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There's a good reason that joining the International Criminal Court, or ICC, hasn't been meaningfully considered since Clinton. The ICC has proven to be one of the most ineffective global institutions to date. The Columbia Law Review in 2021 made it clear:

Columbia Law Review 21:

Roundtable Contributors, 1-9-2021, "Roundtable #6", Columbia Undergraduate Law Review, https://www.culawreview.org/roundtable-1/roundtable-discussion-the-promises-and-problems-of-the-international-criminal-court // ag 🐌

When it comes to the initiation and execution of proceedings before the ICC, **there are recurring practical issues that hinder the Court's mission in two ways: by delaying the administration of justice and by preventing the very chance of seeing [it] justice done [at all] in the first place. ICC proceedings are** patently **slow-moving. Investigations can span years, if not decades; for instance, proceedings in Uganda that began in 2004 have still not concluded.** [8] Such delays are a serious problem for ensuring that victims obtain the justice that they deserve. While it may be argued that justice cannot be rushed, injustice can easily arise from excessive delay. The possibility of procedural delays and injustice is only exacerbated by the Court's limited resources. Indeed, the Court's thirteen ongoing investigations and ten preliminary examinations put significant strain on its workforce of only 900. [9] [10] Beyond these administrative failings, the ICC's reliance on the cooperation of member states to enforce warrants and surrender fugitives is arguably an even greater threat to the organization's efficacy. Although such cooperation has often been forthcoming, **any Court that must rely on the acquiescence of a third party to bring proceedings cannot truly be considered an effective judicial body.** As individual states may simply ignore a warrant or request from the ICC, they have the potential to substantially interfere in the effective administration of justice. The comments made here do not paint a positive picture for the ICC. **Its legitimacy and authority have been validly questioned, and the ICC has been critiqued as being biased and open to significant abuse. Indeed, any effective judicial action by the ICC is heavily limited by administrative and procedural barriers.** While the institution itself is not an absolute failure, there is a clear need for reform to ensure the legitimate and effective administration of justice.

But beyond that, there are three clear reasons acceding to the Rome Statute and joining the ICC would be detrimental.

Crushing the Constitution

Not only is the ICC ineffective, but it violates the Constitution.

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Lee A. Casey [Lee A. Casey is a lawyer and partner at BakerHostetler], "The Case Against Supporting the International Criminal Court," Washington University Law School, https://law.washu.edu/wp-content/uploads/2018/10/The-Case-Against-Supporting-the-International-Criminal-Court.pdf

The United States should not ratify the ICC Treaty. There are two fundamental objections to American participation in the ICC regime. First, **U.S. participation would violate our Constitution by subjecting Americans to trial in an international court for offenses otherwise within the judicial power of the United States, and without the guarantees of the Bill of Rights.** Second, our ratification of the Rome Treaty would constitute a profound surrender of American sovereignty, undercutting our right of self government – the first human right, without which all others are simply words on paper, held by grace and favor, and no rights at all.

With respect to the Constitutional objections, **by joining the ICC Treaty, the United States would subject American citizens to prosecution and trial in a court that was not established under Article III** of the Constitution for criminal offenses otherwise subject to the judicial power of the United States. This, it cannot do. As the Supreme Court explained in the landmark Civil War case of Ex parte Milligan (1866), reversing a civilian's conviction by a military tribunal, "[e]very trial involves the exercise of judicial power," and courts not properly established under Article III can exercise "no part of the judicial power of the country."2

This rationale is equally, and emphatically, applicable to the ICC, a court where neither the prosecutors nor the judges would have been appointed by the President, by and with the advice and consent of the Senate, and which would not be bound by the fundamental guarantees of the Bill of Rights. In fact, individuals brought before the ICC would only nominally enjoy the rights we in the United States take for granted. For example, the ICC Treaty guarantees defendants the right "to be tried without undue delay." In the International Criminal Tribunal for the Former Yugoslavia (an institution widely understood to be a model for the permanent ICC), and which also guarantees this "right," defendants often wait more than a year in prison before their trial begins, and many years before a judgment actually is rendered. The Hague prosecutors actually have argued that up to five years would not be too long to wait IN PRISON for a trial, citing case law from the European Court of Human Rights supporting their position.3 Such practices, admittedly, have a long pedigree, but they mock the presumption of innocence. Under U.S. law, the federal government must bring a criminal defendant to trial within three months, or let him go.4

By the same token, the right of confrontation, guaranteed by the Sixth Amendment, includes the right to know the identity of hostile witnesses, and to **[not] exclude most "hearsay" evidence**. In the Yugoslavia Tribunal, both anonymous witnesses and virtually unlimited hearsay evidence have been allowed at criminal trials, large portions of which are conducted in secret. Again, this is the model for the ICC.

Similarly, under the Constitution's guarantee against double jeopardy a judgment of acquittal cannot be appealed. Under the ICC statute, acquittals are freely appealable by the prosecution, as in the Yugoslav Tribunal, where the Prosecutor has appealed every judgment of acquittal.

In addition, **the ICC would not preserve the right to a jury trial**. The importance of this right cannot be overstated. Alone among the Constitution's guarantees, the right to a jury trial was stated twice, in Article III (sec. 2), and in the Sixth Amendment. It is not merely a means of determining facts in a judicial proceeding. It is a fundamental check on the abuse of power. As Justice Joseph Story explained: "The great object of a trial by jury in criminal cases is to guard against a spirit of oppression and tyranny on the part of rulers, and against a spirit of violence and vindictiveness on the part of the people."5 It is "part of that admirable common law, which had fenced round, and interposed barriers on every side against the approaches of arbitrary power." That said, the exclusion of jury trials from the ICC is not surprising, for that Court invites the exercise of arbitrary power by its very design.

