

February Aff Case

We affirm.

First, regardless of organizational efficacy, participating in international Institutions is a net positive.

Keohane 12 clarifies the relevance of international legal institutions, writing that

Keohane, Robert O. "Twenty Years of Institutional Liberalism." International Relations 26, no. 2 (June 2012): 125–38. <https://doi.org/10.1177/0047117812438451>.

Legalization is a property of institutions. The rules of legalized institutions are precise and obligatory, and they provide arrangements for third-party adjudication.⁹ In some domains, notably human rights and criminal responsibility, there has been a remarkable increase in legalization over the past two decades. In a legalized system, third-party adjudication provides a focal point for agreement, reducing the likelihood of protracted bargaining-induced conflict over relatively minor issues, and reducing uncertainty about both the rules and their enforcement. **Substantively, legalization has facilitated the progressive extension of rights, and legal protection, to oppressed persons and peoples.** Even in situations when formal legalization is not feasible, an orientation toward legalization can promote the rise of 'soft law', which helps reduce uncertainty and facilitate rule-implementation.

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Even in situations when formal legalization is not feasible, an orientation toward legalization can promote the rise of 'soft law', which helps reduce uncertainty and facilitate rule-implementation. So I also give two cheers for legalism. **It can provide a rationale for smoothing the edges of rough order, motivating people to create more consistent legal arrangements that do, under the right conditions, have a positive impact.** And it can provide a model of consistent, normatively justifiable action, even if these arrangements are not formalized in law. But legalism that ignores power and interests misattributes causality and limits adaptation to change. Because of this misattribution of causality, it may generate excessive attention to legal issues when more basic political and interest-based problems may need more urgent attention; and its constraints on adaptation may inhibit creative and flexible diplomacy. When structures of interests and power are coherent and stable and favor democracy, legalism may be quite benign; but when interests and power are changing rapidly, an excessive focus on law can divert attention from more basic problems.

At a time of global instability, the importance of the International Criminal Court, or ICC, cannot be overstated.

Stuart Ford, Professor of Law at UIC John Marshall Law School in Chicago, Illinois, 2-10-2020, "Can the International Criminal Court Succeed?: An Analysis of the Empirical Evidence of Violence Prevention," No Publication, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3535868 //rchen

This Article began with a question: Can **the ICC** succeed? Answering that question requires that we first know what the ICC is supposed to accomplish. After all, it can only be called a success if it accomplishes its goals.¹⁸⁷ A number of goals have been ascribed to the ICC in the scholarly literature. But not all these goals are equal. Rather, there is a hierarchy amongst them, and the court should be judged by whether it accomplishes those goals that have the highest expected value. The goal with the highest expected value is the prevention of violations of international criminal law.¹⁸⁹ This is because serious violations of ICL have enormous costs for the victims of those crimes, as well as their friends, families, neighbors, and colleagues.¹⁹⁰ Violations also have enormous societal costs ranging from the tens of billions to hundreds of billions of dollars per conflict.¹⁹¹ Thus, preventing those violations has enormous value. Or, as Benjamin Franklin once said, "an ounce of prevention is worth a pound of cure."¹⁹² This means that if the ICC can prevent violations of international criminal law, then it is

accomplishing its most important goal. Despite many scholars having vehemently argued that the ICC cannot prevent violence, until recently there had been little empirical evidence one way or the other.¹⁹³ That is no longer the case. Thanks to recent articles by Professors Hillebrecht, Meernik, Appel, Jo and Simmons, **there is now strong evidence that the ICC does prevent violence.**¹⁹⁴ There is also some evidence that the ICC can **shorten ongoing conflicts and prevent some conflicts from occurring.**¹⁹⁵ Can the ICC succeed? The ICC's principal goal is to prevent violations of international criminal law and it is already doing that. Therefore, the ICC is already succeeding. But **this is not the dominant narrative about the Court.** Recently, the Court has been dogged by a number of high-profile problems, and scholarship about the court has become increasingly critical.¹⁹⁶ There is a sense among many international criminal law scholars that the court is in crisis.¹⁹⁷ Nevertheless, the evidence strongly suggests that the ICC is already accomplishing its most important goal. Particularly given how "contested" claims of violence prevention by international criminal courts have been,¹⁹⁸ this is an extremely important finding; one that more scholars and policymakers need to be aware of.

