Acceding to the ICC is unconstitutional

Casey 18 [Lee A. Casey, no date, Washington University Law, https://law.washu.edu/wp-content/uploads/2018/10/The-Case-Against-Supporting-the-International-Criminal-Court.pdf, DOA 1-28-2025, Mr. Casey is a partner in the law firm of Baker & Hostetler LLP, based in Washington, D.C. His practice areas include administrative, environmental, and federal constitutional, as well as public international and international humanitarian law. Mr. Casey has served in various capacities in the federal government, including in the Office of Legal Counsel and the Office of Legal Policy at the U.S. Department of Justice] \\SL

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 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. The ICC will act as policeman, prosecutor, judge, jury, and jailor – all of these functions will be performed by its personnel, with nothing but bureaucratic divisions of authority, and no division of interest. There would be no appeal from its judgments. If the ICC abuses its power, there will be no recourse. From first

to last, the ICC will be the judge in its own case. It will be more absolute than any dictator. As an institution, the ICC is fundamentally inconsistent with the political, philosophical, and legal traditions of the United States ICC supporters suggest that U.S. participation in this Court would not violate the Constitution because it would not be "a court of the United States," to which Article III and the Bill of Rights apply. They often point to cases in which the Supreme Court has allowed the extradition of citizens to face charges overseas. There are, however, fundamental differences between United States participation in the ICC Treaty Regime and extradition cases, where American are sought for crimes committed abroad. If the U.S. joined the ICC Treaty, the Court could try Americans who never have left the United States, for actions taken entirely within our borders. A hypothetical, stripped of the emotional overlay inherent in "war crimes" issues, can best illustrate the constitutional point here: The Bill of Rights undoubtedly impedes efficient enforcement of the drug laws – also a subject of international concern. Could the federal government enter a treaty with Mexico and Canada, establishing an offshore "Special Drug Control Court," which would prosecute and try all drug offenses committed anywhere in North America, without the Bill of Rights guarantees? Could the federal government, through the device of a treaty, establish a special overseas court to try sedition cases – thus circumventing the guarantees of the First Amendment. Fortunately, the Supreme Court has never faced such a case. However, in the 1998 case of United States v. Balsys, the Court suggested that, where a prosecution by a foreign court is, at least in part, undertaken on behalf of the United States, for example, where "the United States and its allies had enacted substantially similar criminal codes aimed at prosecuting offenses of international character . . ." then an argument can be made that the Bill of Rights would apply "simply because that prosecution[would not be] fairly characterized as distinctly 'foreign' The point would be that the prosecution was as much on behalf of the United States as of the prosecuting nation. . ."6 This would, of course, be exactly the case with the ICC. If the United States became a "State Party" to the ICC Treaty, any prosecutions undertaken by the Court would be "as much on behalf of the United States as of" any other State party. Since the full and undiluted guarantees of the Bill of Rights would not be available in the ICC, the United States cannot, constitutionally, sign and ratify the ICC treaty. * * * ICC supporters also have argued that the U.S. should sign and ratify the Rome Treaty because the Court would be directed against people like Saddam Hussein and Slobodan Milosevic, and not against the United States. Here, as pretty much everywhere, the past is the best predictor of the future. We already have seen this particular drama staged at the Yugoslav Tribunal. Even though that Tribunal was established to investigate crimes committed during 1991-1995 Yugoslav conflict, and even though NATO's air war against Serbia was fought on entirely humanitarian grounds, and even though it was conducted with the highest level of technical proficiency in history, the Hague prosecutors nevertheless undertook a politically motivated investigation – motivated by international humanitarian rights activists along with

Russia and China – of NATO's actions based upon the civilian deaths that resulted. At the end of this investigation, the prosecutors gave NATO a pass not because, in their view, there were no violations, but because "[i]n all cases, either the law is not sufficiently clear or investigations are unlikely to result in the acquisition of sufficient evidence to substantiate charges against high level accused or against lower accused for particularly heinous offenses."7 Significantly, in their report the prosecutors openly acknowledged the very elastic nature of the legal standards in this area, further highlighting the danger that the United States will be the subject of such politically motivated prosecutions in the future: "[t]he answers to these question [regarding allegedly excessive civilian casualties] are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision-maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to noncombatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases."8 These are, in fact, "will build to suit" crimes. Whether prosecutions are brought against American officials will depend entirely upon the motivations and political agenda of the ICC. In response, ICC supporters claim that we can depend upon the professionalism and good will of the Court's personnel. One of the ICC's strongest advocates, former Yugoslav Tribunal Prosecutor Louise Arbour has argued for a powerful Prosecutor and Court, suggesting that "an institution should not be constructed on the assumption that it will be run by incompetent people, acting in bad faith from improper purposes." The Framers of our Constitution understood the fallacy of this argument probably better than any other group in history. If there is one particular American contribution to the art of statecraft, it is the principle – incorporated into the very fabric of our Constitution – that the security of our rights cannot be trusted to the good intentions of our leaders. By its nature, power is capable of abuse and people are, by nature, flawed. As James Madison wrote "the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."9 The ICC would not be obliged to control itself. * * * It is also often asserted that the principle of "complementarity," found in Article 17 of the Rome Treaty, will check the Court's ability to undertake prosecution of Americans. This is the principle that prohibits the ICC from taking up a case if the appropriate national authorities investigate and prosecute the matter. In fact, this limit on the ICC's power is, in the case of the United States, entirely illusory. First, as with all other matters under the Rome Treaty, it will be solely within the discretion of the ICC to interpret and apply this provision. Second, under Article 17, the Court can pursue a case wherever it determines that the responsible State was "unwilling or unable to carry out the investigation or prosecution." In determining whether a State was "unwilling" the Court will consider whether the national proceedings were conducted "independently or impartially." The United States can never meet that test as an institutional matter. Under the Constitution, the President is both the Chief Executive, i.e., the chief law enforcement officer, and the Commander-in-Chief of the armed forces. In any particular case, both the individuals investigating, and prosecuting, and the individuals being investigated and prosecuted, work for the same man. Moreover, under command responsibility theories, the President is always a potential – indeed, a likely, target of any investigation. The

ICC will simply note that an individual cannot "impartially" investigate himself, and it will be full steam ahead. **As a check on the ICC, complimentarity is meaningless.** * * * Finally, it's important to understand exactly what is at stake here. **Today, the officials of the United States are ultimately accountable for their actions to the American electorate. If the United States were to ratify the ICC Treaty this ultimate accountability would be transferred from the American people to the ICC in a very real and immediate way** – through the threat of criminal prosecution and punishment. The policies implemented, and actions taken by our national leaders, whether at home or abroad, could be scrutinized by the ICC and punished if, in its opinion, criminal violations had occurred. As Alexis de Tocqueville wrote, "[h]e who punishes the criminal is . . . the real master of society."10 **Ratification of the ICC Treaty would, in short, constitute a profound surrender of American sovereignty – our right of self-government – the first human right**. Without self-government, the rest are words on paper, held by grace and favor, and not rights at all. That surrender would be to an institution that does not share our interests or values. There is no universally recognized and accepted legal system on the international level, particular in the area of due process, as the Rome Treaty itself recognizes in requiring that, in the selection of judges, "the principal legal systems of the world," should be represented. Moreover, although a number of Western states have signed this treaty, so have states such as Algeria, Iran, Nigeria, Sudan, Syria and Yemen. According to the U.S. State Department, each of these states have been implicated in the use of torture or extrajudicial killings, or both. Yet, each of them would have as great a voice as the United States in selecting the ICC's Prosecutor and Judges, and in the Assembly of State Parties. This is especially troubling because, as the ICTY Prosecutor conceded, who is and who is not a war criminal is very much a matter of your point of view. And I'd like to give give you a fairly poignant example that I learned of, actually, while practicing before the ICTY. In this case there was a young officer, 20 or 21 years old, who commanded a detachment of regular soldiers, along with a group of irregulars. Irregulars are, of course, always a problem. I think everyone pretty much agrees that, for example, the worst atrocities in Bosnia were committed by irregulars. At any rate, these irregulars were clearly under the officer's command when they all ran into a body of enemy troops. There was a short, sharp firefight. A number of the enemy were killed or wounded, and the rest through down their arms and surrendered. At that point, the officer entirely lost control of the situation. His irregulars began to kill the wounded and then the rest of the prisoners -- with knives and axes actually. After a good deal of confusion, the officer managed to form up his regulars around the remaining prisoners, but about a dozen were killed. Now, under our system of military justice, the perpetrators would be prosecuted, but the officer would very likely not be. He gave no order for the killings, and took some action to stop it. However, under the command responsibility and "knowing presence" theories now current at the ICTY, the ICC's model, this officer is guilty of a war crime. The fact that he did make some attempt to prevent the killing would certainly be taken into account, but very likely as a matter of mitigation at sentencing. At any rate, this is a real case. It didn't, however, happen in Central Bosnia, or Kosovo, or Eastern Slavonia, and the individuals involved were not Serbs, Croats, or Muslims. As a matter of fact, it happened in Western Pennsylvania. The soldiers were English subjects, at the time, and the irregulars were Iroquis Indians; their victims were French. The young officer was, as a matter of fact, from the county in which I live -- Fairfax, Virginia. And, for those of you who are students here at the University, his name -- Washington -- will grace each of your diplomas.11 War is, inherently, a violent affair and the discretion whether to prosecute any particular

case in which Americans are involved should be kept firmly in the hands of our institutions, to be made by individuals who are accountable to us for their actions. The ICC is inconsistent with our Constitution and inimical to our national interests. It is an institution of which we should have no part.

Contention 1 is Backlash

Trump hates the ICC

Minsberg 2/7 [Talya Minsberg, 2-7-2025, Why Is Trump Targeting the International Criminal Court?, New York Times, https://www.nytimes.com/2025/02/07/us/politics/trump-icc.html, DOA 2-11-2025, Talya Minsberg is a New York Times reporter covering breaking and developing news around the world] \\SL

President **Trump says** the work of **the I.C.C.**, the world's highest criminal court, **threatens the national security of the United States and its allies**, including Israel. The International Criminal Court is located in The Hague, a center for international law. Credit...Peter Dejong/Associated Press Talya Minsberg By Talya Minsberg Published Feb. 7, 2025 Updated Feb. 11, 2025, 8:07 a.m. ET President Trump signed an executive order on Thursday imposing sanctions on the International Criminal Court and **pledging "tangible and significant consequences**" for those responsible for investigations that threatened the national security of the United States and its allies, including Israel. Here's an explanation of the court's mission and why the Trump administration focused its latest executive action on the tribunal. What is the International Criminal Court? The International Criminal Court is the world's highest criminal court, and is located in The Hague, a global center of international law. The court was set up under a 1998 treaty to prosecute individuals for war crimes, genocide, crimes against humanity and the crime of aggression — defined by the court as "the use of armed force by a state against the sovereignty, integrity or independence of another state." Countries join the court by adopting the treaty, which is known as the Rome Statute. Before the court's creation, the U.N. Security Council established several ad hoc tribunals to prosecute atrocities. The I.C.C. has 125 members, although a number of powerful nations are not members and do not recognize the authority of the court, including China, India, Russia, the United States and Israel. The U.S. has abstained from membership as a way to prevent the tribunal from being used to prosecute Americans and has argued it would violate the Constitution. Where does the court have jurisdiction? The jurisdiction of the court, which is based in The Hague, includes the territories of its member states, regardless of the nationality of the accused. The court does not have a police force to make arrests and cannot try defendants in absentia, so it relies on member nations to carry out arrests. Global leaders who face charges but whose nations are not members of the court can be arrested if they travel to a member nation, which includes most European countries. Member states are obliged to — but do not always — detain suspects to stand trial in The Hague. Why has the court been in the news recently? In November, the I.C.C. issued arrest warrants for Prime Minister Benjamin Netanyahu of Israel and Israel's former defense minister, Yoav Gallant, for crimes against humanity and war crimes in Gaza. On the same day, the I.C.C. also issued an arrest warrant for Hamas's military chief, Muhammad Deif. Initially, the court had sought arrest warrants for two other Hamas leaders, Yahya Sinwar and Ismail Haniyeh, but both were confirmed killed before the warrants could be issued. Mr. Deif's death was confirmed by Hamas last month. The tribunal faced immediate backlash over the arrest warrants from the United States and Israel. Why did President Trump issue sanctions against the court? On Thursday, two days after welcoming Mr. Netanyahu to the White House, Mr. Trump signed an executive order imposing sanctions on the court. The order cited the court's actions against Israel and "preliminary investigations" into U.S. personnel that "set a dangerous precedent." But those investigations, aimed at secret C.I.A. prisons in Afghanistan, Poland, Lithuania and Romania, were dropped several years ago. The I.C.C. condemned the order on Friday, saying the action sought to harm the court's "independent and impartial judicial work." Late last month, Democrats blocked a bill in the Senate that would have punished the court for its actions against the Israeli officials, a direct challenge to the tribunal's existence. But the Democrats' objections were not so much a defense of the court's reach; rather, that the bill was far too broad, and could be used to punish not only a wide range of personnel at the court, but also American companies working with it. Mr. Trump has taken action against the I.C.C. before. During his first presidency, in June 2020, his administration issued sanctions against international investigators looking into reports of torture, rape and other mistreatment of detainees by Americans in Afghanistan and at so-called black sites in Europe.