Dismantling US-court driven constitutionalism collapses the rule of law and democracy. Redish and Heins '16

Martin and Matthew; 2016; Professor of Law and Public Policy at the Northwestern University; J.D. from Northwestern University, B.A. from the University of Southern California William & Mary Law Review, "Premodern Constitutionalism," https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3651&context=wmlr; RP]

The argument Kramer and others advance is not only normatively unpersuasive, it is also **logically untenable** in light of the **structural Constitution** and the basic premises of American constitutionalism. As we explained in Part I, the traditionalist view understands the value of counter-majoritarian checking as a political mechanism for enshrining

skeptical optimism, which can be readily deduced from the Constitution's structural design. Our constitutionalism is thus principally concerned with **facilitating democracy** while promoting **rule of law** values and protecting minorities.296 The reality is that any argument that temporary majorities or the governmental bodies that are directly accountable to those majorities are either more capable or more suitable arbiters of constitutional meaning ignores the careful **framework** for promoting these values that was etched into our **supreme law** at the constitutional convention. Our proclaimed unflagging **commitment** to **due process** of law, the existence of a supreme document ratified by super-majoritarian movement and subject to formal alteration only through a super-majoritarian process, and our provision of a politically insulated judiciary are all brightly **flashing signals** that our system understands the importance of speed bumps to slow majorities down. Popular constitutionalism seems to forget – or intentionally ignore – all of this. 297 Mark Tushnet's case against judicial supremacy directly takes on Larry Alexander's and Frederick Schauer's defense of judicial review.298 Alexander and Schauer assert that without judicial supremacy we would have a system of **interpretive anarchy** on our hands.299 The role of the Supreme Court, say Alexander and Schauer, is to provide a single **authoritative interpreter** to which others must defer, to serve the settlement function of the law. 300 Tushnet responds that when it declares that Congress has overstepped its bounds, the Court justifies its behavior using the self-interestedness of the Congress: Congress is self-interested when it defines the scope of its own power. Members of Congress have an interest in maximizing their own power by expanding their sphere of power and responsibilities. Any decision [Congress] make[s], no matter how fully deliberated, will be shaped, and perhaps **distorted**, by this self-interest. 301 But this is an objection equally available to those who would question the Court's version of judicial supremacy, because the judiciary is just as apt to act self-interestedly and expand its own power.302 This position runs directly contrary to the basic principles underlying the structural Constitution. Tushnet's argument essentially ignores the fact that the judiciary was built to be (1) limited in active power, and (2) **counter-majoritarian**, staffed by insulated judges with salary and tenure protections. With the exception of issues surrounding its own powers, the judiciary is **uniquely** positioned to serve as the neutral adjudicator that can settle disputes as to the **boundaries** between executive and legislative, as well as federal and state branches. More importantly, if the judiciary were not tasked with settling the boundaries of majoritarian power, there would be no counter-majoritarian **check at all**, and the Constitution would **essentially be meaningless**. And even as to its own power, the Court's authority – unlike that of Congress or the President – is confined to a **passive** role, awaiting cases to adjudicate.303 It therefore makes sense to give the Court final say as to its own constitutional power in order to protect its counter-majoritarian role.304 Under a regime of judicial supremacy, the judiciary is no more capable of **aggrandizement** than is Congress. Professor Tushnet looks to City of Boerne v. Flores to show how the Court **gives deference** to Congress and assumes laws are constitutional because Congress has a duty to support the Constitution, but the Court does not give deference to congressional **redefinitions** of its own power because Congress is self-interested.305 But, he argues, the Court is no less self-interested because every institution with both power and the ability to aggrandize it will seek to expand or enhance that power.306 Both of Professor Tushnet's proof points are flawed. The Court is **no more empowered** to engage in self-aggrandizement than is Congress, considering that Congress is arguably capable of simply stripping the federal courts of jurisdiction (within constitutional limits) whenever it chooses.307 Why would it be, under Tushnet's theory, that the Framers would devise a constitutional system in which the Congress could be trusted to determine the scope of its own power, disregarding judicial pronouncements of the limits of that power, and then could strip the courts of jurisdiction to hear any challenges to such self-aggrandizement? Tushnet has effectively written **Article III out** of the Constitution. And although he focuses his attention on the fact that the Court is no more a single authoritative interpreter than is Congress or maybe even less singular, because each individual voice is so much more meaningful on the Court 308Tushnet forgets that Congress represents hundreds of millions of people and is, at some level, subject to their momentary preferences. What makes the Court uniquely capable of serving as the **final voice** of constitutional interpretation – the single authoritative interpreter that Alexander and Schauer describe and that the **Framers** envisioned – is that it is **insulated** from such political pressure.309 Arguing that judicial supremacy distorts legislation, Professor Tushnet suggests that without it, Congress would act more responsibly in interpreting and abiding by the Constitution.310 For example, in the context of flag burning, he contends that judicial supremacy problematically prevented Congress from doing what its members and the people wanted – namely, passing an effective law against the burning of the American flag.311 But that is exactly

the point. Presumably by the exact same reasoning, it could have been argued that during the McCarthy era, the judiciary should not have been allowed to prevent the majority from doing what it wanted to do namely, suppress left-wing dissenters. The **entire purpose** of our structural Constitution is to embed Founding-era American skeptical optimism and **force the majority**, if it wishes to circumvent those fundamental truths, to garner enough super-majoritarian support to change them. If the American people are so concerned with flag burning, it is a good thing to require them to amend the Constitution formally, by means of the prescribed super-majoritarian process 312 to render constitutional those state or federal laws that ban it. If burning the flag is a method of expression, and laws forbidding it are contrary to the First Amendment because of their communicative impact, the people may amend the Constitution to declare that flag-burning laws are an exception to the Amendment's general coverage.313 Tushnet believes that lawmakers may apply their own conception of the Constitution if they are conscientious and if their interpretation is reasonable, 314 but this begs the question: Who is to decide whether a lawmaker has conscientiously considered and reasonably interpreted the Constitution? The lawmaker himself? Our constitutional **democracy cannot survive** such constant, momentary, **self-interested** reinterpretation. Tushnet says it is wrong to assume that members of Congress are inherently incapable of interpreting the Constitution.315 But the traditionalist view of American constitutionalism in no way stands for the position that Congress is incapable of properly exercising interpretive authority. To the contrary, we both hope and assume that Congress is doing just that in deciding whether to enact legislation. The Constitution does **not** in any way **prohibit** the majoritarian branches from ever exercising interpretive authority; in fact, as Professor Paulsen discusses with great alacrity, each and every politically accountable member of the federal government takes an oath to **support the Constitution**.316 Congress might be **undereducated** about the Constitution, and it might be that Congress would improve without the judiciary as a backstop, especially if given the same kind of institutional support that the executive receives in its endeavors of constitutional interpretation, such as the Solicitor General's Office and the Department of Justice's Office of Legal Counsel. 317 But this misses the point entirely. The problem is not that Congress is bad at constitutional interpretation – it is that because of its inherently majoritarian nature, Congress is **structurally incapable** of effectively policing majoritarian threats to the values and dictates embodied in the **counter-majoritarian** Constitution. This is especially true when Congress itself **creates** those threats. Thus, our structural Constitution does not envision Congress as the final interpreter, and for good reason. The people's elected representatives exist to advance the current and future interests of their constituents; the courts exist to ensure that those current and future legislative and policy choices adhere to **foundational principles** embodied in the nation's counter-majoritarian supreme law.

It goes global.