Preventing Sanctions

Holland 25:

Steve Holland, 2-7-25, "Trump imposes sanctions on International Criminal Court", Reuters, <https://www.reuters.com/world/trump-impose-sanctions-international-criminal-court-2025-02-06/> // AG 🐼

WASHINGTON, Feb 6 (Reuters) - U.S. **President Donald Trump** on Thursday **authorized** economic and travel **sanctions targeting people who work on International Criminal Court investigations of U.S. citizens or U.S. allies** such as Israel, repeating action he took during his first term.

El-Bawab 25:

Nadine El-Bawab, 2-7-2025, "Trump sanctions against ICC could 'erode international rule of law,' court warns", ABC News, <https://abcnews.go.com/International/trump-sanctions-icc-erode-international-rule-law-court/story?id=118587149>

"Sanctions would severely undermine all situations currently under investigation as the Court may have to close its field offices. Advancing the ICC's vital work serves our common interest in promoting accountability, as evidenced by the support provided to the Court by both States Parties and non-States Parties," the ICC said.

The sanctions could have the potential to "kill the court" by impeding its operations and endangering staff according to Kim Scheppele, an international affairs professor at Princeton University who focuses on international law.

Wiebelhaus-Brahm 23:

Eric Wiebelhaus-Brahm, 1-31-2023, "The evolution of funding for the International Criminal Court: Budgets, donors and gender justice", Taylor & Francis, <https://www.tandfonline.com/doi/full/10.1080/14754835.2022.2156276#abstract> // AG 🐼

For its part, **the ICC has the impossible task of delivering impartial justice while depending on capricious states to keep the lights on, to say nothing of collecting evidence and apprehending suspects.** The ICC frequently does not do itself any favors, however. For example, it has a long record of underestimating resource needs (Cannock & O'Donohue, Citation2018). Evenson and O'Donohue (Citation2015) summarized the consequences of the budget dynamics prior to the invasion of Ukraine thus:

Hamadanchy and Hogle 25:

Kia Hamadanchy and Charlie Hogle, 1-30-2025, "Why Sanctioning the ICC Would Be Terrible for Civil Liberties", American Civil Liberties Union,

<https://www.aclu.org/news/national-security/why-sanctioning-the-icc-would-be-terrible-for-civil-liberties> // AG 🗣️

Moreover, if the bill becomes law, U.S. citizens and residents could be prohibited from meaningfully participating in any of the ICC's investigations and work. **When someone is sanctioned, it is generally against the law for anyone—including people in the United States—to work with or for them.** The penalties for doing so can be extremely harsh. Even accidentally violating a sanctions prohibition may be punished by hundreds of thousands of dollars in fines. In other words, if the bill becomes law, **people in the U.S. who've devoted their lives to seeking justice for the victims of atrocities could face stiff penalties simply for exercising their constitutional right to speak with the ICC, such as providing the ICC with legal advice, guidance, or research support across a range of its activities.** The First Amendment does not allow the government to impose such sweeping limits on what Americans can say, and to whom they can say it.

Rome Statute:

The Rome Statute of the International Criminal Court, 7-17-98,

<https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf> // AG 🗣️

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfilment of its purposes.

2. **The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall**, when engaged on or with respect to the business of the Court, **enjoy the same privileges and immunities** as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

...

States Parties **shall**, in accordance with the provisions of this Statute, **cooperate fully with the Court in its investigation and prosecution of crimes** within the jurisdiction of the Court.