Accession is conceding to an anti-American institution

Rivkin and Casey 99 [David Rivkin Jr. and Lee Casey, 2-5-1999, The International Criminal Court vs. the American People, Heritage Foundation, https://www.heritage.org/report/the-international-criminal-court-vs-the-american-people, DOA 2-2-2025, David Rivkin Jr. was an American Baker & Hostetler attorney, political writer, and former White House counsel. Lee A. Casey is a Washington attorney and served in the Justice Department under Presidents Ronald Reagan and George H.W. Bush] \\SL

As adopted, **the ICC** treaty **is an unchecked invitation to** abuse and use as a political tool to **restrain America's ability to defend its interests**. Although the Clinton Administration refused to approve the ICC treaty, it has indicated that it might change its position if certain revisions were made. In fact, numerous NGOs and members of the Like-Minded Group are pressing the Administration to move in that direction. However, even if the treaty were amended to incorporate measures that protect U.S. troops on peacekeeping missions from prosecution, it would remain both legally and politically inimical to the interests of the United States. Specifically: The ICC **threatens** American self-government. The creation of a permanent, supranational court with the independent power to judge and punish elected officials for their official actions represents a decisive break with **fundamental American ideals of self-government and popular sovereignty**. It would constitute the transfer of the ultimate authority to judge the acts of U.S. officials away from the American people to an unelected and unaccountable international bureaucracy. As Alexis de Tocqueville wrote in his Democracy in America, "[h]e who punishes the criminal is . . .the real master of society." In this regard, the claims of ICC supporters that the court is not directed at American citizens may be dismissed. Suggestions that U.S. soldiers and civilians could not be brought before the ICC because that court would be required to defer to U.S. judicial processes--the concept of "complementarity"--are disingenuous. Under the ICC treaty, the court would be the absolute judge of its own jurisdiction and would itself determine when, if ever, such a deferral was appropriate. The ICC is fundamentally inconsistent with American tradition and law. In its design and operation, the ICC is fundamentally **inconsistent with core American political and legal values.** Indeed, if Americans ever were arraigned before the ICC, they would face a judicial process almost entirely foreign to the traditions and standards of the United States. First and foremost, they would face a civil law "inquisitorial" system where guilt would be determined by judges (possibly from countries hostile to the United States) alone. There would be no right to trial by jury, a right considered so central by the Founders of the American Republic that it was guaranteed twice in the U.S. Constitution (in Article III, Section 2, and the Sixth Amendment). Trial by jury is not, of course, the only right guaranteed to Americans that would be unavailable in an ICC. For example, an American surrendered to the ICC would not enjoy rights to reasonable bail or a speedy trial, as those rights are known and guaranteed in the United States. Although the ICC would have to provide a trial "without undue delay," this could mean many years in prison. For instance, mocking the presumption of innocence, the prosecutor of the United Nations International Criminal Tribunal for the Former Yugoslavia, a court widely viewed as a model for the ICC, actually argued that up to five years would not be too long to wait in prison for a trial.8 In addition, the fundamental right of a defendant to confront the witnesses against him and to challenge their evidence would be fatally compromised in the ICC. The "international" rule and practice is quite different. In the U.N. Yugoslav Tribunal, both anonymous witnesses and extensive hearsay evidence (where the witness cannot be challenged) have been allowed at criminal trials.9 Moreover, the ICC prosecutor would be able to appeal a verdict of acquittal, effectively placing the accused in "double jeopardy." Such appeals have been forbidden in the law of England and the United States since the 17th century. If convicted, the defendant would be unable to appeal the verdict beyond the ICC itself, and could be consigned to a prison in any one of the States Parties to the treaty at the ICC's pleasure and under its supervision. The ICC **violates constitutional principles**. The failure of the ICC treaty to adopt the minimum guarantees of the U.S. Constitution's Bill of Rights is, in fact, one of the principal reasons why the United States could not, even if it wanted to, join the ICC treaty regime. As the U.S. Supreme Court recently suggested in United States v. Balsys,10 the United States cannot participate in or facilitate a criminal trial under its own authority, even in part, unless the Constitution's guarantees are preserved. If, however, the United States were to join the ICC treaty regime, the prosecutions undertaken by the court, whether involving the actions of Americans in the United States or overseas, would be "as much on behalf of the United States as of" any other State Party.11 Since the guarantees of the Bill of Rights would not be available in the ICC, the United States could not participate in, or facilitate, any such court. United States participation in the ICC treaty regime would also be unconstitutional because it would allow the trial of American citizens for crimes committed on American soil, which are otherwise entirely within the judicial power of the United States. The Supreme Court has long held that only the courts of the United States, as established under the Constitution, can try such offenses. The Supreme Court made this clear in the landmark Civil War case of Ex parte Milligan. In that case, the Court reversed a civilian's conviction in a military tribunal, which did not provide the guarantees of the Bill of Rights, holding that "[e]very trial involves the exercise of judicial power," and that the military court in question could exercise "no part of the judicial power of the country."12 This reasoning is equally applicable to the ICC. The ICC **contradicts** the **founding principles** of the American Republic. United States participation in the ICC treaty regime would be fundamentally inconsistent with the founding principles of this country. The Declaration of Independence, which articulates the principles that justify the American Republic's very existence, listed the offenses of the King and Parliament that

required separation from England, revolution, and war. Prominent among those offenses were accusations that Britain had (1) subjected Americans "to a jurisdiction foreign to our constitution and unacknowledged by our laws"; (2) "depriv[ed] us, in many cases, of the benefits of Trial by Jury"; and (3) "transport[ed] us beyond [the] Seas to be tried for pretended offences."13 These provisions referred to the British practice of prosecuting Americans in "vice-admiralty" courts for criminal violations of the navigation and trade laws. Like the ICC, these courts followed the civil law, "inquisitorial" system.14 Convictions, of course, could be obtained far more easily from these tribunals than from uncooperative colonial juries.15 The U.S. Constitution's Framers sought to eliminate forever the danger that Americans might again be surrendered to a foreign power for trial by specifically requiring that criminal trials be by jury and conducted in the state and district where the crime was committed. This is the only right guaranteed by the Constitution to be stated twice in the original document and its first ten amendments. As Justice Joseph Story explained, the "object" of these provisions was "to secure the party accused from being dragged to a trial in some distant state, away from his friends, and witnesses, and neighborhood; and thus subjected to the verdict of mere strangers, who may feel no common sympathy, or who may even cherish animosities, or prejudices against him."16 Of course, if the United States were to join the ICC treaty, Americans again would face transportation beyond the seas for judgment, without the benefits of trial by jury, in a tribunal that would not guarantee the other rights they take so much for granted and where the judges may well "cherish animosities, or prejudices against" them. **The ICC threatens America's** ability to defend its interests through military action. The ICC would be able to prosecute any individual American, including the President, military and civilian officers and officials, enlisted personnel, and even ordinary citizens who were involved in any action it determined to be unlawful and within its jurisdiction. For example, if the ICC existed today, it could investigate President Clinton's August 1998 attack on Osama bin Laden's terrorist base in Afghanistan or the more recent attacks on Iraq. Possible allegations would be that these attacks constituted "aggression" or crimes against humanity based upon any resultant damage to civilians or civilian property. If the ICC determined that there was sufficient evidence to support an indictment, the President, the Secretary of Defense, or any other individual who took part in planning or executing the attacks could be sought by the ICC to be tried for these actions, even though they were entirely lawful under the Constitution and laws of the United States.

New jurisdiction undermines executive power causing lash out.

Waldman 18 [Paul Waldman, 9-19-2018, Paul Waldman: Think Trump's war on the rule of law is bad now? Just you wait., Winston-Salem Journal, https://archive.ph/iMrlW, DOA 2-12-2025, Paul Waldman is an author and commentator who wrote for the Washington Post] \\SL

For the record, there is no one outside of **Trump** and his most worshipful Fox News hype men who thinks it was "unfair" that Sessions recused himself. But this provides an insight into Trump's thinking. He is constantly concerned with the concept of fairness, which he tends to define as whatever is good for Trump. He **regularly complains** that he or people he likes are being treated unfairly, usually **when** they're **held accountable** for some kind of misdeed. We should note that if Trump even bothered to pretend that the Russia investigation should be conducted with professionalism and objectivity, he would agree that it doesn't matter at all whether it's being overseen by the attorney general, the deputy attorney general, or any other official. The only reason why it would be "unfair" for Sessions to follow Justice Department guidance and recuse himself from the Russia investigation is that it means he can't protect Trump. All this is familiar, but it offers a reminder that for Trump, all this -- the Russia investigation, the identity of the people who are in senior leadership at the Justice Department -- is intensely personal. **When he**'s **feel**ing **wronged** or put-**upon, he lashes out.** Which is why after November his cold war with the Justice Department could turn hot. If the Democrats take control of the House in the midterm elections, they will immediately move to provide the oversight of the administration that has been absent over the last 20 months, which means a raft of investigations and a mountain of subpoenas. That will certainly include investigations of the Russia scandal (and when Republicans claim that they're making too big a deal out of an unprecedented attack on the American electoral system by a hostile foreign power, we might remember that Republicans launched seven separate investigations of Benghazi). These investigations will involve demands for documents, administration and campaign officials being called to testify, televised hearings, and a drumbeat of negative news that no amount of tweets shouting "No collusion!" will make disappear. **Trump will** inevitably **become enraged**. We know that more than almost any other president who came before him, Trump chafes **at** the restraints of the job - a Congress that won't do what he wants, media that criticize him instead of celebrating his limitless greatness, **courts that tell him what he can and can't do**, pesky laws that limit his ability to see his every impulse carried out. If he finds himself "unfairly" besieged by congressional Democrats who suddenly have actual power, how is he **likely to** react? Probably by using what power he does have to **strike back**.

The options are complete weaponization of the court or full rejection.

Court members can nominate prosecutors and judges, and these positions hold immense strength.

Scheffer-03 [David J. Scheffer, November 2003, "Advancing U.S. Interests with the International Criminal Court", Vanderbilt, https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1638&context=vjtl. //nw]

Let me just say that **if** we were someday to **ratify** the **Rome Statute**-and it may not be for four, eight, ten, or even fifteen yearswe would immediately gain four advantages. First, we could employ a right under the treaty not to be exposed to any war crimes charges for seven years. That is a quirky provision (for which we can thank ourselves and the French), but we could use it, just as the French have done. Second, if the court were to define the crime of aggression and approve it as an amendment to the Rome Statute, we would not have to embrace that crime. We could simply opt out of its application to the United States. We would have that right, as a state party, to opt out of any new crime that might be added to the statute. Third, **we would have enormous influence** in the **nomination** of **judges**, the prosecutor's staff, and the **prosecutor** himself or herself. We have **no such influence now**, and, of course, there is **no U.S. judge** on the **bench**, as yet. I always thought that the best recommendation for a U.S. judge on the ICC would be a JAG judge. We should put one of our best military lawyers on the bench, one very cognizant of the law of armed conflict, because there are no such individuals on the bench right now. Of eighteen judges, there is not a single military law expert. We could have brought that to the bench and had an enormous impact on how the court thinks about situations and how it understands the law of armed conflict. Our **nominee** for **judge would** have been **elected**; there is **no question** about that. Of course, we do not have that option **unless** we become a **ratified party**

That's devastating, as it hands the US the keys to power.

Andrea **Furger**, The University of Melbourne, May 24, 20**24**, "US hostility towards ICC is nothing new – it supports court only when it suits American interests," Maktoob media, https://maktoobmedia.com/world/us-hostility-towards-icc-is-nothing-new-it-supports-court-only-when-i t-suits-american-interests/, accessed 1-26-2025, //ZD

This has largely been tied to a broader assessment of US foreign policy goals and the anticipated costs and benefits that supporting the court could bring. The US was initially a keen supporter of the creation of a permanent international criminal court and was an active participant in the ICC treaty negotiations in the 1990s. But it ultimately voted against the Rome Statute that created the court in 1998 due to concerns with the court's jurisdictional framework. The US feared it could allow for the prosecution of Americans without US consent. Although the US still signed the Rome Statute, President George W. Bush later effectively unsigned it, saying the US would not ratify the document and had no legal obligations to it. The US remains a non-member state to the ICC today. Once the ICC was created, the US adopted laws to restrict its interactions with the new court. Most importantly, it passed the American Servicemembers' Protection Act of 2002 (ASPA) that prohibited providing any support to the ICC. This law also allowed the US president to use "all means necessary" – a phrase understood to include armed force – to free American officials or servicemembers should they ever be detained for prosecution in The Hague, the seat of the ICC. This earned it the nickname of "The Hague Invasion Act". That same year, however, an amendment was passed to the law allowing exceptions for when the US could assist international courts to bring to justice: Saddam Hussein, Slobodan Milosovic, Osama bin Laden, other members of al-Qaeda, leaders of Islamic Jihad and other foreign nationals. The amendment created significant flexibility, demonstrating tha**t the US was ready to assist international justice efforts as long as they targeted designated US "enemies" or other foreign nationals.** US support in African cases**The US soon adopted a pragmatic approach towards the court, supporting its activities depending on the circumstances and its interests.** In 2005, **Washington allowed a UN Security Council referral to the ICC in relation to possible genocide and war crimes committed in Darfur, Sudan**. The conflict was among the US' top foreign policy priorities in Africa at the time. Later, **the Obama**

administration formally adopted a "case-by-case" strategy to cooperate with the ICC when it aligned with US interests. Under this policy, the US played an important role in the 2011 referral of alleged crimes against humanity and war crimes committed in Libya to the ICC. This was, again, in line with US foreign policy interests. US diplomats also provided vital support in the arrest of Congolese warlord Bosco Ntaganda, who was later sentenced to 30 years in prison by the ICC for war crimes and crimes against humanity. And the US assisted with the arrest of Dominic Ongwen of the Lord's Resistance Army in Uganda, who was later sentenced to 25 years. Dominic Ongwen at the ICC. In this 2016 photo, Dominic Ongwen, a senior commander in the Lord's Resistance Army enters the courtroom of the ICC. Peter Dejong/AP Pool Another falling out over Afghanistan The relationship between the US and the court soon soured again, though, during the Trump administration. This was in part because of developments in the ICC's investigation into alleged crimes committed in Afghanistan, which marked the first time the court probed possible crimes committed by US forces. In 2020, ICC judges authorised an investigation into US, Afghan and Taliban forces. Soon after, the US imposed sanctions on the ICC prosecutor, Fatou Bensouda, and another senior ICC official. After some delays, the investigation is continuing again, with a focus solely on crimes allegedly committed by the Taliban and Islamic State Khorasan Province. Other aspects of the investigation have been "deprioritised", an implicit reference to the US and its allies. Fatou Bensouda, former ICC prosecutor. Fatou Bensouda, the chief prosecutor of the ICC until 2021. Peter Dejong/AP Pool Soon after taking office, the Biden administration lifted the sanctions against the ICC officials, returning to a seemingly more collaborative period in US-ICC relations. These relations became closer following the Russian invasion of Ukraine, with the adoption of new laws that broadened the possibilities of US cooperation with the court. The goals of the US and ICC had seemingly aligned again, at least for the time being. But this week's request for **arrest warrants for Israeli leaders demonstrates yet another shift in the US approach t**o the court. **It continues the pattern of the US supporting the court when it suits it, prioritising its own foreign policy goals over wider international criminal justice efforts.**

The ICC is especially vulnerable.