Matthews 17 – Senior Correspondent at Vox. (Dylan, 02/13/17 ("I asked 8 experts if we're in a constitutional crisis. Here's what they said.," https://www.vox.com/policy-and-politics/2017/2/13/14541974/constitutional-crisis-experts-unanimous) Are we in a constitutional crisis**?** Well, **no**. As silly as the president declaring "SEE YOU IN COURT" in all caps on Twitter is, it's not exactly a sign that he's willing to bypass the judiciary altogether, which really would portend a crisis. But with Trump tweeting attacks on "so-called judges," and warning that decisions contrary to his wishes could lead to terrorist attacks, and **C**ustoms and **B**order **P**atrol officials at the nation's airports initially ignoring court orders and according to some reports doing so on orders from the White House, **it's an understandable worry** to have. Slate's Mark Joseph Stern was one of the first to invoke the "C" word, the day after the executive order came down. On Thursday, Sen. Richard Blumenthal (D-CT) declared, after President Trump started openly disputing that his Supreme Court pick had criticized Trump's treatment of the judiciary, that the country was, "careening, literally, toward a constitutional crisis." So I decided to ask eight leading experts — **six constitutional law professors** and **two political scientists** — for their thoughts. They were unanimous that the situation as it exists now doesn't count as a constitutional "crisis"; some cast doubt on whether that term, which has no firm definition, is even useful. "Trash-talking the federal courts on Twitter does not create a constitutional crisis," Yale's Jack Balkin explained. "It's a really bad idea, but there are many really bad ideas that are not constitutional crises." **But** most experts said that **if Trump**

were to start defying court edicts, that would **very possibly qualify**, and even his **mere rhetoric ramps up conflict** with the judiciary in a **counterproductive** and perhaps **dangerous way**. And they were sure to add that even if we're not in a constitutional crisis, that doesn't at all imply that what is happening is normal, or moral, or fair, or decent. "I don't like the phrase 'constitutional crisis' because it has this contention that unless the whole system is up for grabs, we shouldn't care about an 18- or 19-year-old kid in Chicago who is so anxious about being deported he takes his own life," Aziz Huq, a constitutional law professor at the University of Chicago, noted. "Crises happen everywhere on a micro scale. Just because they are happening to people on the margins doesn't make them less important." Defining a "constitutional crisis" There are two major papers in the American constitutional law literature on the concept of a "constitutional crisis." The first, from Princeton political scientist Keith Whittington, was written in the wake of the impeachment of President Clinton and the contested 2000 election, both of which provoked fears that the US was either in, or barely avoided, a constitutional crisis. Whittington argued that neither came close to qualifying. "Constitutional crises arise out of the **failure**, or **strong risk of failure**, of a constitution to **perform its central functions**," he wrote. That didn't happen in the impeachment (which unfolded according to the procedures laid out in Articles 1 and 2) or in the 2000 election (in which decisions of executive branch officials in Florida were challenged through normal legal channels and all actors respected the ultimate decision of the US Supreme Court, whether or not they thought it was rightly decided). So what would qualify**?** Whittington divided constitutional crises into two categories. **Operational crises** occur "when **important political disputes** cannot be resolved within the **existing constitutional framework**." That is, the Constitution itself is failing, and is allowing people engaged in a political conflict to each behave in ways that together can result in calamity. A "**crisis of constitutional fidelity**," by contrast, occurs when, "**important political actors threaten to become no longer willing to abide** by **existing constitutional arrangements** or **systematically contradict constitutional proscriptions**." That's when what the Constitution prescribes is **clear**, but **one or more politician or branch of government willfully defies it**. The secession crisis of 1860 was, Whittington argues, both an operational and a fidelity crisis. It was a fidelity crisis because some political actors — namely the seceding Southern states — refused to obey the dictates of the Constitution and explicitly rejected its power over them. But it was an operational crisis too, because, "the text of the Constitution was silent on the question of secession, and it provided no clear mechanism for resolving the contested question of whether and how states could secede from the Union." Whittington told me via email that he doesn't think the current standoff between Trump and the judiciary qualifies as either a fidelity or operational crisis. While Trump's comments are, he says, "certainly disquieting," he adds that "disagreements between the executive and the courts are not uncommon, and are sometimes expressed rather strongly." What would change matters is if Trump were to receive an **unfavorable ruling from the Supreme Court** — and **ignore it**. "If the president were really to **contemplate ignoring a decision** by the U.S. Supreme Court, we'd be in **nearly uncharted waters**," Whittington adds. He noted that the US has come **close** to that scenario in the past, but that in just about **every case** either the president or the Court backed down before an explicit violation occurred. For instance, in 1974 the Supreme Court ruled that Richard Nixon had to hand over the Watergate tapes to the special prosecutor's office, and Nixon briefly considered not complying, as he strongly felt the president should not be subject to judicial proceedings outside of impeachment. But strong pressure from congressional Republicans and the threat that he would be impeached anyway caused him to back down and comply. Balkin agrees that **open defiance of clear court dictates** could **qualify as a crisis**. He and UT Austin's Sanford Levinson published the other widely cited article besides Whittington's categorizing and analyzing constitutional crisis. In addition to Whittington's two categories, they add a third: when **two or more political actors** each **strongly believe** the other is **violating the Constitution** or **constitutional norms**. In fidelity crises, it's clear that only one side is violating the Constitution. In operational crises, it's clear both sides are obeying the Constitution. In type three power struggle crises ("power struggle" is my term, not theirs, but it's clearer than "type three"), each side has a real argument that it's obeying and the other isn't. Balkin and Levinson offer a number of examples of power struggle crises, including the Nullification Crisis (in which South Carolina claimed it had the constitutional right to not enforce a federal tariff, Andrew Jackson claimed it didn't, and each had arguments for why they were right), the conflict between Andrew Johnson and Congress over each one's role in Reconstruction, and the Little Rock Crisis in 1957 between the government of Arkansas and the Eisenhower administration. "We are not having a constitutional crisis, **at least not yet**," Balkin told me via email, elaborating on a blog post he published on the topic. "Trump has **not** announced that he is going outside the Constitution, and he has **not** openly defied a judicial order. … If he does either of these things, **and he won't back down**, **then we would be in a constitutional crisis**." Maybe not a crisis, but "hardball"? No expert I talked to, including Whittington and Balkin, characterized the