Intelligence

Kelly 23:

Professor Michael Kelly '23 shows: Kelly, Michael. [Sen. Allen A. Sekt Endowed Chair in Law; Creighton University School of Law] "U.S. Evidence Sharing with the ICC." Lieber Institute West Point, no page, March 9, 2023. <https://lieber.westpoint.edu/us-evidence-sharing-with-icc/> CH

But decisions must be made. Ultimately, it is the president's job to make them. President Biden now sits at an impasse between his Secretaries of State and

Defense over sharing evidence the United States has in its possession of Russian atrocities in Ukraine with the International Criminal Court (ICC) in The Hague. Despite the Pentagon's objection, he should share that evidence. U.S. Cooperation with the ICC **Although Congress** recently made bipartisan legislative adjustments **authorizing the United States to engage with the ICC on war crimes committed by Russian soldiers in Ukraine, the Pentagon has drawn a line in the sand it is unwilling to cross.** As **the ICC's** investigation of Russian war crimes gains steam, it **needs credible** and admissible **evidence to mount prosecutions.** A not in **significant source** of such evidence **is the** intelligence community of the **U.S.** government, **gleaned** not only **from human and signals intelligence** but also sophisticated **satellite imagery and unmatched forensic capabilities.** To the consternation of the State Department and other units of government, **the Defense Department has** staked out a position **block[ed] transfer of such evidence to the Court.** Although supportive of Ukraine in its war against Russia, on this question, DoD stands alone – but it stands firm. **At the core** of its reticence **lies a perception of the ICC as a threat to the Pentagon's** ability to deploy globally to protect the national security interests of the United States. In the wake of the ICC's unfruitful preliminary examination into U.S. conduct during and after the war in Afghanistan, Secretary of Defense Lloyd Austin remains wary of engaging with them at any level lest a precedent be set that the ICC's prosecutor can investigate and bring cases against the troops of non-member States against their consent. Of course, it is the Defense Department's duty to protect both its forces and our country. Misplaced Concern and Demands of Justice However, in this instance, **such concern is overstated.** The ICC is an international justice mechanism with a highly constrained, back-up jurisdictional reach. The court's "rules of engagement" under the Rome Statute cabin its jurisdiction to handling only genocide, war crimes, crimes against humanity, and aggression in limited instances and only where such States are unwilling or unable to prosecute in their own courts. In rare instances, the Court's jurisdiction may be triggered voluntarily by a non-member State. This was the case with Ukraine when Kyiv requested the Court to investigate Russian conduct in the aftermath of Moscow's occupation and annexation of Crimea in 2015. Because that preliminary examination had not been closed by the time Russian forces invaded Ukraine in 2022, the prosecutor was able to convert the Ukraine situation into an investigation proper. The happenstance of the Court's ability to even engage on the Russia-Ukraine War is due entirely to a set of circumstances almost impossible to replicate. **Alongside Russian targeting of civilians and infrastructure, the** particularly grievous **evidence in our possession proving** that decisions were made by **Russian officials lead**ing to the **abduction and internment of 6,000 Ukrainian children** to "Russify" them, **needs to come to the Court.** Forcible transfer of children is not only a war crime but a crime of genocide under both the 1948 Genocide Convention as well as the Rome Statute. In the case of the former, if not the latter, the United States is legally obligated to prevent and punish genocide. Sharing this material evidence with the ICC to bring such perpetrators to justice meets that obligation. Unfortunately, the Defense Department's institutional position on this matter places it squarely against delivering international criminal justice. On balance, that stance grants more misplaced weight to an unlikely distant worry than to atrocities being committed today against innocent civilians. Although the Pentagon is entitled to its position, the president is entitled to his decision. President Biden must now speak with one voice on sharing evidence with the ICC, and that voice should put America squarely on the side of justice.

Evenson et al. 21:

Scholars Elizabeth Evenson et al '21 show: Evenson, Elizabeth [Director, International Justice Program], and Esti Tambay [Senior Counsel, International Justice Program]. "The US Should Respect the ICC's Founding Mandate." Published in *Just Security*. Human Rights Watch, no page, May 19, 2021.
<https://www.hrw.org/news/2021/05/19/us-should-respect-iccs-founding-mandate> / CH