Daniel P.L. **Chong**, 20**14**, Debating Human rights, "6 Should the United States Join the International Criminal Court?" https://www.degruyter.com/document/doi/10.1515/9781685850661-008/html //ASD [recut //SG!]

The United States, given its superpower status, would likely exert disproportionate influence over the International Criminal Court (ICC) if it were to join. This could manifest in attempts to steer the court's prosecutorial decisions to align with U.S. foreign policy objectives, thereby compromising the ICC's independence. Historical instances demonstrate that **the U.S. has prioritized its strategic interests over international legal norms, suggesting that its participation might lead to selective justice and erode the court's credibility as an impartial institution. The potential for the U.S. to manipulate the ICC underscores concerns about the court becoming an instrument of American hegemony rather than a bastion of universal justice.**

If the ICC allows U.S. influence to dictate its actions, it will create a system where accountability is determined by power, not justice.

Caleb **Wheeler**(Lecturer in Law at Cardiff University.), 12-08-20**22**, "Should the ICC Allow the United States to Become a State Party?"

Opinio Juris, https://opiniojuris.org/2022/08/12/should-the-icc-allow-the-united-states-to-become-a-state-party/?fbclid=IwZXh0bgNhZW0CMTEAAR3qnKZYVQclxCBA7VsAL6Rr_p36SDq-S4_4IpBpLG79SZnMREBoP6fABP0_aem_KNBuqeWfozIjEDO3lQx3VA, accessed 7-1-23, //ZD

While it did not refer directly to the International Criminal Court, one of the bills' co-sponsors, Representative Ilhan Omar stated in a Press Release that the Bill would help support proceedings at the ICC. Conclusion **The actions and statements of the last five presidential administrations suggest that they do not fully understand what the ICC actually does and that they are not particularly interested in finding out**. They **have only been interested in engaging with the Court as a tool to be used against others rather than as a real instrument designed to combat impunity**. This was made clear in a recent statement by Linda Thomas-Greenfield, the US Ambassador to the United Nations. When asked about trying Putin at the ICC, she responded that it remained available as an option and that the United States has always been supportive of the Court taking action 'when action is required.' **Implicit in this statement is the idea that holding Americans accountable is never required.** 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**. That leaves **the Court** with a choice. It **can either change its mission to secure American membership or stay the course and continue to pursue its goal ending impunity**. The first path would likely result in the ICC receiving greater political, intelligence and financial support from the United States, 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 development of a two-tiered jurisdictional structure at the ICC under which individual criminal responsibility would depend as much on the citizenship of the accused as the circumstances surrounding their alleged criminality. Such a change would fundamentally alter the Court's mission by making full accountability for atrocious crimes an unattainable goal**. Until the United States is willing to drop its objections to how the ICC exercises its jurisdiction**, the Court is better off without the United States** as state party **and should resist any attempts it might make to join.**

The EU chose the ICC over Trump

Dom 2/12 [Evelyn Ann-Marie Dom, 2-12-2025, EU leaders and lawmakers condemn Trump's sanctions against ICC, Euronews, https://www.euronews.com/my-europe/2025/02/12/eu-leaders-and-lawmakers-condemn-trumps-sanctions-against-icc, DOA 2-13-2025, Evelyn Anne-Marie Dom is a Journalist at Euronews] \\SL

EU leaders and lawmakers **hit back** on Tuesday **at** US President Donald **Trump, after he** signed an executive order last week **impos**ing **sanctions on the** International Criminal Court (**ICC**). In November of last year, the ICC issued an arrest warrant for Israeli Prime Minister Benjamin Netanyahu and former Defence Minister Yoav Gallant over alleged war crimes and crimes against humanity committed during Israel's war against Hamas in Gaza. An arrest warrant was also issued for Hamas leader Mohammed Deif. Member states of the court are expected to arrest those facing an arrest warrant if they were to set foot on their soil — however, the ICC has no way of enforcing this. The US and Israel are neither members of the court nor do they recognise it. In a statement issued by the White House last week, Trump said the ICC illegitimately "asserted jurisdiction over and opened preliminary investigations concerning personnel of the United States and certain of its allies, including Israel." It added that the court used "its power by issuing baseless arrest warrants targeting ... Netanyahu and Gallant." On Friday, European Council President António Costa said the sanctions threaten the court's independence and undermine the criminal justice system. During a debate at the European Parliament in Strasbourg, members of **the Eu**ropean Parliament mirrored these concerns and **spoke** out **in defence of the court, pledging to safeguard it** and those working there. 'Accountability around the world' impacted Polish Minister for European Union Affairs Adam Szłapka acknowledged the ICC's crucial role in "delivering justice to the victims of some of the world's most horrific crimes." "It is highly regrettable that the court continues to face threats, intimidation and pressure, any threat against the court, its staff and those involved in the work in the ICC is unacceptable," he added. European Commissioner for Democracy, Justice, the Rule of Law and Consumer Protection Michael McGrath said the decision poses a serious risk to ongoing investigations of the ICC, "impacting years of efforts to ensure accountability around the world." "In the face of the US sanctions, The Union is aware of the urgency of **providing support** to the court, both **financially and** also **diplomatically**. We will continue to use the tools at our disposal to protect the ICC," McGrath said.

So NATO's first to go

Nordstrom 24 [Louise Nordstrom, 10-27-2024, 'The guardrails are gone': Full throttle as Europe tries to Trump-proof itself, France 24, https://www.france24.com/en/europe/20241027-europe-guardrails-tries-to-trump-proof-security-nato, DOA 2-11-2025, Louise Nordstrom is a Journalist at France 24] \\SL

The other European headache is NATO. During his first mandate, **Trump repeatedly said he wanted out of the alliance**. According to EU Commissioner Thierry Breton, Trump even **told European Commission President** Ursula von der Leyen so in no uncertain terms. "Trump said to Ursula: 'You need to understand that if Europe is under attack, we will never come to help you and to support you. And by the way, **NATO is dead**. And **we will leave, we will quit** NATO'," Breton cited the former president as saying. Trump argued that he was sick of the (European) "free-loaders" who were profiting from US protection, despite not living up to the NATO goal of spending 2 percent of their GDP on defences. At the time, only three of the alliance's 32 members did so. Since then, likely spurred by Russia's large-scale invasion of Ukraine in 2022, 23 members have hit that goal. But **even though contributions have improved, Trump is** still **not happy**. At a rally in South Carolina earlier this year, he said he would let Russia "Do whatever the hell they want" to NATO members who had not achieved the 2 percent target.

He'll exploit loopholes

Gould et al. 24 [Joe Gould, 11-8-2024, The law is 'not airtight': Trump may have a way out of NATO, POLITICO, https://archive.ph/vnFtM, DOA 2-11-2025, Joe Gould is a reporter at POLITICO. Jack Detsch is a defense reporter for POLITICO. Connor O'Brien is a defense reporter for POLITICO Pro, covering Congress] \\SL

The law is 'not airtight': Trump may have a way out of NATO The guardrail against the next president leaving the alliance is shakier than you think. **If** Donald **Trump** as president simply **declared he was pulling out** of the alliance, **it's unclear whether**

Congress would have the legal standing to sue him for ignoring the law, one expert said. | Nicholas Kamm/AFP via Getty Images By Joe Gould, Jack Detsch and Connor O'Brien 11/08/2024 12:00 PM EST In the wake of NATO-skeptic President-elect Donald Trump's victory, backers of the alliance are taking comfort in a year-old U.S. law that says he can't withdraw unless Congress approves. But Trump may have a way around it — and it's a method he has used before. In 2023, Sens. Tim Kaine (D-Va.) and Marco Rubio (R-Fla.) authored legislation requiring that any presidential decision to exit NATO must have either two-thirds Senate approval or be authorized through an act of Congress. Lawmakers passed the measure as part of the fiscal 2024 National Defense Authorization Act, which President Joe Biden signed into law. Legal experts warn that **Trump could try to sidestep Congress's NATO guardrail**, citing presidential authority over foreign policy — an approach he used before to bypass congressional restrictions on treaty withdrawal. The law is "not airtight," said Scott Anderson, a Brookings Institution scholar and senior editor of Lawfare who has argued for firmer restrictions on a president leaving NATO. What it does do, he said, is set up **a direct constitutional conflict** with Congress if a president does try to withdraw. "This is not open and shut, this is about Congress telling you you can't do this, and if you ignore Congress, you're going to have to fight us in the courts over it," Anderson said. If Trump simply declared he was pulling out of the alliance, it's unclear whether Congress would have the legal standing to sue him for ignoring the law, according to Curtis Bradley, the Allen M. Singer distinguished service professor at the University of Chicago Law School. The Supreme Court has generally held that institutional conflicts between the branches are political questions best resolved through the political process rather than through judicial intervention. "For the issue to be litigated, there would need to be someone with standing to sue," Bradley said in an email. "The only party I can think of who might have standing would be Congress itself, but it is not clear that the Republicans in Congress (who will at least control the Senate) would support such a suit." Anderson said lawmakers should strengthen the law by adding language explicitly authorizing litigation, which would improve Congress' chances of establishing standing in court. He also explains that while Congress has the strongest standing to sue over a presidential withdrawal from NATO, service members or private individuals — such as Americans who own property in NATO countries — may have potential arguments, but those are less certain. Another possibility, he said, is that one of the chambers could try to sue, if both don't agree. Even if the Supreme Court took up the case, it's not clear who would win because the constitutional question is murky. Congress has never mounted a direct legal challenge to a president withdrawing from a treaty. **"It's very contested legal terrain, and it's not 100 percent clear,"** Anderson said. That doesn't mean a withdrawal, if Trump were able to pursue one, would happen quickly. Under the NATO treaty, a member state would have to submit a "notice of denunciation" to inform the other members of the decision. The country's membership wouldn't officially end until after a one-year waiting period. Meanwhile, **Trump could undermine NATO without formally leaving**. Democratic lawmakers have warned that he could **refuse** U.S. **support** by **withholding ambassadors** or **keeping troops from participating in** military **exercises**. While several lawmakers in February called for new legislative measures to guard against these risks, nothing serious has materialized since. "Following Trump's threats in his first term, the Congress — recognizing the vital importance of NATO — acted on a bipartisan basis to prevent any future presidents from unilaterally withdrawing," Sen. Chris Van Hollen (D-Md.), a member of the Senate Foreign Relations Committee, said in a statement. "While Trump may resort to his old tricks, we'll continue working to shore up NATO and stand ready to fight back against any attempts to undermine the strength of this alliance." Kaine, one of the authors of the NATO guardrail, slammed Trump's rhetoric on the alliance and argued the U.S. "is safest when we link arms with our allies." "Donald Trump's disparaging comments about NATO are disturbing, and my hope is that the legislation we passed will ensure the United States continues to participate in this crucial alliance," Kaine said in a statement. Asked to comment, Trump spokesperson Karoline Leavitt said in a statement, "The American people re-elected President Trump because they trust him to lead our country and restore peace through strength around the world." It wouldn't be the first time Trump's team ignored legal requirements on treaty withdrawal. In 2019, amid a debate over the Open Skies Treaty, Congress included a provision in the fiscal 2020 National Defense Authorization Act requiring the defense secretary and secretary of state to notify Congress at least 120 days before withdrawing. The 34-nation pact allowed reciprocal surveillance flights between members to monitor military forces and weaponry. Arms control advocates and internationalists in Congress supported the Open Skies Treaty because, with Russia and countries such as the U.S., the U.K. and France as parties, it promoted transparency and trust. But the Trump administration and some congressional Republicans argued Russia was violating it and that satellite imaging technology made the flights obsolete. In May 2020, the Trump administration announced its intention to leave the Open Skies Treaty and ignored the legal notification requirements. The Justice Department's Office of Legal Counsel, at the time led by Assistant Attorney General Steven Engel, issued an opinion arguing that the notice requirements infringed on the president's constitutional authority over foreign affairs. "The President's power to withdraw from treaties flows from his constitutional role as the 'sole organ of the nation in its external relations,' granting him discretion in conducting foreign affairs and implementing or terminating treaties without congressional constraints on diplomatic decisions," Engel wrote in the administration's final days. Asked about congressional guardrails on a president leaving NATO, Bradley said the Trump administration's argument in 2020 that Congress has no regulatory authority isn't necessarily on solid footing because Congress has a history of regulating treaties. "I think there should be a heavy burden on presidents to show that a statute is unconstitutional before acting to disregard it, given that our checks and balances depend on presidents having to follow the law, and I don't think that burden has been met here," he said. A NATO spokesperson

did not reply to a request for comment. Because NATO runs on the confidence of allies, former alliance officials said that signaling an exit is as good as leaving. "De facto the day you send the letter it is in a way effective immediately," said Camille Grande, a former NATO assistant secretary general and now a distinguished policy fellow at the European Council on Foreign Relations. "Because what you're saying is 'I'm no longer committed.'" Beyond the legal aspects of withdrawing, the United States would have to figure out what to do with more than 100,000 U.S. troops stationed in Europe — a number that has grown by one-fifth since Russia's full-scale invasion of Ukraine more than two years ago. The Defense Department might also have to pull out of NATO's military command structure, which has been run by an American general dating back to its establishment under then-Gen. Dwight Eisenhower in 1949. "We are not sort of having a discussion in very quiet times where there is a guy in the White House who's not a strong believer in alliances and in old-fashioned NATO," Grande said. "We have a war in Europe. We have a serious concern for many Europeans that the confrontation with Russia might escalate in some shape or form, and then where are we?" Trump repeatedly criticized NATO allies during his first term for not meeting defense spending targets, openly suggesting reduced U.S. support and even hinting at withdrawal. At a rally this year, he recalled telling allies, "If we don't pay, are you still going to protect us? … Absolutely not." **Trump** hasn't said publicly that he would **pull out of NATO**, but **reportedly has discussed it repeatedly in private**. He did say on the campaign trail that he would "encourage" Russia "to do whatever the hell they want" to NATO allies who don't spend enough on defense.