current situation as a constitutional crisis. "As far as we know, **the executive is complying**" with court orders, Yale's Heather Gerken says. "That's not a constitutional crisis. That's a constitution working." Luckily, the legal literature has developed other, arguably clearer, categories for talking about heated conflict like this. In 2004, Mark Tushnet, now at Harvard Law, introduced the concept of "constitutional hardball": when political actors are clearly acting within their legal and institutional limits, but are violating past practices or norms in a way that feels unprecedented and provides advantage to their side. For example, he argues that Republican efforts to redistrict congressional seats in Texas and Colorado in 2003, after they had already redistricted for the census, count as constitutional hardball, as does the impeachment effort against Bill Clinton, as does Democrats' obstruction of appellate nominees in the early George W. Bush administration. In none of those cases was anybody acting outside their prerogative per the Constitution. But in every case, they were using those powers in new and tough ways that caught their opponents off guard. "In the current spat, if there is hardball going on, it takes the form of White House people bypassing the established systems for vetting executive orders," Tushnet told me. "Not submitting them to career people in the Office of Legal Counsel, but sending it apparently only to the political, shadow person they sent over there. They can say, 'We did send it to OLC,' but the person who got it is not the kind of person who'd ordinarily be used to vet these issues." But he was open to the idea that Trump's rhetoric against the judiciary could count too. "The more or less formal definition of constitutional hardball is that it consists of actions that are inconsistent with settled ways of doing things. In a political context, statements and rhetoric count as actions," he explained. "I want to say I didn't draw that distinction when I initially developed the idea. Now that we've had more examples, rhetoric can count as a form of constitutional hardball." Constitutional "showdowns" are important, but not crises The University of Chicago's Eric Posner and Harvard's Adrian Vermeule introduced the parallel concept of "constitutional showdowns," in 2008. The idea is similar to the idea of hardball, but focuses more on the precedents that such conflicts can create. A constitutional showdown, Posner and Vermeule wrote, is a "a disagreement between branches of government over their constitutional powers that ends in the total or partial acquiescence by one branch in the views of the other and that creates a constitutional precedent." They cite, as examples, the conflict between Nixon and the Supreme Court over the Watergate tapes (in which Nixon totally acquiesced and a new precedent was created limiting the president's powers), the conflict between the Court and Harry Truman over seizing a steel mill (Truman backed down, creating another precedent limiting presidential powers), Abraham Lincoln's refusal to obey an order from Chief Justice Roger Taney to release a man arrested by Union troops in 1861 (which created a new precedent enhancing the president's war powers), and Andrew Jackson's refusal to help enforce a Supreme Court ruling in 1832 that Georgia's laws did not apply in Indian territory (which set a precedent, since contradicted by events like the Little Rock Crisis in 1957, of presidents not always acting to enforce federal rulings against state governments). Posner has been clear that he views Trump's attacks on the judiciary as a very serious matter. He used a New York Times op-ed to urge Supreme Court nominee Neil Gorsuch to condemn Trump's behavior (presaging Gorsuch's comments that Trump's rhetoric is "disappointing and disheartening"). But he has also written that the present situation doesn't rise to the level of "constitutional crisis." "If Trump ordered border agents to disregard judicial orders blocking the executive order," that would qualify, he told me in an email. But for now we're in a constitutional showdown of a more ordinary variety. "I think showdowns are unavoidable because constitutional rules do not necessarily keep up with the times (while amendment has proven to be too difficult to revise them in a timely fashion), and government depends on cooperation among different institutions," Posner said. And who is right in each showdown can vary. You can think it was right of Lincoln to claim the power to suspend habeas corpus in wartime, but not for Jackson to decline to use federal force to protect Indian rights (and then to use it to commit ethnic cleansing). "But," he added, "the rule that the president obeys a judicial order in peacetime is ancient, and it is well established to be a good one except if the judiciary goes haywire, **which is certainly not the case here**." Violating that norm would go **further** than **Nixon**, **Truman**, **Lincoln**, or even, arguably, **Jackson** went. And Trump ordering border agents to enforce his executive order when judges are telling them not to would violate that norm. Suppose we get into a crisis. Could Trump then be stopped? While no one I talked to declared the situation right now a crisis, many expressed concern that President **Trump is all too willing to provoke one**. "Remember Trump's statement before the election: 'I'll accept the results, if I win'?" Alice Ristroph, a law professor and political theorist at Seton Hall who has written about constitutional crises, says. "I think this administration will accept and preserve the basic structure of the American constitutional system if that system can be manipulated to give the administration what it wants. If Trump is overruled by the courts, who knows what will happen. Maybe a crisis." So what happens then? A lot depends on how institutional actors respond. Aníbal Pérez-Liñán, a **comparative political scientist at the University of Pittsburgh** who **studies presidential democracies in Latin America**, including **constitutional crises** experienced there, notes, "**Many countries modeled their constitutions after the US**, but most presidential regimes have experienced much more turbulent histories. The **reason for American stability** lies in the fact that politicians in both parties historically exercised **civility** and **reached deals to process their disagreements**." That norm, of course, **would take a major battering if Trump rejected a Court edict**.

Democratic backsliding spurs existential risks.

Twining '21 [Daniel; October 10; PhD from the University of Oxford, President of the International Republican Institute, Fulbright/Oxford Scholar at Oxford University, Former Counselor to the President and Director of the Asia Program at the German Marshall Fund; the Hill, "America Must Double Down on Democracy," https://thehill.com/opinion/campaign/575693-america-must-double-down-on-democracy]

Democracy is **under assault**. **China** and **Russia** are pursuing strategic campaigns to undermine liberal values and U.S. **leadership**. Authoritarians from Belarus to Burma brutalize their citizens to stay in power. The debacle of U.S. troop withdrawal from Afghanistan and our national soul-searching in the wake of the 20th anniversary of 9/11 led some to wonder if support for democracy should remain a component of American foreign policy.

The hard truth is that a world that is less free is one that is **less secure**, stable and prosperous. The **greatest dangers** to the American way of life emanate from **hostile autocracies**. There are no quick fixes, but the best antidotes to the challenges of **great-power conflict, terrorism** and **mass migration** of desperate refugees lie in the building of inclusive **democratic institutions** — and working with allied democracies to sustain the free and open order that China, in particular, wishes to replace with a world that's safe for autocracy.

The conventional wisdom that authoritarianism has popular momentum is wrong. No one anywhere is taking to the street to demand more corrupt governance, the adoption of one-man rule, a stronger surveillance state, or greater intervention by malign foreign powers. Democratic freedoms are unquestionably under assault in many nations. Autocrats are aggressive precisely because of the growing demands for change in their more modern, connected societies — and the rising risk that middle classes in nations such as China and Russia will not be willing forever to forfeit political rights for prosperity.

American **retrenchment** and **isolationism** compound the danger. It would be nice to live in a world where failed states and dictatorships were a problem for someone else to worry about. But rather than producing stability, Western retreat only **emboldens autocrats** in ways that amplify dangers to American national security.

We know that violent **extremism flourishes** under state failure and dictatorship. Broken states become **breeding grounds** for extremist groups because they leave **vacuums** that **terrorists** are only too happy to **fill**. In nations without **democratic accountability**, citizens become **drawn** to the only forms of expression available to them, which are often **violent** and extreme.