The task force describes ways in which the ICC's work intersects with U.S. interests, and it makes valuable recommendations even beyond the ICC — for example, on advancing domestic prosecutions of atrocity crimes — that the Biden administration hopefully will adopt. But we disagree with recommendations that would make prosecution of U.S. nationals before the Court less likely, even in the absence of genuine national proceedings. This would advance neither justice nor the Court's success. The task force provides a panoply of options for constructive **U.S. engagement with the ICC,** even though it is not a State party. They include **supporting witness protection and** assistance to victims at the Court, reporting to Congress on ICC-related developments, and tasking its diplomatic missions to follow relevant developments in "situation countries" where the Court's prosecutor is conducting investigations or preliminary examinations. It also recommends **supporting ICC investigations** under appropriate circumstances. While these recommendations are positive, and would go beyond what the Biden administration has signaled about its

prospective cooperation in “exceptional cases,” they **do not go far enough**. Since 2017, **the ICC** prosecutor **has opened** four new **investigations**, including **on Burundi and Bangladesh/Myanmar, and announced** that **investigations** are also warranted **in Ukraine and Nigeria**. **The ICC is relevant in far too many places for the U** **nited States** **to sit on the sidelines**. In the long term, **the U** **nited States** **should join the Court**, but in the meantime U.S. cooperation with the ICC should be the rule, not the exception. The prospect of investigations in Afghanistan and Palestine — to the extent they could implicate the conduct of U.S. and Israeli nationals — triggered Trump’s attacks. The Afghanistan and Palestine situations, both now open before the Court but still in their earliest phases, are likely to be the source of considerable tension in the U.S. relationship with the Court. The Biden administration has already reiterated that it “disagree[s] strongly with the ICC’s actions relating to the Afghanistan and Palestinian situations.” The task force (Just Security Executive Editor Beth Van Schaack is a co-chair of the task force, with Ambassador Todd Buchwald) grappled with this reality. It provides several potential U.S. arguments to ensure the Court does not pursue cases against U.S. nationals, and suggests the U.S. could work in a mutually supportive way with Israel to the extent the latter also seeks to deprioritize cases against its nationals.

They add: Evenson, Elizabeth [Director, International Justice Program], and Esti Tambay [Senior Counsel, International Justice Program]. “The US Should Respect the ICC’s Founding Mandate.” Published in *Just Security*. Human Rights Watch, no page, May 19, 2021. <https://www.hrw.org/news/2021/05/19/us-should-respect-iccs-founding-mandate> CH

Better solutions include: developing robust strategies for responsibly completing ICC investigations to maximize true justice for affected communities and build capacity to support domestic investigations and prosecutions to complement those brought by the Court; expanding the Court’s capacity through better resourcing and performance; redoubling atrocity prevention and rule-of-law efforts globally; and conducting a stakeholder discussion to set out a 10-year strategy for the Court, as the independent expert group recommended. Bringing the United States into partnership on international justice is important. But States parties and other stakeholders should remain vigilant that it does not come at the expense of the Court’s mandate. The review process should not be a Trojan horse that undermines, rather than strengthens, the Court’s delivery of justice. **U.S. support for international justice has been game-changing** in some situations, **such as the impact of U.S. involvement when it came to the International Criminal Tribunal for the former Yugoslavia, and it could be for future efforts to pursue justice through the ICC**, as already seen given the U.S. role in the surrender of two suspects to the Court. It should not come, however, at the cost of subtly degrading the Court’s legal framework or excluding valid claims from victims of grave crimes.

Legitimacy

Ibrahim , 6-13-2024, "Sanctioning the ICC over Israel is a strategic misstep for the US", Atlantic Council, <https://www.atlanticcouncil.org/blogs/menasource/icc-israel-misstep-netanyahu-gallant/>

