peace in Uganda, Sudan and Congo is a worthy objective can encourage the Ugandan authorities to seek solutions which are consistent with the Rome Statute. That treaty should not be viewed as though it were merely a Prosecutors Charter, but as epitomising broader conceptions of justice which are sensitive to the price that communities pay for conflict and which respect the sphere of state sovereignty. Uganda therefore deserves the space and time to respond in the most appropriate manner, and in the national and regional interest, to the challenges posed by

the activities of the Lords Resistance Army (LRA). Its overriding duty is arguably to seek an end to the devastating damage that LRA activity has imposed on the region.

25 June 2006

Annex

Selected Provisions of the Rome Statute of the International Criminal Court

Article 17 (1)
Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.
(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine the unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international aw, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
(b) There has been an unjustifiable delay in the proceedings which in the circumstances is inconsistent with bringing the person concerned to justice;
(c) The proceedings were not and are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out the proceedings.

Article 19
1.The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.
2.Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the court may be made by:

(a) An accused person or a person for whom a warrant of arrest or a summons to appear has been issued under article 58.
(b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or
(c) …..

3. The prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take lace prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on Article 17, paragraph (c).

Article 20

3. No person who has been tried by another court for conduct also proscribed under article 6,7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
   (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
   (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognised by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Under **Article 53**, the prosecutor may determine that a prosecution is not in the interests of justice.

Article 53 (2) (c):

If, upon investigation, the Prosecutor determines that there is not a sufficient basis for a prosecution because: a prosecution is not in the interests of justice, taking into account all the circumstances, including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator, and his or her role in the alleged crime; the Prosecutor shall inform the Pre-Trial Chamber and the State making the referral under article 14 or the Security Council in a case under article 13, paragraph (b), of his or her conclusion and the reasons for the conclusion.

Article 53 (4)

The prosecutor may, at any time, reconsider a decision whether to initiate an investigation or prosecution based on new facts of information.

Arrest Proceedings in the custodial State

Article 59

1. A state party, which has received a request for provisional arrest or for arrest and surrender, shall immediately take steps to arrest the person in accordance with its laws and the provisions of Part 9.

Article 68

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in

article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

Provisions of the Rules of Procedure and Evidence (RPE) of the International Criminal Court

Rule 58
Proceedings under article 19

1. A request or application made under article 19 shall be in writing and contain the basis for it.
2. When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing. It may join the challenge or question to a confirmation or a trial proceeding as long as this does not cause undue delay, and in this circumstance shall hear and decide on the challenge or question first.
3. The Court shall transmit a request or application received under sub-rule 2 to the Prosecutor and to the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons, and shall allow them to submit written observations to the request or application within a period of time determined by the Chamber.
4. The court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility.

Rule 59 imposes an obligation on the Registrar to inform affected parties of a request under Article 19, including those who have communicated with the Court in relation to that case.

Rule 106
Notification of a decision by the Prosecutor not to prosecute.

1. When the Prosecutor decides that there is not a sufficient basis for prosecution under article 53, paragraph 2, he or she shall promptly inform in writing the Pre-Trial Chamber, together with the State or States that referred a situation under article 14, of the Security Council in respect of a situation covered by article 3, paragraph (b).

2. The notifications referred to sub-rule 1 shall contain the conclusion of the Prosecutor and, having regard to article 68, paragraph 1, the reasons for the conclusion.