The good news is that we have billions of allies around the world: citizens on every continent chafing for greater freedom and dignity. They do not want U.S. military-led nation-building. They want peaceful support for their independent efforts to create democratic space in systems distorted by overweening government control, dangerous governance gaps and foreign malign influence.

The free world cannot be neutral in the face of autocracy's resurgence. Rather, it should play to its strengths. The **appeal** of democratic opportunity is a **strategic asset** for the **U**nited **S**tates — despite our own shortcomings — because people around the world similarly aspire to live in societies that guarantee justice, rights and dignity.

America's closest allies are democracies. Democracies **don't fight** each other, export violent extremism, or produce the conflicts that drive mass migration. Democracies are better **partner**s in fighting **terrorism**, human **trafficking** and **poverty**, as well as establishing reliable **trading** relationships.

Open societies **incubate the technologies** that will help **solve the world's most pressing problems**, including **climate change**. Citizens can hold leaders accountable when they fall short, and democratic institutions are stronger than any man — as America itself witnessed after the assault on the U.S. Capitol on Jan. 6.

Obliterating Objectivity

The ICC is subject to the influence of more powerful countries.

Shamsi 16 [Shamsi, Nadia. "A POLITICAL TOOL? HOW the ROME STATUTE IS SUSCEPTIBLE to the PRESSURES of MORE POWER STATES." *Willamette Journal of International Law and Dispute Resolution*, vol. 24, no. 1, 2016, pp. 85–104. *JSTOR*, www.jstor.org/stable/26210471, https://doi.org/10.2307/26210471.] // LHP NA

One important controversy involved the jurisdiction of the Court. During the negotiations, while many **States argued that the Court should be granted universal jurisdiction**, a few of the **more powerful countries, including the United States, opposed this proposition**.4 As a result, the ICC was allowed to exercise jurisdiction only in certain circumstances under Article 13. 5 However, the conditions that govern jurisdiction under the Rome Statute are vulnerable to political pressure and bias, thus rendering the entire system vulnerable to the whim of the more powerful states. This article will first discuss the preliminary investigation process, examining the three ways that an ICC investigation process can begin. It will then scrutinize how each option within this preliminary investigation step may be susceptible to political pressure, and thus may not be entirely independent. In doing this, this article will look at several concrete situations where the ICC's opinion may have been influenced by political relationships. Finally, this article will recommend how the Court and the Security Council can best cooperate in order to minimize the political power that the Security Council-and, as a result, powerful States-has over the ICC. II. INITIATING PROCEEDINGS UNDER ARTICLE 13 Under Article 1 of the Rome Statute, the ICC has the power to exercise its jurisdiction over people for the most serious international crimes, and shall be complementary to national criminal jurisdictions.6 Several articles govern the jurisdiction and admissibility of the Court. One important principle related to jurisdiction is the issue of complementarity. Under Article 17 of the Rome Statute, the Court shall determine that a case is inadmissible if the case is being investigated or prosecuted by a State that has jurisdiction over it, unless the State is willing or unable to genuinely carry out the investigation or prosecution.7 While this emphasizes the ICC as being a court of last resort, this also raises issues of inequality among states. The ICC is **less likely to interfere with the more powerful States,** who have the ability to carry out **sufficient investigations and prosecutions**. This has caused some resentment among **African States**, which have criticized the ICC for targeting their territories due to their **inability to carry out investigations** or prosecutions. 8 The issue of complementarity alone already raises some issues regarding the States it investigates. In order to activate jurisdiction of the Court with regard to a specific situation under Article 13 of the Rome Statute, proceedings can be initiated in the ICC in one of three ways: (1) referral by a State Party; (2) action by the Security Council, and (3) action taken by the prosecutor proprio motu.9 III. STATE PARTY REFERRAL A State Party may also refer a situation to the ICC. Article 14 notes that: "(a) State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes."'10 While Article 14 would ideally allow States to refer situations where large-scale crimes are taking place, this would likely be rare. State **Parties typically avoid referring other States**, for fear that it could also be referred to the Court for its own crimes." Another issue raised here would be that of **self-referrals**. States sometimes refer themselves in the hopes of using the ICC for their **own political gains and stifling the opposition.** 12 This has been seen in several situations among African States. Additionally, States that committed crimes on the territory of a State Party could use Article 98 to protect itself from any self-referrals.' 3 The United States' use of Article 98 agreements among State Parties is a prime example. A. Self-Referrals among African States A State may refer itself to the jurisdiction of the Court.14 There have been several cases of self-referrals, recently in Uganda, the Democratic Republic of Congo, and the Central African Republic. 15 However, the concept of self-referrals is **also a root of vulnerability for the Court**, as it can lead to States using the ICC for their own political motives.

Lack of checks and balances means ICC is extremely vulnerable to politicization – a rogue prosecutor or racist court can do whatever they want as an independent body. Groves and Schaefer 09

[Steven Groves and Brett Schaefer, 8-18-2009, "The U.S. Should Not Join the International Criminal Court", Heritage Foundation, https://www.heritage.org/report/the-us-should-not-join-the-international-criminal-court - bgem] // rct RB
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A number of specific risks are obvious. Politicization of the Court. Unscrupulous **individuals and groups and nations seeking to influence foreign policy and security decisions of other nations have and will continue to** seek to **misuse the ICC for politically motivated purposes. Without appropriate checks and balances** to prevent its misuse, **the ICC represents a dangerous temptation** for those with political axes to grind. **The prosecutor's** *proprio motu* **authority to initiate an investigation based solely on his own authority or on information provided by a government, a nongovernmental organization** (NGO), **or individuals[67] is an open invitation for political manipulation.**

Mañá 24:

Francesc Torres i Mañá [Advanced MA at College of Europe | BSc Honours Political Science (IRO) at Leiden University | UWC Alumnus], 3-7-2024, "The budgetary instrumentalisation of international criminal justice", Elcano Royal Institute, https://www.realinstitutoelcano.org/en/commentaries/the-budgetary-instrumentalisation-of-international-criminal-justice/ // ag 🐌

This comes as no surprise to scholars and policymakers as it is coherent with the vast array of past accusations against the Court as a neo-colonial instrument for Western control and geopolitical dominance. Such double standards are corroboration of what sceptical scholars from the Global South have consistently referred to as a privatisation of justice that is contingent upon Western influence. In this regard, **ICC funding patterns largely reflect its position as a tool of powerful states.** Consequently, Africa becomes a disproportionate target for criminal prosecution, selective justice is exacerbated and **the Court is more susceptible and vulnerable to powerful states' manipulation.**

Baldwin 20:

Clive Baldwin, 12-18-2020, "The ICC Prosecutor Office's Cop-Out on UK Military Crimes in Iraq", Human Rights Watch, https://www.hrw.org/news/2020/12/18/icc-prosecutor-offices-cop-out-uk-military-crimes-iraq

UK nationals committed abuses in Iraq after 2003 on a significant scale. The International Criminal Court's Office of the Prosecutor (OTP) Final Report on the UK and Iraq on December 9 is the latest official report to find that **members of UK armed forces subjected Iraqi detainees to abuse, and concludes there is a reasonable basis to believe these were war crimes.** But the prosecutor's decision to close her examination of the UK without proceeding to an investigation on the basis that the UK is willing to genuinely investigate and prosecute these war crimes defies belief.