NATO collapses without American support

Binnendijk et al. 24 [Hans Binnendijk, R.D. Hooker Jr., Alexander Vershbow 5-13-2024, NATO Cannot Survive Without America, Foreign Affairs, https://archive.ph/sLENX, DOA 2-12-2025, HANS BINNENDIJK is a Distinguished Fellow at the Atlantic Council. He was Senior Director for Defense Policy at the National Security Council, Vice President of the National Defense University, and Legislative Director for the Senate Foreign Relations Committee. R.D. HOOKER JR. is a Senior Fellow at the Atlantic Council. He was Dean of the NATO Defense College and Senior Director for Europe and Russia at the National Security Council. ALEXANDER VERSHBOW is a Distinguished Fellow at the Atlantic Council and a Senior Adviser at the University of Pennsylvania's Perry World House. He was U.S. Ambassador to NATO and Russia, Assistant Secretary of Defense, and NATO Deputy Secretary General] \\SL

NATO Cannot Survive Without America If Trump Pulls Out, the Alliance Would Likely **Fall Apart** By Hans Binnendijk, R.D. Hooker Jr., and Alexander Vershbow May 13, 2024 A Ukrainian serviceman at a press conference of Ukrainian President Volodymyr Zelensky and NATO Secretary-General Jens Stoltenberg, Kyiv, April 2024 Thomas Peter / Reuters Last month, NATO, the world's most successful military alliance, celebrated its 75th anniversary. Some fear that it may have been its last anniversary with the United States playing a leading role. Former U.S. President Donald Trump still views the alliance as obsolete. If reelected, he says he would encourage Russian leaders to do "whatever the hell they want" to member states that do not pay what he considers to be enough for defense. A second Trump presidency could have dire implications for European security. Trump's defenders argue that he is bluffing to pressure Europe into spending more on defense. But former U.S. officials who worked closely with Trump on NATO during his tenure, including one of us (R.D. Hooker Jr.), are convinced he will withdraw from the alliance if reelected. Trump hugely resents the more moderate advisers who kept him in check during his first term. If he reaches the White House in 2025, the guardrails will be off. The U.S. Congress is concerned, too. It recently enacted legislation to prohibit a president from withdrawing from NATO unless Congress approves, either by a two-thirds vote in the Senate or an act of both houses of Congress. But Trump could circumvent this prohibition. He has already raised doubts about his willingness to honor NATO's Article 5 mutual defense clause. By withholding funding, recalling U.S. troops and commanders from Europe, and blocking important decisions in the North Atlantic Council (NATO's top deliberative body), Trump can dramatically weaken the alliance without formally leaving it. Even if he does not withdraw American support completely, Trump's current position on NATO and his disinterest in supporting Ukraine, if adopted as national policy, would shatter European confidence in American leadership and military resolve.

Crucially,

Binnendijk 19 [Hans Binnendijk, 3-19-2019, 5 consequences of a life without NATO, Defense News, https://www.defensenews.com/opinion/commentary/2019/03/19/5-consequences-of-a-life-without-nato/, DOA 2-13-2025, Hans Binnendijk is Roosevelt Chair at the National Defense University in Washington, D.C., and director of its Center for Technology and National Security Policy] \\SL

Most people retire by age 70. Next month, NATO turns 70. U.S. President Donald Trump has now been joined by Barry Posen, a so-called realist political scientist, in suggesting that it may be time for the alliance to retire as well. To see if they are correct, let's consider what international life might be like without NATO. There would be at least five set of consequences, all negative. The most catastrophic impact of NATO's retirement would be **the risk of Russian aggression and misc**alculation. Without a clear commitment to defend allied territory backed up by an American nuclear deterrent, President Vladimir **Putin will** certainly see opportunities to **seize land** he believes is Russian. He has already done this in Georgia and Ukraine. Had they not joined NATO, the Baltic states would probably already be occupied by Russian troops. Certainly Putin would also see an opportunity to seize more of Ukraine without the "shadow" of NATO to protect it. History teaches us that **major wars start when aggressive leaders misca**lculate. German leader Adolf Hitler attacked Poland in 1939, believing that after then-British Prime Minister Neville Chamberlain's Munich Agreement, England would be unlikely to respond. North Korea attacked South Korea in 1950 after the United States appeared to remove Seoul from its defensive perimeter. Iraqi leader Saddam Hussein invaded Kuwait in 1990, believing the United States had signaled that it would not respond. In each case, miscalculation led to larger conflict. Secondly, **NATO's retirement would** also **decrease American military** reach, its **political** influence **and** its **economic advantage**. American **bases throughout Europe** not only provide for the defense of Europe — they bring the U.S. a continent closer to trouble spots that threaten vital American interests. **Fight**ing the **Is**lamic **S**tate group, clearly an American interest, would have been markedly more difficult without permanent U.S. bases in Europe and without the American-built coalition that included every NATO nation. Without NATO, the mutual security interests that underpin both U.S. bases and coalition operations would be undermined. This extends to the economic realm. U.S. annual trade in goods and services with Europe exceeds $1 trillion, and U.S. total direct investment in Europe nears $3 trillion. These **economic ties** enhance U.S. prosperity and provide American jobs, but they **require** the degree of security now provided by **NATO** to endure. NATO's **retirement would** thirdly **exacerbate divisions within Europe.** NATO's glue not only holds European militaries together — it provides the principal forum to discuss and coordinate security issues. The European Union is unlikely to substitute for NATO in this respect because it has no military structure, few capabilities and no superpower leadership to bring divergent views together. Germany and France already seek a plan B should NATO collapse, but without the United Kingdom in the European Union, an all-European approach is likely to fail. The added insecurity of NATO's collapse would also **amplify** current **populist movements** in Europe. The consequence could be **renationalization of European militaries**, a system that brought conflict to the 19th and early 20th centuries. The fourth consequences of life without NATO would be global. **American** bilateral **alliances in Asia would** each **be shaken** to their core should NATO fail. America's **defense commitments** there would **become worthless.** With China determined to claim a dominant position in Asia, the **collapse of NATO would cause** America's **Asian partners to seek** accommodation with **China**, much as the Philippines is in the process of doing. Trump's decision to abandon the economic Trans-Pacific Partnership agreement has already given China new advantages in the region. Without credible American security commitments, there would be **little to stop China from controlling the South China Sea and** probably **occupying Taiwan** as well. Add to this equation the new footholds that China is building in central Asia, Africa and Europe: Abandoning NATO would help assure China's competitive success. The final impact of NATO's retirement would be the near **collapse of** what has been called the "**liberal international order**." This order consists of treaties, alliances, agreements, institutions and modes of behavior mostly created by the United States in an effort to safeguard democracies. This order has kept relative peace in the trans-Atlantic space for seven decades. The Trump administration has begun to unravel elements of this order in the naive notion that they undercut American sovereignty. The entire European project is built on the edifice of this order. NATO is its principal keystone. Collapsing this edifice would undercut the multiple structures that have brought seven decades of peace and prosperity. So the answer is clear. Life without NATO would be more dangerous and less prosperous. Russia and China would be the big winners at

America's expense. NATO simply can't retire. Yes, NATO has problems. It needs to be managed. But there is too much left to be done for retirement. And there is too much to lose if NATO fails.

And

Kroenig 15 (Matthew, Associate Professor and International Relations Field Chair in the Department of Government and School of Foreign Service at Georgetown University, 2015. "The History of Proliferation Optimism: Does It Have a Future?" *Journal of Strategic Studies*, Volume 38, Issue 1-2, 2015 https://www.tandfonline.com/doi/abs/10.1080/01402390.2014.893508) rc Aaron

The spread of **nuclear weapons** poses at least six **severe threats** to international peace and security including: **nuclear war**, **nuclear terrorism**, global and regional instability, constrained US freedom of action, **weakened alliances**, and further nuclear proliferation. Each of these threats has received extensive treatment elsewhere and this review is not intended to replicate or even necessarily to improve upon these previous efforts. Rather the goals of this section are more modest: to usefully bring together and recap the many reasons why we should be pessimistic about the likely consequences of nuclear proliferation. Many of these threats will be illuminated with a discussion of a case of much contemporary concern: Iran's advanced nuclear program. Nuclear War The greatest threat posed by the spread of nuclear weapons is nuclear war. The **more states** in possession of nuclear weapons, the **greater the probability** that somewhere, someday, there will be a **catastrophic nuclear** war. To date, nuclear weapons have only been used in warfare once. In 1945, the United States used nuclear weapons on Hiroshima and Nagasaki, bringing World War II to a close. Many analysts point to the 65-plus-year tradition of nuclear non-use as evidence that nuclear weapons are unusable, but it would be naïve to think that nuclear weapons will never be used again simply because they have not been used for some time. After all, analysts in the 1990s argued that worldwide economic downturns like the Great Depression were a thing of the past, only to be surprised by the dot-com bubble bursting later in the decade and the Great Recession of the late 2000s.48 This author, for one, would be surprised if nuclear weapons are not used again sometime in his lifetime. Before reaching a state of **MAD**, new nuclear states go through a **transition** period in which they **lack** a secure-**second strike** capability. In this context, one or both states might believe that it has an **incentive** to **use** nuclear weapons **first**. For example, if Iran acquires nuclear weapons, neither Iran, nor its nuclear-armed rival, Israel, will have a secure, second-strike capability. Even though it is believed to have a large arsenal, given its small size and lack of strategic depth, Israel might not be confident that it could absorb a nuclear strike and respond with a devastating counterstrike. Similarly, Iran might eventually be able to build a large and survivable nuclear arsenal, but, when it first crosses the nuclear threshold, Tehran will have a small and vulnerable nuclear force. In these pre-MAD situations, there are at least three ways that nuclear war could occur. First, the state with the nuclear advantage might believe it has a splendid first strike capability. In a crisis, Israel might, therefore, decide to launch a **preventive** **nuclear** **strike** to disarm Iran's nuclear capabilities. Indeed, this **incentive** might be further increased by Israel's aggressive strategic culture that emphasizes **preemptive action.** Second, the state with a small and vulnerable nuclear arsenal, in this case Iran, might feel **use** **them or lose** **them pressures**. That is, in a crisis, Iran might decide to strike first rather than risk