“President Biden has emphasized the importance of a rules-based international order, consistent with the US support for the ICC’s warrant against Russian President Vladimir Putin for war crimes in Ukraine. However, Biden’s vision for a rules-based world has been widely criticized due to what appears to be unconditional support for Israel in Gaza. If the administration chooses to sanction the ICC, it would display inconsistency and undermine Biden’s efforts to distinguish his administration from those of Barack Obama and Trump, both of whom were criticized for fluctuating foreign policy stances and values. With that, the United States would concede to Russia and China that great-power competition would be based on their values of selective interference and legal reasoning, not acclaimed, consistent US values. The existence of the ICC benefits the United States by helping maintain order in an increasingly unstable world. **As the world moves into the second quarter of the twenty-first century, with great-power competition involving China and Russia as a major theme, many middle powers are finding more space to avoid pressure by hedging their alliances. This hedging allows these middle powers greater latitude to resist any US efforts against domestic or regional conflicts**. Isolated ideological regimes like those in Syria and North Korea do not need to meet economic demands to survive; their legitimacy comes from their authoritarian control and mafia-like rule of society. In contrast, **middle and regional powers such as Saudi Arabia, Turkey, Qatar, and** the United Arab Emirates **(UAE) must remain connected to the world. They will take seriously the risk of being targeted by the ICC if the court is allowed to operate effectively. However, these countries are not members of the ICC, and the lack of**

prosecution against their governments and others for alleged atrocities limits the ICC's ability to influence their behavior and casts doubt on its credibility. By sanctioning ICC officials, **the United States forfeits a potential deterrent against human rights violations and sets a dangerous precedent for nations seeking Chinese or Russian protection from future ICC prosecutions.**"

Funding Link

The root cause of the lack of substantive investigations is the ICC's lack of funding. Ford 17 finds:

Stuart Ford, What Investigative Resources Does the International Criminal Court Need to Succeed?: A Gravity-Based Approach, 16 Wash. U. Global Stud. L. Rev. 001 (2017),

https://openscholarship.wustl.edu/law_globalstudies/vol16/iss1/5

There is an ongoing debate about what resources the International Criminal Court (ICC) needs to be successful. **On one side of this debate are many of the Court's largest funders, including France, Germany, Britain, Italy, and Japan. They have repeatedly opposed efforts to increase the Court's resources even as its workload has increased dramatically in recent years. On the other side of the debate is the Court itself and many of the Court's supporters within civil society. They have taken the position that it is underfunded and does not have sufficient resources to succeed.** This debate has persisted for years and disagreements over the ICC's funding level are now a central feature of the Court's budgeting process. This Article assesses the ICC's needs by looking at the investigative resources that states assign to domestic mass atrocity crimes and then comparing them to the investigative resources available to the ICC. One would expect that similar crimes would require similar resources to investigate. Thus, the resources devoted to domestic atrocity crime investigations can shed light on what resources the ICC needs to be successful. If the ICC has similar resources to those devoted to domestic mass atrocity investigations, this suggests that the ICC is adequately resourced. If, on the other hand, the ICC has fewer resources to conduct its investigations than domestic systems use in comparable circumstances, this suggests that the ICC is under-resourced.

The U.S. joining could alleviate this pressure, as the ICC reports that it is

International Criminal Court. "Understanding the International Criminal Court." International Criminal Court. International Criminal Court, 2020.

<https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>

5. Where is the seat of the Court? The seat of the Court is in The Hague in the Netherlands. The Rome Statute provides that the Court may sit elsewhere whenever the judges consider it desirable. The Court has also set up offices in the areas where it is conducting investigations. 6. How is the Court funded? **The Court is funded by contributions from the States Parties and by voluntary contributions from governments, international organisations, individuals, corporations and other entities.** 7. How does the ICC differ from other courts? The ICC is a permanent autonomous court, whereas the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as other similar courts, were established within the framework of the United Nations to deal with specific situations, and only have a limited mandate and jurisdiction. The ICC, which tries individuals, is also different from the International Court of Justice, which is the principal judicial organ of the United Nations for the settlement of disputes between States. The International Court of Justice and the International Residual Mechanism for Criminal Tribunals also have their seats in The Hague.

For funding specifically, it will help the ICC's Trust Fund for Victims continue and expand its important work. Williams 23:

Williams, Paul R. "U.S. Strategic Interests in Contributing to the ICC Trust Fund for Victims (Part I)." Just Security, February 13, 2023.