…

Second, the report gives the impression that **the [ICC] often bends over backwards to give the UK the benefit of the doubt, even when the evidence is against it.** On the detailed BBC/Sunday Times claims, it said it could not 'substantiate the allegations to the required level of proof'. It praises the government for setting up IHAT – but it ignores that the government was forced to do so by the courts due to cases brought by victims.

The US would be interested in using the ICC to increase its political power.

Wheeler 22:

Caleb Wheeler, 12-8-22, “Should the ICC Allow the United States to Become a State Party?” https://opiniojuris.org/2022/08/12/should-the-icc-allow-the-united-states-to-become-a-state-party/ // ag 🐌

There have been five US presidents in the years since the Statute was concluded, each of whom have seemingly engaged with the Court in different ways. Their approaches have ranged from condemning the ICC as a rogue organisation that threatens American sovereignty to a possible solution to the problem of how to punish Putin for the Russian invasion of Ukraine. However, the differences in how four of the five administrations engaged with the ICC are largely superficial and that position of each has largely been informed by the same motivations: to encourage and sometimes assist the Court when it is pursuing the arrest of individuals to whom the United States is either hostile or indifferent, and to condemn it when the Court’s activities may affect American citizens. This approach indicates that **the United States is only interested in accountability when it is directed at individuals the United States thinks should be targeted, a position that is directly contradictory to the ICC’s mission statement of ending impunity. Therefore, the ICC needs to consider whether it wants a state as a party that is uninterested in furthering the Court’s mission.**

…

The problem with this approach is that the United States’ understanding of when action is required differs from that of the Court. The ICC was founded on the principle of ending the impunity of individuals committing genocide, war crimes, crimes against humanity and the crime of aggression regardless of their official position or national affiliation. From the Court’s perspective, action is required when it can help achieve that purpose. **The United States** takes a different approach to deciding when action is required. It **only believes in action against its enemies or citizens of those countries that is does not really care about. When the United States or its friends are threatened with prosecution, even in the face of overwhelming evidence of criminality, it rejects that action as an impermissible infringement on sovereignty. In the end, these two approaches are incompatible.**

Indeed, if the United States were to join, it would have unprecedented power in the organization.

McAllister 22:

Jacqueline R. McAllister, 4-15-2022, "It’s still easy for great powers to avoid international justice", Washington Post, https://www.washingtonpost.com/outlook/2022/04/15/war-crimes-icc-us/ // ag 🐌

But states — especially great powers — retain at least two important levers of control over the court’s work. First, the ICC is a treaty organization, operating primarily on the basis of state consent. **The court lacks** that from many **great powers — including the United States, Russia, China and India, not to mention regional powers such as Turkey, Egypt, Israel, Saudi Arabia, Pakistan and Indonesia, none of which are members.** The ICC has jurisdiction over only the territory and nationals of its member states — and even then, only when they are either unable or unwilling to prosecute international crimes in their own court systems. The only other way a situation can come before the court is if the U.N. Security Council refers it there, or if a nonmember state formally accepts the jurisdiction of the court.

The impact is atrocities without investigation. The US will kill the ICC’s ability to prosecute crimes against humanity by pushing the right to self-defense

Wheeler 24 of Wake Forest University concludes

Wheeler 24 – [(Caleb, Senior Lecturer in Law at Cardiff University), “Strange bedfellows: The relationship between the International Criminal Court and the United States,” Wake Forest University School of Law, https://orca.cardiff.ac.uk/id/eprint/159100/. , 2024] NH (recut SB)

Article 31’s provision on excluding liability could also support **the position taken by the U**nited **S**tates. It **confirms that an accused acting in self-defense or the defense of others may be shielded from responsibility for their** otherwise **criminal acts.** That being said, it does not prevent the Court from investigating and prosecuting them and it does not offer a member of the military protection from prosecution solely due to their involvement in a defensive operation. Determining whether someone acted in self-defense or the defense of others is a judicial one made during the trial or the confirmation of charges hearing. That means a proceeding must first be instituted before an accused can benefit from Article 31. This undermines the argument that the ICC’s purpose is limited to only prosecuting atrocity crimes resulting from aggressive act**s. Despite the existence of some textual support for its position, the United States’ conception of the ICC must also fail on policy grounds. Adopting the American approach would disrupt the functioning of the court and limit its overall effectiveness. It would** effectively **authorize people to commit atrocity crimes** far **out of proportion** with the harms they are trying to prevent **because their criminality could be excused on the basis that it was the only way to respond to the commission of other crimes.** A strict interpretation of **the proposed principle could** theoretically **lead to** a **genocide going unprosecuted** so long as its perpetrators were able to link its commission to stopping other atrocity crimes. Further, the solutions to the United States’ concerns are already being pursued by the ICC in other forms. By considering the gravity of the alleged crimes before pursuing prosecutions and excluding responsibility under certain circumstances, the ICC is taking a reasonable approach to the problem. **Implementing further protections from prosecution** on the basis of the context in which a crime is committed **would be fundamentally incompatible with the ICC’s goal of ending impunity. IV. Conclusion** Since its inception, the ICC has sought universal ratification of its Statute. In that context, significant emphasis has been placed on convincing the United States to join the Court. The United States has consistently resisted those calls, citing a host of concerns about the Court’s Statute and the perceived dangers it poses to American citizens. Despite this longstanding opposition to ICC membership, it seems more likely now than at any time in recent history. The Russian invasion of Ukraine has seen American sentiment shift in favor of the ICC, manifesting itself in a somewhat sympathetic presidential administration and a measure of bilateral support from Congressional Republicans and Democrats. However, calls for American membership in the Court have largely failed to consider whether the ICC should want the United States as a member. **The U**nited **S**tates**’** long-standing **concerns** about the Court would **need to be resolved before it could be considered a** viable member **of the ICC**. That leaves **the Court** with a choice if it wants to accomplish its stated goal of achieving universality. It **can either change its mission** to secure American membership by adopting mechanisms shielding some people from prosecution **or** stay the course and **give up its hope for universal ratification**. Were it to pursue the former it **would** likely **receive great**er political, intelligence and **financial support from the U**nited **S**tates, making it easier for the Court to conduct investigations and prosecutions. **In exchange, it would** almost **certainly need to institute a policy exempting American citizens from prosecution** in at least some situations. **This could lead other states, particularly those that** also regularly **participate in peacekeeping** efforts**, to seek similar protections for their own citizens. That would result in the ICC developing a two-tiered jurisdictional structure** under which individual criminal responsibility would depend as much on the citizenship of the accused as the circumstances surrounding their alleged criminality. The Court’s other option is to **continue on its present path and accept that the U**nited **S**tates **is not a good candidate for membership** and that it should remain outside of the ICC structure. Should the Court follow that path it will maintain its integrity while also missing out on receiving additional support from the United States that could help it further its mission in other areas. Neither is a perfect solution, and whichever route the ICC chooses to take will keep its overarching goal of ending impunity stubbornly out of reach.