having its entire nuclear arsenal destroyed. Third, as Thomas Schelling has argued, nuclear war could result due to the reciprocal fear of surprise attack.49 If there are advantages to striking first, one state might start a nuclear war in the belief that war is inevitable and that it would be **better to go first than** to go **second**. Fortunately, there is no historic evidence of this dynamic occurring in a nuclear context, but it is still possible. In an Israeli–Iranian crisis, for example, Israel and Iran might both prefer to avoid a nuclear war, but decide to strike first rather than suffer a devastating first attack from an opponent. Even in a world of MAD, however, when both sides have secure, second-strike capabilities, **there is still a risk of nuclear war**. Rational deterrence theory assumes nuclear-armed states are governed by rational leaders who would not intentionally launch a suicidal nuclear war. This assumption appears to have applied to past and current nuclear powers, but there is no guarantee that it will continue to hold in the future. Iran's theocratic government, despite its inflammatory rhetoric, has followed a fairly pragmatic foreign policy since 1979, but it contains leaders who hold millenarian religious worldviews and could one day ascend to power. We cannot rule out the possibility that, as nuclear weapons continue to spread, some leader somewhere will choose to launch a nuclear war, knowing full well that it could result in self-destruction. One does not need to resort to irrationality, however, to imagine nuclear war under MAD. Nuclear weapons may deter leaders from intentionally launching full-scale wars, but they do not mean the end of international politics. As was discussed above, nuclear-armed states still have conflicts of interest and leaders still seek to coerce nuclear-armed adversaries. Leaders might, therefore, choose to launch a limited nuclear war.50 This strategy might be especially attractive to states in a position of conventional inferiority that might have an incentive to escalate a crisis quickly to the nuclear level. During the Cold War, the United States planned to use nuclear weapons first to stop a Soviet invasion of Western Europe given NATO's conventional inferiority.51 As Russia's conventional power has deteriorated since the end of the Cold War, Moscow has come to rely more heavily on nuclear weapons in its military doctrine. Indeed, Russian strategy calls for the use of nuclear weapons early in a conflict (something that most Western strategists would consider to be escalatory) as a way to de-escalate a crisis. Similarly, Pakistan's military plans for nuclear use in the event of an invasion from conventionally stronger India. And finally, Chinese generals openly talk about the possibility of nuclear use against a US superpower in a possible East Asia contingency. Second, as was also discussed above, leaders can make a 'threat that leaves something to chance'.52 **They can initiate a nuclear crisis**. By playing these risky games of nuclear **brinkmanship**, states can **increase the risk of nuclear war** in an attempt **to force a less resolved adversary** to **back down.** Historical crises have not resulted in nuclear war, but many of them, including the 1962 Cuban Missile Crisis, have **come close**. And scholars have documented historical incidents when accidents nearly led to war.53 When we think about future nuclear crisis dyads, such as Iran and Israel, with fewer sources of stability than existed during the Cold War, we can see that there is a real risk that **a future crisis could result in a devastating nuclear exchange**. Nuclear Terrorism The spread of nuclear weapons also **increases the risk of nuclear terrorism**.54 While September 11th was one of the greatest tragedies in American history, it would have been much worse had Osama Bin Laden possessed nuclear weapons. Bin Laden declared it a 'religious duty' for Al- Qa'eda to acquire nuclear weapons and radical clerics have issued fatwas declaring it permissible to use nuclear weapons in Jihad against the West.55 Unlike states, which can be more easily deterred, there is little doubt that if terrorists acquired nuclear weapons, they would use them.56 Indeed, in recent years, many US politicians and security analysts have argued that nuclear terrorism poses the greatest threat to US national security.57 **Analysts** have pointed out the tremendous **hurdles** that terrorists would have to overcome in order to acquire nuclear weapons.58 Nevertheless, as nuclear weapons spread, the possibility that they will **eventually fall into terrorist hands increases**. States could intentionally **transfer nuclear weapons**, or the

fissile material required to build them, to terrorist groups. There are good reasons why a state might be reluctant to transfer nuclear weapons to terrorists, but, as nuclear **weapons spread**, the probability that a leader might someday **purposely arm a terrorist group increases**. Some fear, for example, that Iran, with its close ties to Hamas and Hizballah, might be at a heightened risk of transferring nuclear weapons to terrorists. Moreover, even if no state would ever intentionally transfer nuclear capabilities to terrorists, a **new nuclear state**, with **underdeveloped security** procedures, might be vulnerable to **theft**, allowing terrorist groups or corrupt or ideologically-motivated insiders to transfer dangerous material to terrorists. There is evidence, for example, that representatives from Pakistan's atomic energy establishment met with Al-Qa'eda members to discuss a possible nuclear deal.59 Finally, a nuclear-armed state could collapse, resulting in a breakdown of law and order and a loose nukes problem. US officials are currently very concerned about what would happen to Pakistan's nuclear weapons if the government were to fall. As nuclear weapons spread, this problem is only further amplified. Iran is a country with a history of revolutions and a government with a tenuous hold on power. The regime change that Washington has long dreamed about in Tehran could actually become a nightmare if a nuclear-armed Iran suffered a breakdown in authority, forcing us to worry about the fate of Iran's nuclear arsenal. **Regional Instability** The spread of nuclear weapons also **emboldens nuclear powers**, contributing to **regional instability**. States that lack nuclear weapons need to fear direct military attack from other states, but states with **nuclear weapons** can be confident that they can deter an intentional military attack, giving them an incentive to be more aggressive in the conduct of their foreign policy. In this way, nuclear weapons provide a shield under which states can feel free to engage in **lower-level aggression**. Indeed, international relations theories about the 'stability-instability paradox' maintain that stability at the nuclear level contributes to conventional instability.60 **Historically**, we have seen that the **spread of nuclear weapons** has emboldened their possessors and contributed to **regional instability**. Recent scholarly analyses have demonstrated that, after controlling for other relevant factors, nuclear-weapon states are more likely to engage in conflict than nonnuclear-weapon states and that this aggressiveness is more pronounced in new nuclear states that have less experience with nuclear diplomacy.61 Similarly, research on internal decision-making in Pakistan reveals that Pakistani foreign policymakers may have been emboldened by the acquisition of nuclear weapons, which encouraged them to initiate militarized disputes against India.62 Currently, Iran restrains its foreign policy because it fears major military retaliation from the United States or Israel, but with nuclear weapons it could feel free to push harder. A nuclear-armed Iran would likely step up support to terrorist and proxy groups and engage in more aggressive coercive diplomacy. With a nuclear-armed Iran increasingly throwing its weight around in the region, **we could witness an even more crisis prone Middle East.** And in a poly-nuclear Middle East with Israel, Iran, and, in the future, possibly other states, armed with nuclear weapons, **any** one of those **crises** could result in a **catastrophic nuclear exchange**.

C2 is peace obstruction

Negotiations resolve the Ukraine war now.

Marquardt from Yesterday [Alex Marquardt, Kevin Liptak, Alayna Treene, Michael Rios; Alex Marquardt is an award-winning Chief National Security Correspondent based in the network's Washington bureau; Saudi Arabia to host US-Russia talks on Ukraine, as UK says it's 'ready and willing' to put troops on ground, 2-16-2025; CNN, https://www.cnn.com/2025/02/16/europe/us-russia-ukraine-talks-saudi-uk-troops-intl-latam/index.html; accessed, 2-17-2025] itang

Talks between the United **S**tates **and Russia over** the war in **Ukraine** are set to **begin Tuesday**, multiple sources have told CNN. Secretary of State Marco Rubio, Middle East special envoy Steve Witkoff and National Security Adviser Mike Waltz are all traveling to Saudi Arabia for the talks. A Saudi official told CNN they would be doing more than just hosting and would be involved in a mediation role. The Saudi team will be led by the country's national security adviser. A Ukrainian official said they would not be present at the talks though Keith Kellogg, the Trump administration's Russia-Ukraine envoy, discussed a "dual track" set of negotiations and will be in Kyiv this week. On Sunday, US President Donald Trump said the **Ukrainians would be part of the negotiations**. News of the US-Russia talks came as **UK P**rime **M**inister Keir Starmer said on Sunday he was "**ready** and willing" **to put British troops** on the ground **in Ukraine to enforce** a **peace deal** if necessary. Writing in the Daily Telegraph newspaper, Starmer said he does not take the possibility lightly but reasoned that **helping** to guarantee **Ukraine**'s security would also **strengthen the security of** the United Kingdom and **Europe**. He called on European nations to increase their defense spending and "take on a greater role in NATO," but said **US support** would remain **critical for guaranteeing peace**. The prime minister also said he would meet with Trump and other G7 allies in the coming days to secure a strong deal. People visit a makeshift memorial for fallen Ukrainian soldiers during Russia's war on Ukraine at Independence Square in Kyiv in February 2025. Starmer is among the European leaders who will take part in an emergency summit on Ukraine on Monday amid growing concern that the Trump administration's push to work with Russia to end the war has left them isolated. The Elysée Palace said French President Emmanuel Macron would hold an "informal" meeting Monday with "the heads of government of Germany, the United Kingdom, Italy, Poland, Spain, the Netherlands and Denmark, as well as the President of the European Council, the President of the European Commission and the Secretary General of NATO." Starmer on Saturday called the European meeting a "once in a generation" moment for national security and said the UK would "work to ensure we keep the US and Europe together," according to a Downing Street statement. "We cannot allow any divisions in the alliance to distract from the external enemies we face," he said. Trump has talked openly about the Saudis playing a key role in the negotiations and the country has been an important part of US foreign policy under his presidency. It was just a week ago that Saudi Crown Prince Mohammed bin Salman helped facilitate the release of Marc Fogel in Russia. Trump's first foreign trip in 2017 was to Saudi Arabia. CNN's Jeff Zeleny contributed to this report.

Ukraine's on board

Hodunova '25 [Kateryna Hodunova, B.A. in political journalism from Taras Shevchenko University & M.A. in political science from the National University of Kyiv-Mohyla Academy, 2-11-2025, Ukraine could

trade territory in potential peace talks with Russia, Zelensky says, Kyiv Independent, https://kyivindependent.com/zelensky-plans-to-exchange-territories-in-case-trump-manages-to-get-ukraine-russia-to-negotiating-table/, Willie T. recut Aaron]

President Volodymyr Zelensky said he **planned to exchange territories** if U.S. President Donald Trump succeeds in bringing Ukraine and Russia to the negotiating table, according to an interview with The Guardian published on Feb. 11.

Ukraine launched a **surprise cross-border incursion** into Russia's **Kursk Oblast** in August 2024, initially capturing around 1,300 square kilometers (500 square miles) of territory. While Ukrainian forces have since lost roughly half that area, they recently advanced 2.5 kilometers (1.5 miles) in the region in a new offensive.

The Ukrainian military continues to hold Russian territory that could play "an **important part**" in future negotiations, Zelensky previously said.

"We will swap **one territory for another**," Zelensky told The Guardian, without specifying which Russian-occupied land Ukraine would seek in return.

"I don't know, we will see. But all our territories are important, there is no priority," he said.

Talk of ending Russia's full-scale invasion of Ukraine has increased as U.S. President-elect **Donald Trump took office** on Jan. 20.

The new administration aims to end Russia's war against Ukraine 100 days from inauguration, Keith Kellogg, Trump's special Ukraine peace envoy, said on Jan. 8.

Affirming undermines peacemaking

Chokaris ’23 [Andreas Chorakis; MPhil/Ph.D. Candidate at Middlesex University. He is currently a Teaching Fellow at the School of Oriental and African Studies (SOAS) University of London. He has taught modules at Middlesex University London and the University of Law, specializing in English Business Law, Civil Litigation, and Human Rights. He is developing his research in Business and Human Rights Law, International Dispute Resolution, International Criminal Law and General International Law. He is a graduate of the Geneva Graduate Institute (LL.M., 2018) and the University of Athens (LL.B., 2017).; The Icc’S Arrest Warrant Against Putin: A Grenade Against Peace In Ukraine?, 11-14-2023; Harvard International Law Journal, https://journals.law.harvard.edu/ilj/2023/11/the-iccs-arrest-warrant-against-putin-a-grenade-against-peace-in-ukraine/; accessed, 2-13-2025] Aaron

A further question is the impact of the arrest warrant on peacemaking and substantive international justice in Ukraine. This issue is complex. In the context of transitional justice and attribution of criminal responsibility, the ICC has been used as a forum to prosecute perpetrators of war crimes committed during active hostilities. Characteristic is the example of the Juba Agreement for Peace in Sudan, which names the Court as one of the main forums for delivering international justice as part of the peace process.

However, the Court is not a peacebuilding institution but a criminal prosecution mechanism for the most heinous crimes. The prosecutorial function of **the Court is** often **detrimental to the peace process as it criminalizes certain parties of the conflict. The criminalization of one side of the conflict** not only tarnishes the public image of those accused, but it also **politically disenfranchises the individual and their constituency**. **Consequently,** warlords, regional **leaders**, and armed group leaders **are unwilling to enter peace negotiations as arrest warrants are pending against them**, and they have been identified as international criminals. **This phenomenon was seen with the Ituri conflict in the Democratic Republic of Congo and the arrest warrants against the former leader of the Union of Congolese Patriots (UPC), Thomas Lubanga Dyilo, and the former leader of the Patriotic Resistance Force in Ituri (FRPI), Germain Katanga.**

Additionally, the prosecutorial role of **the Court could easily jeopardize the peacemaking role of international organizations.** International organizations such as the EU **and the** AU can be a **neutral forum** for peace talks as they offer flexibility and neutrality. **Moreover, these organizations have developed strong mediation skills due to their enlargement process.**

In the case of Ukraine, the EU can be the main negotiator and peacemaker in the Russia-Ukraine War. The EU has played the same role in the past, on certain occasions with great success, such as the Bosnian War, and on other occasions with great failure, such as the situation in Cyprus. As a mainly political organization, **the EU has the capacity, the skills, and the appropriate means to provide a peaceful solution for Ukraine. However, under the pressure of the arrest warrant, the EU could not fulfill its role. Having a fear of being arrested** and being transferred to The Hague, the **Russian political authority would avoid** any visit to EU countries or any **negotiations** in an EU Member State's territory. **Therefore, the EU would lose its main advantage as a neutral negotiation mediator.**

Moreover, the EU would need to spend its resources to enforce the arrest warrant. Such a policy would length the gap in the relationships between the EU and Russia, prolonging the armed conflict. Thus, the arrest warrant can provoke more damage to the EU's role than any benefit.

Accession pits US-Russia escalation which goes nuclear

Eng ’23 [Kok-Thay Eng, Kok-Thay Eng is director of the Cambodian Institute for Peace and Development., 3-20-2023, "ICC warrant on Putin risks nuclear war," The Phnom Penh Post, https://www.phnompenhpost.com/opinion/icc-warrant-putin-risks-nuclear-war] nikhil

I followed the formation of the International Criminal Court (**ICC**) when the **Rome Statute** was adopted in the Italian capital in 1998 at the same time when the Khmer Rouge tribunal was being debated in Cambodia, led by a proposal to the UN by Prime Minister Hun Sen.

The ICC was meant to prosecute genocide, war crimes and crimes against humanity, analogous with the Jewish Holocaust, the Cambodian killing fields, Rwandan genocide, the Bosnian genocide, genocide against American Indians, genocide against Australian aborigines and other mass atrocities.

Apparently, what’s happening in **Ukraine**, although **disturbing**, is not yet **comparable** to any of these past crimes. **Lowering** the ICC to prosecute **lighter** crimes distract its role to deter and prosecute **genocide**, inhibit negotiation during wars and restrict dialogues which is a cornerstone of diplomacy.