<https://www.justsecurity.org/85112/u-s-strategic-interests-in-contributing-to-the-icc-trust-fund-for-victims-part-i/#:~:text=Contributing%20to%20>

Contributing to the International Criminal Court's (ICC) Trust Fund for Victims serves the strategic interests of **the United States. The Trust Fund provides** an efficient and effective **vehicle for the United**

States to channel assistance to victims of atrocity crimes, including in Ukraine, while strengthening the foundations of U.S. leadership in the ongoing fight against impunity. Lawmakers perceive legal ambiguity around whether the United States may contribute to the Trust Fund given past efforts by the U.S. Congress to shield American service members and citizens from the ICC's jurisdiction. As Part II and Part III will explain, various federal laws prohibit general financial assistance to the ICC, even following the recent addition of the "War Crimes Accountability" provision. However, because the Trust Fund for Victims is a functionally different entity than the Court itself, Part IV explains that the United States could contribute financially to the Trust Fund for Victims in situations beyond Ukraine

Powell 18:

Catherine Powell, 9-11-2018, "International Criminal Court Plays Important Role in Global Rule of Law", Council on Foreign Relations,

<https://www.cfr.org/article/international-criminal-court-plays-important-role-global-rule-law>

The idea behind creating the ICC emerged from the ashes of World War II and the Nazi Holocaust. It took another half century after the founding of the UN before the ICC came into effect. **Its establishment not only offers a way to punish war atrocities, but also deters would-be abusers from even contemplating committing genocide and other serious international crimes. International criminal justice is important not only to secure justice for victims, but also to preserve rule of law and promote greater peace, security, and stability in an otherwise tumultuous world.** When courts dispense justice, aggrieved individuals and communities are less likely to take matters into their own hands, which can escalate into serious conflicts with spillover effects for all. National courts can occasionally prosecute these crimes, but are sometimes not willing or able to do so.

That's why empirically

Jo 2016 finds that [Hyeran Jo, Beth Simmons, "Can the International Criminal Court Deter Atrocity?", 03/07/2016, International Organization, https://scholarship.law.upenn.edu/faculty_scholarship/1686/] M.S.

Table 2 presents the results for government forces. Consistent with our hypothesis about **prosecutorial deterrence**, the significant and negative incidence-rate ratio suggests that **ratification reduces the intentional civilian killing by a factor of .531 [53%], compared to nonratification.**

For example, if, hypothetically, 100 civilians were killed by a non-ratifying government, our estimates suggest about 53 civilians are likely to be killed, assuming ratification with all other control variables held constant (see Figure 1). All specifications control core predictors for civilian killing such as the nature of the political regime, ongoing civil war, intentional rebel killing of civilians (to account for the possibility of reciprocity as well as for trends in violence over time), and an indicator for before and after the ICC came into force. Surprisingly, these models suggest that regime type is not likely to explain intentional civilian killing, though active civil wars certainly do. Governments are also much more likely to commit violence against civilians when rebels do so, which suggests that ICC deterrence may contribute to breaking cycles of violence committed on both sides of a conflict.

Model 2 looks at the effect of ICC Actions, the three-year moving average of previous preliminary examinations, investigations, and warrants by the Office of the Prosecutor (OTP). According to the incidence-rate ratio based on Model 2, one additional investigation each year over the three-year term is estimated to reduce intentional civilian killing by a factor of 0.570 [57%]. (See Table 1 for an estimate of lives spared, which is substantial). Note that the significant effect of ICC Actions is robust even after including Post-ICC Regime, a variable that captures the Court's existence, but not its actions. It is therefore quite unlikely that the effect of ICC Actions is merely an artifact of some general violence-reducing temporal trend or the result of a passive court. Rather, ICC Actions represent new information, available to all actors, demonstrating that the ICC is operational, authoritative, and that the prosecutor means to bring perpetrators to justice. What of complementarity? Model 3 **demonstrates that improvements in Domestic Crime Statutes – which are themselves influenced by the presence of the ICC – are also associated with reduced civilian killing.** This effect is robust to the control of Rule of Law, suggesting that it is not merely the capacity to enforce but the substantive legal change that is critical. **One categorical shift toward stronger ICC-consistent domestic legal reform is estimated to reduce civilian killing by a factor of 0.61,** the substantive impact of which is illustrated in Figure 1.