Continuing Conflict

Subpoint A is Dictators

Unfortunately, the ICC allows dictators to refer political opponents, as Johns 24 of UCLA finds that

Johns 24

Leslie Johns, Francesca Parente. 9-24-2024. “Dictators and the ICC: The Enemy’s Enemy”. Australian Institute of International Affairs. https://www.internationalaffairs.org.au/australianoutlook/dictators-and-the-icc-the-enemys-enemy/. LEONARDO JIA

The International Criminal Court aspires to hold all leaders accountable for serious international crimes. But thus far, **[so far,] the Court has only been successful in helping dictators punish their political opponents**, leading many to ask, what is international justice really for? International justice activists have spent months pleading with the Prosecutor of the International Criminal Court (ICC) to get involved in high-profile international disputes in Gaza and Ukraine. In previous decades, similar efforts led the Prosecutor to pursue cases involving Côte d’Ivoire and Kenya, and caused the UN Security Council to order the Prosecutor to take action against leaders in Libya and Sudan. Yet an overlooked fact is that dictators self-refer cases to the ICC, meaning that they welcome the ICC into their state to conduct investigations and prosecute their political opponents. In theory, such self-referrals can result in arrest warrants and trials against anyone within the borders of the state. However, as we argue in a recent publication, dictators have tremendous power to shape investigations and prosecutions. Successful ICC investigations require that investigators identify and locate witnesses. Dictators can limit the information available to the ICC, the free movement of ICC staff, and access to local security, translators, and transportation. ICC investigations and trials also

often use digital and documentary evidence to establish that high-ranking individuals, like military commanders, are responsible for acts committed by subordinates. For example, in the recent trial of Uganda rebel leader Dominic Ongwen, this evidence was provided to the ICC by the Ugandan government. And perhaps most importantly, the ICC relies on its member states to enforce arrest warrants. Dictators often have the power to track and arrest their political opponents, sending them to The Hague for trial. However, rebel groups usually cannot arrest and surrender a sitting dictator to the ICC. These powers are apparent in the ICC's investigations and prosecutions in the Central African Republic, the Democratic Republic of the Congo, Mali, and Uganda. A simple glance at the raw data suggests that dictators are using the ICC to punish their opponents. **Between 2002 and 2021, dictator self-referrals resulted in seventeen total ICC arrest warrants. Of these, 94 percent were for opponents of the sitting government.** These are the arrest warrants that have resulted in successful trials for the ICC. In contrast, over the same period, only 25 percent of the ICC's other twenty arrest warrants were for government opponents. To date, the ICC has not successfully prosecuted a single sitting head of government. These patterns mean that **the only people who are in jail after being found guilty by the ICC of committing a serious international crime are individuals who challenged a dictator.** So, a dictator knows that if he commits atrocities against rebel forces, there is little chance that the ICC will hold him accountable. However, that same dictator can use the ICC to punish rebel forces when they commit similar atrocities. This asymmetry in punishment suggests that ICC membership can give a dictator a strategic advantage in a civil conflict. A credible threat of ICC referral makes it extremely costly for a rebel group to commit atrocities, while the dictator faces relatively trivial costs for using the same tactics, knowing that they will be shielded from ICC accountability. However, not all dictators choose to use violence. Higher levels of political competition make it more difficult for a dictator to deploy violence to remain in power. For example, multiple political parties allow opponents to publicise and shame a dictator for atrocities more easily. Similarly, a free press, opposition political parties, active civil society, and/or independent bureaucracies increase transparency about actions and policies. Finally, legislatures and domestic courts can have limited powers to sanction a dictator for violence. We believe that domestic political competition helps to explain why dictators choose to join the ICC. Joining the ICC (and using it through self-referral) has complex direct and indirect effects on how both a government and rebel group will behave during a civil conflict. Overall, when political competition is low, violence is cheap for a dictator, and there is little added benefit from joining and using the ICC. However, as domestic political competition increases, violence becomes more costly. In this scenario, there is more strategic advantage to joining the ICC and then trying to control its processes. This indicates that there are key patterns in how dictators behave. For one, dictators who face more political competition are likely to join the ICC than dictators who do not face credible threats to their power. Statistical results show that dictators who face factional competition—that is, competition based on parochial or ethnic-based political factions—are nearly twice as likely to join the ICC compared to dictators who can suppress the opposition from participating in politics.Second, the overall level of violence committed in the state is likely to decrease after a dictator joins the ICC because both the dictator and rebel groups will face higher costs from committing atrocities. This is also supported statistical analyses. We estimate that joining the ICC increases the chance of having a year with zero total violence by twelve percentage points (from 71 percent for dictators before joining the ICC to 83 percent after joining). Finally, if there is a benefit to the dictators for joining the ICC. That is, those dictators who join the ICC will be less likely to be removed from office. In other words, joining the ICC should increase their chances of survival. Again, this is supported by our data. The **dictators who join the ICC are half as likely to lose office** after joining as compared to before joining.

A longitudinal study from the Cambridge Organization of all investigations over 15 years finds that the ICC actually prolongs conflicts.

Protok 17

Alyssa K. Prorok, 4-3-2017, "The (In)compatibility of Peace and Justice? The International Criminal Court and Civil Conflict Termination", Cambridge Core, https://www.cambridge.org/core/journals/international-organization/article/abs/incompatibility-of-peace-and-justice-the-international-criminal-court-and-civil-conflict-termination/2B52BDBADB701F2B6CF1586E417ED2F4

Does the International Criminal Court's (ICC) pursuit of justice facilitate peace or prolong conflict? This paper addresses the "peace versus justice" debate by examining the ICC's impact on civil conflict termination. Active **ICC involvement in a conflict increases the threat of punishment for rebel and state leaders, which, under certain conditions, generates incentives for these leaders to continue the conflict as a way to avoid capture, transfer to the Hague, and prosecution. The impact of ICC involvement is conditional upon the threat of domestic punishment that leaders face; as the risk of domestic punishment increases, the conflict-prolonging effects of ICC involvement diminish.** I test these theoretical expectations on **a data set of all civil conflict dyads from 2002 to 2013**. Findin J gs support the hypothesized relationship. Even after addressing potential selection and endogeneity concerns, I **find** that active **involvement by the ICC significantly decreases the likelihood of conflict termination** when the threat of domestic punishment is relatively low.