The **ICC’s** recent arrest **warrant** for Russian President Vladimir **Putin** over the **Ukraine** conflict also risks the **exodus** by member states from its 123 membership when they consider that their sovereignty is being overruled by the body, increasingly controlled by politically motivated prosecutors. Thirty-one states have yet to ratify the Rome Statute and now they never would. The Philippines withdrew its memberships in 2019 under former President Rodrigo Duterte when he believed that heavy-handed actions in the war on drug were required to prevent his country from becoming Mexico and Columbia, rotten from within by drug cartels. Violating state sovereignty and diplomatic immunity endangers the state system set up since Westphalia in 1648 to secure European peace.

The likelihood of a global **war** increases when the head of a **nuclear superpower** is threatened with **arrest**. A world war in the nuclear age will lead to **nuclear apocalypse**. Putin has never been **deterred** by the **West**, either by sanctions or the threat of arrest. He threatened a **nuclear attack** before, and the ICC warrant will likely raise that **prospect**. If the West continues to **isolate** him by restricting his travel through arrests, then there is **no hope** for **peace** in Ukraine and the suffering of all Ukrainian people will indefinitely continue.

During the Cold War, nuclear deterrence worked on two preconditions. 1) The US and the Soviet Union did not go into direct conflict. Instead, they fought proxy wars in Korea, Afghanistan, Indochina and South America and other places. 2) Neither superpower directly harmed the others’ leaders through arrest, abduction or assassination. Any such act meant a declaration of war.

If the ICC veered away from mass violence for prosecution, they would be overwhelmed by cases to investigate. By issuing an **arrest warrant** against Putin, Karim Khan is clearly **politically** motivated. Currently there are 27 ongoing conflicts worldwide, most notably the war in Afghanistan, Yemen, Libya, the Rohingya crisis, Ethiopia, Iraq, Palestine, South Sudan, Central African Republic and others. Children are dying every day through starvation in Yemen. Warring parties within these conflicts can potentially be indicted under the ICC statute if interpreted to cover less serious crimes. The war in Iraq and Afghanistan can also lead to ICC prosecutions.

Redlines are **low**

Faulconbridge ’24 [Guy Faulconbridge, Moscow bureau chief, Guy runs coverage of Russia and the Commonwealth of Independent States. Before Moscow, Guy ran Brexit coverage as London bureau chief (2012-2022), and Anton Kolodyazhnyy, November 19, 2024, "Putin issues warning to United States with new nuclear doctrine", Reuters, https://www.reuters.com/world/europe/putin-issues-warning-us-with-new-nuclear-doctrine-2024-11-19/] rosh

MOSCOW, Nov 19 (Reuters) - Russian President Vladimir Putin on Tuesday **lowered the threshold** for a **nuclear strike** in response to a broader range of **conventional attacks**, and Moscow said Ukraine had struck deep inside Russia with U.S.-made ATACMS missiles.

Putin approved the change days after two U.S. officials and a source familiar with the decision said on Sunday that U.S. President Joe **Biden's** administration **allowed Ukraine** to use **U.S.-made weapons** to **strike deep into Russia**.

Russia had been warning the West for months that **if Washington allowed Ukraine** to **fire U.S., British and French missiles** deep into Russia, Moscow would **consider** those **NATO members** to be **directly involved in the war in Ukraine.**

The updated Russian nuclear doctrine, establishing a **framework** for **conditions** under which Putin could **order a strike** from the world's **biggest nuclear arsenal**, was approved by him on Tuesday, according to a published decree.

Analysts said the biggest change was that Russia could **consider a nuclear strike** in **response** to a **conventional attack** on **Russia** or its ally Belarus that "created a **critical threat** to their **sovereignty** and (or) their **territorial integrity**".

"The big picture is that Russia is **lowering the threshold** for a nuclear strike in **response** to a possible conventional attack," said Alexander Graef, a senior researcher at the Institute for Peace Research and Security Policy at the University of Hamburg.

Idealistic legalism undermines pragmatic resolution---empirics prove

Korzhenyak ’24 [A.Korzhenyak, Moscow State Institute of International Relations, 05-08-2024, "Problems of legality of the International Criminal Court”, Ministry of Foreign Affairs of the Russian Federation, https://mid.ru/en/foreign_policy/legal_problems_of_international_cooperation/1949021/]/Kankee

ICC and Immunities of State Officials According to the Judgment of the International Court of Justice of February 14, 2002, in the Arrest Warrant Case (Democratic Republic of the Congo v. Belgium), “in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal”[25]. That position is widely supported by publicists[26] and members of the UN International Law Commission[27]. As regards State Parties to the Rome Statute, the provisions of Article 27, paragraph 2, apply according to which “immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person”. Therefore, State Parties to the Statute came to agreement that for the purposes of exercising the criminal jurisdiction of the ICC immunities do not apply as between them. In other words, some kind of collective waiver of the immunity of State Parties’ officials in favour of the ICC jurisdiction exists by virtue of the treaty. Meanwhile, according to Article 98, paragraph 1, of the Rome Statute “The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity”. These provisions apply, in particular, to requests for assistance concering surrender of an official of a State non-party to the Statute. In 2019, the Appeals Division of the ICC groundlessly asserted in its Judgment in the case of Sudanese President Al-Bashir (appeal filed by Jordan)[28] the absence of a rule of customary international law prescribing that the Heads of State enjoy immunity from jurisdiction of international courts. According to the Judgment, such courts “when adjudicating international crimes, do not act on behalf of a particular State or States. Rather, international courts act on behalf of the international community as a whole”[29]. In the meantime, only ICC Member States could waive their officials’ immunities in relations among themselves and with the Court by becoming a party to a treaty (namely, Rome Statute). As concerns States that are not parties to the Statute, the general international law norms on immunities of State officials apply in whole to relations among them as well as to relations between them and ICC Member States. It is sometimes asserted that immunity from international criminal jurisdiction is not an international custom[30]. They argue that as no permanent international criminal institutions existed before 1990s, neither general practice nor opinio juris could be established which would form such a custom. That argument should be rejected. The fact that each State Party to the Rome Statute is bound by the international law norms governing immunities of State officials is **indisputable**. These norms define the limits of exercise of criminal jurisdiction by any such State. They correspond to the rights of other States to have their State officials’ immunity from foreign criminal jurisdiction respected. Therefore, several States, and even a considerable number of States, may not conclude a treaty circumventing these norms and infringing upon the rights of third States mentioned above. Another argument commonly referred to is the practice of the Nuremberg and Tokyo Military Tribunals established at the end of the Second World War as well as the International Criminal Tribunals for the former Yugoslavia and Rwanda which did not apply immunities of State officials[31]. This evidence should be considered inconclusive as well. Neither Germany nor Japan advanced the issue of immunity of their State officials, which they could not even have done, their sovereign rights being exercised by the victorious powers[32]. As for the International Criminal Tribunals for the former Yugoslavia and Rwanda, those were created by virtue of the UN Security Council resolutions, respect of the obligatory provisions of which prevails upon other international law obligations of States according to Article 103 of the UN Charter. To conclude, ICC arguments in the Al-Bashir case are nothing but an attempt of the Court to arbitrarily and unilaterally extend the scope of its competence while limiting the sovereign rights of States non-parties to the Rome Statute. Such an approach contradicts the principle pacta tertiis nec nocent nec prosunt enshrined in Article 34 of the 1969 Vienna Convention on the

Law of the Treaties, according to which a treaty may not create either obligations or rights for a third State without its consent. In this case, principles of the law of international organisations are infringed as well, in particular the principles of speciality and unacceptability of ultra vires acts by international organisations[33]. The Appeals Chamber's assertion about the absence of international customary norm vesting State officials with immunity from criminal prosecution by international jurisdictions cannot be supported by either State practice or opinio juris. It is not surprising that it sparked vivid objections within the expert community[34]. On March 17, 2023, the ICC announced the issuance by the Pre-Trial Chamber of arrest warrants against the President of the Russian Federation and the Presidential Commissioner for Children's Rights. The text of the warrants has been undisclosed "in order to protect victims and witnesses and also to safeguard the investigation"[35]. Official representatives of the Russian Federation have qualified the warrants as legally void[36]. On the contrary, some States' and international organisations' officials "commended" issuance thereof[37]. Moreover, some of them declared willingness to enforce the warrants[38]. Adding to the absurdity of the accusations giving rise to the warrants issued (the evacuation of children from the frontline being unfoundedly alleged to constitute "unlawful deportation"), the decision was issued in violation of the generally recognised principles and norms of international law governing immunities of State officials including the absolute immunity of the current Head of State from foreign criminal jurisdiction. The legal consequence of issuance of the ICC warrant consists in obliging State Parties to the Rome Statute to arrest the individual in respect of whom the warrant was issued. However, in case of individuals enjoying immunity as officials of a State non-party to the Rome Statute which does not cooperate with the ICC, the issuance of warrant results in violation of Article 98 of the Rome Statute and is, therefore, unlawful. The attempts to enforce the warrants thus issued shall be unlawful as well. It is important to emphasize that the ICC does not possess a coercive apparatus of its own. Hence, the arrest warrants can only be enforced through measures taken by law enforcement authorities of States. These measures constitute a form of exercise by the executing State of its own jurisdiction. As demonstrated above, the fact that the warrants were issued by the ICC, not by national law enforcement authorities, does not exempt the State from obligation to respect immunities of foreign State officials. Given the above analysis, an **attempt of any State** to enforce the "warrant for arrest" of March 17, 2023, would constitute an internationally **wrongful act** giving rise to international responsibility. ICC role in conflict settlement The States creating the ICC were guided by the idea that prosecution of individuals responsible for the most serious international crimes by an international jurisdiction would facilitate conflict settlement and post-conflict reconciliation. Thus, the Rome Statute enshrines a procedure of cooperation between the Court and the UN Security Council as the main international body responsible for the maintenance of international peace and security. UN SC may refer to the Court any situation for investigation as well as suspend an investigation initiated. Therefore, the ICC was designed as an element of conflict settlement system under the auspices of the United Nations. In practice, the results of ICC activities as a peace maintaining body are, to say the least, controversial[39]. For instance, not only was the prosecution of the then-President of Sudan Omar Al-Bashir (the "Situation in Darfur" was referred to the Court by the UN SC in 2005) conducted in violation of international law norms governing the immunity of State officials, but it also **compromised** the efforts of mediators aimed at conflict resolution within the region. In particular, Arab League officials asserted that the decision of the ICC creates "a **dangerous precedent**" in the system of international relations and may negatively impact the situation in Sudan as well as in the region in general[40]. When Jordan appealed one of ICC decisions regarding Mr Al-Bashir, Arab League submitted to the Court detailed arguments supporting Jordan's application and declared that the goals of international justice "cannot be achieved at any cost. The fight against impunity must take place within the framework of international law, including the rules that aim to guarantee orderly relations between States"[41]. It is significant that no single State enforced the arrest warrant against Mr Al-Bashir. One cannot help suggesting that African States were guided by the understanding that, on the one hand, Al-Bashir enjoyed immunity and, on the other hand, that the ICC prosecution was counter-productive. To conclude, the role of the Court in the "Darfur case" cannot be called a success either from the standpoint of administration of

justice or from that of national reconciliation. On the contrary, the measures taken by the ICC de facto **escalated** the tensions in East Africa[42] and led to a long-term **discord** between the Court and the African Union. Another example of the Court's acting without taking into account the actual context of political settlement was the investigation into the situation in Kenya. In 2013, Uhuru Kenyatta, who was under charges of the Court (connected with the internal political crisis of 2007-2008), was elected President of the country. As a result, the ICC found itself in the position of a body trying, by prosecuting an individual, to promote a resolution of a situation that in fact had already been resolved through compromises between political forces and votes of the citizens. The investigation was closed in 2015 because of insufficient evidence. As a result, the long-term work of the ICC in Kenya did not lead to results either in terms of directly implementing criminal justice (in the case involving a total of 8 people not a single sentence was passed), or in terms of facilitating the resolution of the internal political conflict. The abovementioned examples (the list could be continued) indicate that the ICC, instead of serving as a means of peaceful settlement of disputes, often becomes a source of new conflicts or problems. In general, the fact that for a long time after the commencement of its work in 2002 the Court handled exclusively African cases (situations in the Democratic Republic of the Congo, Central African Republic, Uganda, Sudan, Kenya, Libya, Côte d'Ivoire, Mali) triggered the development by the African Union of an advisory "Withdrawal Strategy from the ICC", which was approved by its highest authority, the Assembly of the Union[43]. Unfounded criminal prosecution of persons

Letting the war continue is devastating.

Gallone '24 concludes [Guglielmo Gallone; Italian journalist and analyst; 11-18-2024; "Ukraine war: Deep uncertainty about the statistics"; Vatican News; https://www.vaticannews.va/en/world/news/2024-11/ukraine-war-deep-uncertainty-statistics-deaths-displaced.html; accessed 02-12-2025] //RG

It's been 1,000 days since the beginning of the war in Ukraine.

Behind that figure lie many other statistics, many deliberately hidden, because war is fought with information as well as with weapons.

First and foremost, there is the most difficult figure of them all – **the number of victims**. **In September, The Wall Street Journal, citing intelligence sources, wrote that around a million people had died, both Ukrainians and Russians, since the 24th February 2022**.[1] Most of those were soldiers belonging to both sides, followed by Ukrainian civilians.

2NC

The ICC structurally is unable to address international issues. A.