Authoritarianism kills 138 million

Rummel 94

R.J. Rummel. xx-xx-1994. "20th Century Democide". University of Hawai'i. https://www.hawaii.edu/powerkills/DBG.CHAP1.HTM. LEONARDO JIA

In sum, then, where absolute Power exists, interests become polarized, a culture of violence develops, and war and democide follow. In this century alone, by current count, **absolute-totalitarian-Power has murdered near 138,000,000 people** (table 1.6). Over 14,000,000 more of its subjects have died from battle in their wars. Where among states Power is limited and accountable, interests are cross-pressured and a culture of nonviolence develops, no wars have occurred and comparatively few citizens have been murdered by the governing elite, and even most of those killed is questionable. About 90 percent of the citizens killed by democracies have been by marginally democratic Spain (during its 1936-1939 Civil War and by Republicans after the war), India, and Peru (during its struggle against the communist Shining Path guerrillas).

Subpoint B is Mediation

The ICC is horrible at mediating conflict. Duursma 17:

Duursma, Allard. 2020. "Pursuing Justice, Obstructing Peace: The Impact of ICC Arrest Warrants on Resolving Civil Wars." *Conflict, Security & Development* 20 (3): 335–54. https://www.tandfonline.com/doi/full/10.1080/14678802.2020.1741934

The impact of ICC involvement on peace processes once mediation is underway is quite different. Domestic courts are unlikely to be willing to prosecute government members targeted by the ICC or able to prosecute rebels in practice, in spite of the complementarity principle laid down in the Rome Statute. In countries in which the ICC has targeted individuals, the judicial and the executive branch could be intertwined.34 This means that governments are unlikely to allow domestic courts to prosecute any of its members, let alone domestically prosecute a head of state. Since the domestic prosecution of people on the government and the rebel sidesis not a viable route,the only justice mechanism in place is **the ICC**.35 This **undermines** the prospect for **conflict resolution, since it makes the [dictators] government side determined to gain a victory rather than conclude a peace agreement.** **The government** side **will perceive the conclusion of a peace agreement**in which political power is shared with the armed opposition as risky because this might lead to a shift in political powerin the future, paving the way for an **[to avoid] arrest** that leads to a trial in The Hague.36 Indeed,**[for example] the arrest warrant issued against Sudanese President al-Bashir was perceived** in Khartoum **as a matter of state survival.** As US Special Envoy to Sudan Andrew Natsios commented on this arrest warrant,**the regime** in Khartoum "will do **[did] everything necessary to remain in power and make sure that Bashir is never arrested.'** 37 **The arrest warrant[s] issued against Libyan President**

Muammar Gaddafi had a similar effect [in libya and in ivory coast]. The International Crisis Group observed with regard Gaddafi in 2011 that "[t]o insist that he both leaves the country and face trial in the International Criminal Court is virtually to ensure that he will stay in Libya to the bitter end and go down fighting.' 38 The ICC arrest warrant issued against Gaddafi indeed complicated the mediation effort.39 Finally, although the ICC had not yet issued an arrest warrant against President Gbagbo of **Côte d'Ivoire** prior to the end of the civil war on 11 April 2011, **the ICC investigation** regarding his role in the violence in Côte d'Ivoire may very well have **motivated Gbagbo to continue to resist stepping down from power** and conclude an agreement aimed at a transition of political power. **The ICC** chief prosecutorissued a statement regarding the situation in Côte d'Ivoire on 21 December 2010 in which he promised that "those leaders who are planning violence will end up in The Hague.' 40 McGovern asserts that with this statement,the chief prosecutor "ensured that Gbagbo would reject any negotiated solution and instead fight to the end.' 41 In short, the targeting of individuals on the government side **greatly complicates peace efforts, since continued fighting is often perceived as the only way to circumvent prosecution by the ICC**. In addition, domestic courts could be unable to prosecute rebels who are targeted by the ICC. Notable cases in which domestic courts did have this ability are the Ituri courts in the DRC and the International Crimes Division in Uganda. Although ICC arrest warrants issued against rebels allows for flexibility in terms of decisions about accountability, ICC arrest warrants issued against rebels inhibits the conflict parties from agreeing on an amnesty.42 **Rebels are unlikely to lay down their weapons with ICC arrest warrants** against some of its membersin place, even if they anticipate that they could face a domestic trial based on the complementarity principle.

This agreement provided for the formation of a domestic legal framework that would function as viable national alternative for the ICC arrest warrants against the five top-LRA leaders.58 The agreement stipulated that the rebel commanders accused of serious crimes would have to face criminal and civil justice proceedings in a special division of the High Court of Uganda, which could impose "alternative penalties and sanctions' that will replace existing penalties. In addition, the agreement stipulated that abuses by the national army were to be pursued in the criminal justice system. However, this agreement was meant to serve as a peace process agreement, with the implementation of it being dependent on the signing of a final agreement that would integrate a series of separate peace process agreements. The different impact of mediation and ICC involvement on the one hand and mediation and no ICC involvement on the other hand becomes particularly pronounced when looking at the impact on durable peace agreements that resolve the conflict. **A durable peace agreement was concluded in only 4.1 percent of the conflict** dyad **years that experienced** both mediation and **ICC involvement,** as **opposed to 24.7 percent when mediation took place without ICC involvement** in place. International mediation in a conflict dyad-year with ICC involvement is thus relatively unlikely to lead an agreement that terminates the conflict.

Mañá 24 [mediation]:

Francesco Torres i Mañá, 3-7-2024, "The budgetary instrumentalisation of international criminal justice", Elcano Royal Institute, https://www.realinstitutoelcano.org/en/commentaries/the-budgetary-instrumentalisation-of-international-criminal-justice/ // ag 🐌

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The impact is exacerbating African conflict. DW 18:

DW, 8-31-2018, "African wars 'killed millions of children' – DW – 08/31/2018", dw, https://www.dw.com/en/wars-killed-5-million-african-children-over-20-years-says-study/a-4529

9472

A new study published on Friday found that as many as **five million children in Africa under the age of five died as a result of armed conflict between 1995 and 2015.** Approximately three million of them were infants aged 12 months or younger.