Burns '22 [Sarah Burns; She is a Moderator of the International Law Society's International Law and Policy Brief (ILPB) and a J.D. candidate at The George Washington University Law School. She has a bachelor's degree in International Studies and Spanish from the University of Miami. Prior to attending law school, Sarah worked for the Global Partnership for Sustainable Development Data at the United

Nations Foundation; The International Criminal Court: Obstacles Hindering the Full Potential of International Justice, 4-4-2022; International Law and Policy Brief, /https://studentbriefs.law.gwu.edu/ilpb/2022/04/04/the-international-criminal-court-obstacles-hindering-the-full-potential-of-international-justice/; accessed, 2-14-2025] itang

African Bias? Since the establishment of the Court, it has received allegations of crimes from over 139 countries via State Party and UN Security Council referrals. Despite this high number, the Office of the Prosecutor has opened cases in only 15: the Democratic Republic of the Congo, Uganda, Darfur (Sudan), Central African Republic, Kenya, Libya, Côte D'Ivoire, Mali, Georgia, Burundi, Palestine, Bangladesh/Myanmar, Afghanistan, the Philippines, and Venezuela. With a large majority of the aforementioned cases stemming from Africa, the Court has faced severe criticism for holding an African bias and is claimed to be a "colonial institution." Within these cases, over 40 individuals have been indicted—all from African countries. As Mia Swart from the Brookings Doha Center writes, "at the center of this debate is the ICC's nearly exclusive focus on African countries until very, very recently." After severe criticisms of the ICC from the African Union piled on, in 2011 the Court appointed Fatou Bensouda, a Gambian native and former legal adviser at the International Criminal Tribunal for Rwanda, as the new chief prosecutor. Many credit her with broadening the narrow focus on African leaders over her nine year term. In 2021, she was succeeded by Karim Khan, a British lawyer and former Assistant Secretary-General of the United Nations. Although the claims of African bias have largely been rebutted by the Court, many feel that the sentiment of bigotry towards African nations has been well established. Due to the voluntary nature of participation in ratifying the Rome Statute, this sense of bias has the potential to discourage both full participation and additional ratification from African states that are non-parties to the Rome Statute, straining the reputation of and thus weakening the efficacy of the Court. Debilitating Veto Powers In addition to the effects of the alleged African bias, the **efficacy of the ICC is hampered by veto** powers **of the UN S**ecurity **C**ouncil. While technically considered an independent legal court, the Security Council has certain special powers in the ICC's process. For example, the Security Council may refer a situation to the ICC, essentially permitting the Security Council to have say over which cases shall be investigated. This is an extremely controversial power, particularly considering the Security Council **includes** three **countries that are not** endorsed **signatories to the Rome Statute: the U**nited **S**tates, **Russia, and China.** Many lament the fact that these countries have unjust influence, pointing to Russia and China's veto power preventing the Council from referring the situation in Syria to the ICC as a devastating example. The power of referral is coupled by the Security Council's **ability to suspend any investigation** for a time period of one year—the power of deferral. Many argue this power is another way that certain world powers (i.e., the United States, China, and Russia) may **abuse the system to defer** any situation they wish **for ulterior motives**, such as prioritizing bilateral relationships with countries who lack the veto power. "Transnational Justice" The potential of **the ICC** is plagued with criticisms that international law and the concept of "transnational justice" **cannot account for** deeply rooted **cultural and historical differences in countries** that have experienced systematic and wide-spread human rights violations. Mia Swart argues it is "uncontroversial that international **law has been shaped by** colonialism and **imperialism**." The fact that the ICC has only ever convicted nine people lends support to the argument that the intricacies of local government compounded by cultural and historical complexities ultimately inhibits the very concept of international justice. This argument is illustrated in the case of the Khmer Rouge in Cambodia. From 1975 to 1979, Cambodians experienced a genocide under the Pol Pot regime that took the lives of more than a quarter of the population. Conditions at a detention center called S-21 were so atrocious that it is estimated only 7 of 20,000 prisoners survived. Despite the end of the genocide after Vietnamese invasion in 1979, Pol Pot died in 1998 and never was tried for his violations against humanity. In 2006, at the request of the Royal Cambodian Government, the UN spearheaded the creation of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to try and convict the surviving prominent perpetrators of the mass genocide throughout Cambodia. The trials, "touted as the largest reckoning since the Nuremberg trials" were held in Cambodia with a combination of both international and national Cambodian judges. From its inception, these trials were plagued with criticism. The new Cambodian government (the Cambodian People's Party) accused the UN of using the trials as a means to oust the newly elected party, while the international community harshly criticized the reports of corruption within the process. Criticisms were fueled by the more than 200 million dollar price tag of the trials, with only one conviction delivered. Many say that the failures stem from the inability of the UN to fully understand the nuance of what really happened in Cambodia. An American human rights lawyer whose own parents were killed by the Khmer Rouge stated "This is no longer a legitimate court…It's a sham. It does such a disservice to Cambodian victims and international justice in general." The massive criticisms of the UN and the ECCC have led many to believe that the potential of the ICC is hindered by its inability to account for cultural, historical, and political differences of countries that have experienced

mass trauma. During the Cambodian genocide, the lines between murderer and victim became blurred, and the CPP government that remained in power throughout the trials was itself riddled with problems and inefficiencies. Critics state that **the vague** and general **sweeping ideals of justice that the ICC holds renders it ineffective because it cannot** account for the intricacy of cultural differences globally. This inability to **create a cohesive ideal of** international **justice** has been, and will continue to be, a source of weakness within the Court.

B.

Perry '24 [Dan Perry and Chris Stephen; former chief editor of the Associated Press in Europe, Africa and the Middle East; war correspondent, author of *The Future of War Crimes Justice*; The Hill, "The ICC's Israel arrest warrants have backfired," https://thehill.com/opinion/international/5044761-icc-arrest-warrants-israel-backfire/amp/, accessed 2-11-2025] recut Aaron

Central to the crisis is the **little-understood Article 98** of the court's founding statute, which provides **member states** with the ability to grant **immunity** to officials from **other nations**. Intended to balance state sovereignty with international justice, it means the member states have a **painless way** of granting the **arrest immunity** America will shortly be **demanding**, simply by lodging an **Article 98 declaration**.

France has already taken advantage of this loophole, declaring that, while it adheres to its ICC obligations, it is also giving Israelis immunity.

Italy, Hungary and Greece have followed suit, and more countries, including Austria, Australia, Argentina, the Czech Republic and the Netherlands are considering it.

The tactics, which may now shield **Netanyahu**, were honed **two decades ago** by the United States to protect its **own officials** from **ICC prosecution**.

In 2002, as the ICC opened its doors, the Bush administration demanded Article 98 immunities for American personnel, threatening aid cuts to noncompliant countries. Defense Secretary Donald Rumsfeld even threatened to move NATO's headquarters out of Brussels unless Belgium gave war crimes immunity for U.S. personnel stationed there.

The Nethercutt Amendment formalized these threats, and dozens of states acquiesced, granting the U.S. sweeping protections.

The European Union also capitulated, granting limited immunity to U.S. personnel stationed in Europe.

With Trump almost certain to sign **Graham's legislation**, **U.S. allies** know they will face the prospect of **economic sanctions**, coupled with the **withdrawal** of **military cooperation** unless they give **Israel immunity**. Across the chanceries of Europe, the fear is that if they **don't cooperate**, it may speed Trump in **decoupling** America from **NATO**.

2. The UK empirically proves it's possible – big, developed countries just circumvent.

Rowe 21 [Emily Rowe, Teaching Assistant to Professor Joshua Nichols for Constitutional Law @ McGill University – Faculty of Law, "The ICC-African Relationship: More Complex Than a Simplistic Dichotomy,"

11/05/2021, FLUX: International Relations Review, https://fluxirr.mcgill.ca/article/view/75, Accessed 02/07/2025] // cady

The Principle of Complementarity: Developed States

While it is relatively easy to label developing states as 'unable' or 'unwilling' according to the criteria stipulated in the Statute, it is much more difficult to **demonstrate that developed states** that have signed on to the Rome Statute are **'unable'** or **'unwilling'**, for they are often **affluent and democratic**. Therefore, **developed countries** are often able to **evade ICC investigation** because they can **afford to locate** and **obtain the accused**, fund the **investigation**, as well as 'guarantee' an **independent, impartial, timely trial** at home (Vinjamuri 2016). As Canadian Ambassador Paul Heinbecker (2003) stated, "The ICC was not **designed** for the United States, Canada, European states or other **developed countries** because these are **well-functioning democracies** with strong judiciaries; the ICC is **instead designed specifically** for the weak states of the world." This **procedural advantage** of affluent **developed countries** is visible in the proceedings of the 2006 **investigation** into the United Kingdom's (UK) military officers' actions during the Iraq conflict and occupation from 2003 to 2008. The UK military officers were **accused of unlawful murder**, torture, and other forms of ill-treatment that are considered war crimes under **international humanitarian law** (Davies, Gareth, and Nicholls 2019). As a **developed, affluent, and democratic** country, the UK was able to effectively demonstrate a willingness and an ability to investigate and prosecute the accused. As stated in the executive summary of the ICC's Final Report on the situation in Iraq/UK, "having exhausted reasonable lines of enquiry arising from the information available, the Office has determined that the only appropriate decision is to close the preliminary examination without seeking authorisation to initiate an investigation" (International Criminal Court 2020d, 4). Nevertheless, an ICC investigation would have been warranted, if not for the UK's privilege to establish its own independent judicial body to investigate the alleged crimes, **prevent**ing the ICC **jurisdiction** to continue their **investigation** by opening an official case (Davies, Gareth, and Nicholls 2019). Not only did the ICC previously assert that there exists credible evidence that British troops committed war crimes in Iraq, but an investigation by BBC Panorama and the Sunday Times also discovered damning evidence of war crimes from the personal statements of the Iraq Historic Allegations Team (IHAT), which was composed of British soldiers and army staff (BBC News 2019). The closure of the case against the UK military officials serves as a **clear example of the ability** of the ICC's legal framework to **advantage developed states** and **disadvantage developing countries.**

Following the conclusion of the ICC's preliminary examination on February 9, 2006, the UK proceeded with an independent investigation by the IHAT set up by the Labour government in 2010 to investigate credible claims of abuses in Iraq and secure criminal prosecutions where appropriate (Shackle 2018). Over the following years, IHAT referred a few cases to the independent Service Prosecuting Authority (SPA) for prosecution; nevertheless, the SPA declined to prosecute in each instance because the cases failed to meet the evidential test or the public and service interest component of the 'full code test' (International Criminal Court 2020d, 6). By February 2017, the UK government had shut down IHAT, as its investigations had developed into a national scandal over their failure to secure a single prosecution, despite the ICC asserting "there is a reasonable basis to believe that, in the incidents which form the basis of the Office's findings, the Iraqi detainees concerned were subjected to torture, cruel treatment or outrages against personal dignity, and in some cases willful killing" (6).

To this day, the UK has yet to be held **legally accountable** for its military's war crimes, **demonstrating** the **ability** for **affluent developed countries** to not only **circumvent ICC investigation** but then evade **prosecution and accountability** domestically. Wealth in and of itself should not render a state immune from ICC prosecution. It is evident that the principle of **complementarity** allows the definitions of 'unable' and 'unwilling' to **advantage** developed, often **democratic states**, simply because the state's wealth meets a standard that indicates an ability to administer

justice. As a result, **developed countries** can evade Court investigation, while African states are rendered easy targets for ICC investigation. This disproportionate outcome as a result of the principle of complementarity demonstrates that the ICC's legal framework is predisposed towards selectivity bias against developing states. It is important to add that almost ten years later, the ICC did re-open the preliminary examination of the war crimes of UK officers in the Iraqi conflict due to new evidence, though the Prosecutor has not yet moved forward with indictments (International Criminal Court 2020f).

2NC---AT: funding

1. LT. Even with funding, the ICC is ineffective.

Dunlap '19 [Charles; Former Deputy Judge Advocate General of the United States Air Force; December 5; Lawfire; "Why the case against the International Criminal Court (ICC) is the stronger one," https://sites.duke.edu/lawfire/2019/12/05/why-the-case-against-the-international-criminal-court-icc-is-the-stronger-one/] tristan **brackets r og**

In the American Bar Association (ABA) Journal, Kristen Smith argues "The case for the International Criminal Court: Why it deserves our support." She highlights the merits of the ICC, and while she does note some flaws, Smith misses the key civil liberties **issues** that **makes ratification unsupportable**, at least insofar as the U.S. is concerned.

The **ICC** began with the best of intentions– and good background on it is found here. Unfortunately, over time the ICC **has had a miserable record in terms of holding people accountable**. In more than 17 years of existence – and **despite the expenditure of** well **over one billion dollars** – the Washington Post reported last year that **the ICC** has **secured** just "**two convictions and one** guilty **plea**." Even Human Rights Watch, a strong ICC advocate, very recently conceded that "**performance gaps due to various factors have become very evident,** underscoring the need for changes in policy, practice, and state support" related to the ICC."

From an American perspective, **the ICC** has not been able to shake the long-stated concerns that it **would lead to politically-motivated cases, and infringe upon U.S. sovereignty** – issues Secretary Pompeo reiterated recently. The U.S. is not, however, alone in its criticism. The Council on Foreign Relations noted just last May that **"[s]everal major powers echo U.S. complaints**. China and India, in abstaining from the court, argue that **it would infringe on** their **sovereignty**."

Some critics also see the **ICC as biased against Africans**, while others say the "ICC sadly reinforces Western perspectives and standpoints as universal maxims valid for all people and all nations, and re-enacts racialised metaphors of savages, victims and saviours in the name of truth and justice."

There is, however, another perhaps ever greater concern: **ICC procedures do not meet the standards of the U.S. criminal justice system**. There is, for example, **no jury** of one's peers; indeed, no juries at all. Decisions are made solely by **judges,** the **qualifications** of whom have been **severely criticized.**

Additionally, **ICC trials admit hearsay and other evidence that would be barred in U.S. courts**. Even its advocates admit that "**the admissibility threshold in international tribunals is generally low relative to that in common law countries like the United States."** There is also an absence of some of the bedrock principles of American criminal justice jurisprudence. For example, there is no Sixth Amendment right to confrontation within the meaning of Crawford v. Washington. Perhaps most shocking from an American perspective is that prosecutors can – and do – appeal trial acquittals.

All of this ought to matter for a nation dependent upon an All-Volunteer Force (AVF). Is it wise, or – more to the point – right to tell the less than .04% of Americans who have stepped up to serve their country in uniform that they will also be subject to a criminal court system that fails to meet the basic groundwork of the Constitution that they are being asked to go into harms' way to support and defend?

If U.S. troops are accused of wrongdoing, shouldn't they – of all people – be afforded a trial that meets American standards?

Sure, there are instances where negotiated Status of Forces Agreements permit foreign courts to take jurisdiction over U.S. personnel in limited circumstances, but these are in no way akin to the sort of expansive jurisdiction contemplated by the ICC's Rome Statute. Moreover, Department of Defense policy mandates that such agreements "protect, to the maximum extent possible, the rights of United States personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons." As one scholar puts it:

"Implicit in this statement is the desire to protect U.S. persons' due process rights, which might be infringed if they are subject to trial in an unfair judicial system. In addition, this policy reflects the goal of retaining the right to enforce the military's own disciplinary standards as part of the chain of command. All told, and in principle, DOD will not send military personnel abroad without sufficient status protections such as those found in…SOFAs."

SOFAs can vary from country to country, but typically the U.S. will not agree to the exercise of foreign jurisdiction in combat zones or with respect to combatant activity – exactly the circumstances which form the centerpiece of the ICC's focus.

"Sufficient status protections" for U.S. troops are important not just tactically, but strategically. We can't forget that the AVF is already struggling to fill the ranks because of the booming economy. Additionally, studies show that the "percentage of young people who say they will likely join the military is at 11 percent — the lowest point in nearly 10 years." How much smaller would that pool shrink if potential recruits were told it was possible that they would be handed over to a foreign criminal court system?

It may be true that the likelihood of an American servicemember being hauled before the ICC for alleged war crimes is small, but no one can say it is impossible. The ICC recently announced that it would allow the prosecutor to appeal a judicial rejection of authority to investigate the Afghanistan conflict, including activities of U.S. troops. Clearly, **the prosecutor is taking aim at Americans**: Reuters reports that "[p]rosecutors have cited preliminary evidence suggesting that international forces in Afghanistan, including employees of the U.S. Central Intelligence Agency, mentally and physically abused detainees, which could constitute a war crime."

2. Rich countries refuse to fund and the Rome Statue can't enforce. This also contradicts their second argument because it begs the question of why trump would fund his own prosecution.

Brahm 23 [Eric Wiebelhaus-Brahm (PhD in political science, is associate professor in the School of Public Affairs at the University of Arkansas at Little Rock), 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 (accessed 2-6-2025)] ME *brackets are og

Debt politics Like many intergovernmental organizations, the ICC **struggles** to get state parties to **pay** their **dues**, which calls into question state parties' commitment toward justice. Budgets are of **limited use** if the **money** is **not actually delivered**. This further complicates the Court's ability to complete its mission. One can only surmise whether states are sending a political message by not paying their dues, but the likelihood is greater when rich countries are the culprits. As Table 2 shows, as of 2019, it is **predominantly** the **richest state parties** that have **shorted** the ICC the **most** (see Harvard Dataverse for historical data). The amounts can be **staggering**, particularly when compared to the ICC's **overall budget**. In 2019, for example, the top 10 debtors owed approximately €80 million, when the approved annual budget for the year was a little over €148 million. The **Rome Statute** contains provisions to sanction state parties for nonpayment. Specifically, countries in arrears can have their voting rights suspended. However, the treaty is written such that there are **few consequences**, particularly for **rich countries**. Article 112, paragraph 8 of the Statute dictates that the suspension of voting rights **can** be enforced when "the amount of [a State Party's] arrears equals or exceeds the amount of the

contributions due from it for the preceding two full years." Practically, rich countries can **withhold much more substantial sums without crossing** this threshold. Provisions also **permit** the ASP to **allow states** to **retain voting rights** "if it is satisfied that the failure to pay is due to conditions **beyond** the **control** of the **State Party**." Thus, sanctions are at the **discretion** of **state parties**. The countries that **have** been **sanctioned** owe **dramatically less**, meaning that their **failure** to **pay** has much more **limited effects** on the Court's **ability** to **fulfill** its **mandate**. With the notable exceptions of Argentina and Brazil, the countries **meeting** the Statute's **definition** of "**in arrears**" are **overwhelmingly poor**. However, aside from Venezuela, **only poor African and island states** have had their **voting rights suspended** (see Harvard Dataverse for data on countries in arrears and suspensions). Thus, even by the treaty's own criteria, larger economies like Argentina and Brazil are not sanctioned, despite their arrears having a much more dramatic effect on the Court's ability to function effectively.

Even if they can empower the icc the icc itself is bad as it Prolongs conflict.

Prorok '17 [Alyssa K. Prorok; Professor of Political Science at UIUC; 04-03-2017; "The (In)compatibility of Peace and Justice? The International Criminal Court and Civil Conflict Termination"; Cambridge University Press; https://www.cambridge.org/core/journals/international-organization/article/abs/incompatibility-of-peace-and-justice-the-international-criminal-court-and-civil-conflict-termination/2B52BDBADB701F2B6CF1586E417ED2F4; accessed 02-01-2025] leon

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**. Findings 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.

2NC---AT: Accountability

1. Will to engage in unnecessary wars is no longer present

Trita **Parsi, 22**, 7-1-2022, "The end of American adventurism abroad," No Publication, https://www.ips-journal.eu/topics/foreign-and-security-policy/the-end-of-american-adventurism-abroad-5629/ //BP-SV

The **end of American adventurism abroad** With or without Trump, many **Americans no longer see the US in the role of global policeman.** Europe must take this seriously One year into the Joe Biden administration and most of the world has accepted two realities. First, America is not back, and Biden's slogans notwithstanding, there simply is no going back to the pre-Trump era. Secondly, **whether America keeps troops in various parts of the world or brings them home**, **America's will to fight is by and large no longer there.** Its implications for the trans-Atlantic relationship will be profound. Europe would be wise

to pro-actively adjust its defence policies accordingly. **American decision-makers have long warned allies and partners that the United States must reduce its security obligations, lighten its military footprints in certain regions and that greater burden-sharing is inescapable.** But US allies have largely ignored these warnings and pleas. Perhaps because the United States itself has sent mixed messages: When Europe begins to talk about strategic autonomy, Washington has a meltdown. When Europe continues to rely on the US's security umbrella, American leaders rebuke Europe for freeriding.

. LT. Perception of "restraint" causes hotspot escalation and war---reverses solvency!

Mazarr '20 [Michael; Senior Political Scientist @ the RAND corporation; June 16; Taylor & Francis; "Rethinking Restraint: Why It Fails in Practice," https://www.tandfonline.com/doi/full/10.1080/0163660X.2020.1771042, accessible at: https://sci-hub.ru/https://doi.org/10.1080/0163660X.2020.1771042] tristan **brackets & ellipses r og**

Some leading members of this school, for example, urge an effective end to the NATO alliance69 whereas others propose gradual troop withdrawals with some conditions.70 Some argue that the US "forward presence in Asia has lost its Cold War security rationale" and recommend an end to alliances with Japan and South Korea71 or a vaguely-defined "reduction in U.S. forward deployments" in the region;72 others, as we will shortly see, worry about the rising threat from China and exclude Asia from their restraint agenda. Some advocates appear to propose immediately abandoning the Middle East;73 others highlight the region as the exception to **a global policy of retrenchment**.74 Some suggest that "terrorism should still elicit a strong response," 75 without specifying what US engagement this would demand. Such a response would appear to call for efforts to develop partner capabilities and conduct limited counterterrorism operations with a minimal footprint—but this is exactly the sort of posture the United States has now adopted in Iraq.76

Critically, most restrainers appear to agree that **the United States could not sit idly by if a hostile Russia invaded Europe, if China began waging wars against its neighbors, or if Iran undertook large-scale attacks**.77 **Given the nature of US global interests, this concession is unavoidable**, but it fatally complicates the coherence of any agenda for restraint: **if the United States must be ready to fight such distant, short-notice regional wars, then it is not clear just how much its** defense budget can be cut or its **global posture eviscerated**.78 Advocates of restraint often imply that reducing forward posture in and of itself will dramatically ease US defense burdens. But they misperceive the origins of US defense requirements, which flow from the contingencies that the United States decides it must be willing to fight (and how it plans to fight them). **Withdrawing US forces from abroad** will not change that essential equation.79 It **could create new burdens**, in fact, in two ways: **by demanding added investments in power-projection capabilities to make up for the forces that are withdrawn, and by risking the truly enormous costs of major wars if US restraint invites new aggression.**

Hemmed in by such constraints on one issue after another, proponents of restraint usually end up advocating only partial or half-way disengagement in specific regions or on particular issues. Stephen Wertheim, even while calling for a dramatic pullback from the Middle East, still suggests that "Washington should of course try to broker the best possible settlements to the conflicts" in Syria and Iraq and "should continue to provide assistance to the Afghan and Iraqi governments." 80

But such responsibilities would appear to be precisely what restraint advocates are trying to escape. Barry Posen argues that the United States must still secure the global "commons," and he favors a potent maritime strategy to do so81—an ambitious goal that would keep the United States embroiled in regional maritime disputes such as those in the South China Sea. Even on the issue of humanitarian interventions, CATO Institute analysts Trevor Thrall and Benjamin Friedman contend that proponents of restraint "do not wholly reject them. … [I]f the danger to the

people is high and the difficulty of intervention low, it is morally justified." 82 A better shorthand summary of the argument made by advocates of the intervention in Libya could hardly be imagined.

These halfway approaches rely in part on a questionable notion that the United States can disengage from the world or significant parts of it, undertake a more distant and conditional set of commitments, and if wars loom, decide then if it will respond. But **vague, halfway commitments are the worst kind of all**.83 **They tempt potential aggressors to act and allow situations to collapse into instability in cases where US national interests will not allow America to remain aloof. The United States will then have to go in and clean up the mess at far greater cost than if it had remained engaged in the first place.**

Such an outcome would ruin the restraint proponents' hope of limiting costs, because the truly crippling expenses of US foreign policy emerge in wars, not annual defense budgets. If a major new regional conflict matched the combined costs of the lower-intensity Afghan and Iraq campaigns, for example (direct costs of between US$1 trillion and US$1.5 trillion and indirect costs, such as long-term veteran care, roughly double that84), a restraint agenda that cut US defense spending by US$100 billion a year would take over a quarter century to equal the savings of avoiding a single war.

This danger is far from theoretical: US detachment from Korea and Kuwait helped to tempt major aggression in 1950 and 1990. Restraint advocates scoff at the risk of war absent a US balancer and express confidence that other factors —such as **nuclear deterrence** and expanded defense efforts by others—will fill the vacuum of power left by US retrenchment.85 Even if this reasoning is true to a degree, such a policy would represent **a tremendous gamble**, one that might be justified if the only alternative were a militarized form of primacy. But US policy never conformed to that caricature, and **the United States has many options short of full-scale restraint to temper the risks and costs of global engagement.**

Dealing with the China Challenge

These dilemmas show up most of all in the way in which some restraint proponents handle the issue of China. **Given Chinese regional ambitions, predatory behavior, and coercion of its neighbors, there is a strong argument that the United States cannot pull back**—militarily or otherwise—**and effectively compete.** The problem is especially acute in Asia because of the likely effect of China's overwhelming power on the calculations of others: **countries in the region are urgently looking for evidence of credible US commitments. Without that evidence, many could end up deciding** that they have no alternative but **to appease, rather than balance, Chinese demands**.

Despite these concerns, some restraint proponents remain willing to include Asia in their retrenchment agenda. Yet, many leading advocates of restraint disagree and accept that deterring China must be a major exception to the general principle of retrenchment. Mearsheimer and Walt, for example, note that **China "is likely to seek hegemony in Asia**," that local powers are too dispersed and weak to offer an effective counter, and that **the United States will therefore have to "throw its considerable weight behind" a balancing effort**.86 Andrew Bacevich appears to agree.87

This admission is welcome—but it blows a massive hole in the case for restraint. **A serious US effort to contest Chinese hegemony will demand significant and growing regional presence in an operationally demanding theater. It will** likely **require continued US troop deployments** in Japan and Korea, **deep engagement including extensive security cooperation activities with regional partners, and major financial commitments to counter Chinese economic statecraft**. In sum, if the United States intends to balance Chinese power, it is not clear how restrained it will be able to be. The global outline of restraint would begin to look not unlike a supercharged version of the "rebalance to Asia" announced

by the Obama administration, with reduced posture in the Middle East and Europe but a renewed commitment to the Indo-Pacific region. If that is all restraint amounts to in the most geopolitically significant region in the world, it would not imply much of a change.

The dilemmas the China case creates for the restraint agenda come out clearly in Posen's analysis. He suggests that, in theory, retrenchment in Asia might work out fine—but "out of an abundance of caution … **the United States ought not to run this experiment**." In Asia, he concludes, "the locals may need the United States, and the United States may need the locals." **Washington should**, therefore, **play a balancing role to prevent Chinese regional hegemony.**88