

# C1 is U.S. Peacekeepers

**Currently, the US military is deployed in every continent as a peacekeeping force.**

**O'Dell '24** [Hope O'Dell joined the Chicago Council on Global Affairs in 2023 as real-time reporter. In this role, they covered global politics and policy daily.] Where in the world are US military deployed?, Global Affairs,  
<https://globalaffairs.org/bluemarble/us-sending-more-troops-middle-east-where-world-are-us-military-deployed>, Hope O'Dell, 04-05-2024, Accessed 1-29-2025 //lynne

Where are U.S. military stationed around the world? While the U.S. boosts its military presence in the Middle East, it maintains troops on every continent. As of September 2022, there are 171,736 active-duty military troops across 178 countries, with the most in Japan (53,973), Germany (35,781), and South Korea (25,372). These three countries also have the most U.S. military bases – 120, 119, and 73, respectively. There are around 750 U.S. military bases in at least 80 countries, though Al Jazeera says the number “may be even higher as not all data is published by the Pentagon.” Many U.S. military bases were built after World War II “when the U.S. took position as the global leader and peacekeeper in and around Japan and Germany,” which explains why those two countries have the most bases. Then the Cold War and the Korean War gave the U.S. another reason for global military expansion – to contain communism.

## **US Forward Presence dramatically reduces conflict**

**Shunk et al. '17** [“The Role of Forward Presence in U.S. Military Strategy” Col. Dave Shunk, U.S. Air Force, Retired Lt. Col. Charles Hornick, U.S. Army Maj. Dan Burkhart, U.S. Army, MILITARY REVIEW, July-August 2017,  
<https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/July-August-2017/Shunk-Forward-Presence/>]  
squasha

Preventing war and the human suffering it entails has long been a core element of U.S. national security strategy and military strategy. Although diplomacy and economic power have significant roles in forestalling conflict, our military is the ultimate means of deterring aggression.

To deter enemies means to prevent them from taking hostile action by persuading them that the cost of the action will outweigh the benefits. This can be accomplished through two principal approaches: deterrence by threat of punishment or deterrence by denial. Deterrence by punishment is threatening to inflict pain against aggressors if they take an action that threatens U.S. national interests. Deterrence by denial is accomplished by dissuading potential adversaries from taking actions contrary to U.S. interests by making it clear that these actions cannot succeed.<sup>1</sup> Specifically, the adversary calculates that the likelihood of success is so low the probable gain is not worth the effort.<sup>2</sup> This type of deterrence is preferable under a range of circumstances, especially when deterrence by threat of punishment could be undermined by carefully limited enemy action, designed to stay below the U.S. threshold for response. An example is Russia's operations in the Ukraine, which stayed below the U.S. threshold for response. Additionally, the threat of punishment has its risks, as it might result in the expansion or escalation of conflict.

Deterrence requires capacity, communication, capability, and will.<sup>3</sup> Indeed, the adversary's perception that you will use military force is central to deterrence. While we can never know exactly what conveys evidence of will, deterrence resides in the mind of the adversary. We do know that physical presence conveys both commitment and intentionality. U.S. security strategies since World War II also provide lessons of practice that buttress deterrence theory. We know from broad experience what does and does not work, and this knowledge can inform us how to position our forces for the deterrent outcomes we seek.

For the past seven decades, U.S. land forces have had an instrumental role in deterrence. Although air and naval power contribute indispensable capabilities to the joint force, these forces, operating on their own, principally facilitate deterrence by punishment. Land forces in their forward presence role are often the linchpin of deterrence by denial. In addition, the forward presence of land power is the most credible signal of U.S. commitment to a nation or region. Positioning land forces in a contested area causes the enemy's calculus to be far different than if U.S. forces are offshore. The prospective adversary has no reason to question the will of the United States to respond to aggression. Quite simply, forward-deployed Army forces raise the stakes and create uncertainty among would-be aggressors that armed conflict would achieve their desired objectives.

The absence of U.S. land forces increases an adversary's temptation to act in ways that slide under the U.S. threshold for inflicting punishment. It may also increase an adversary's willingness to try for a fait accompli before U.S. forces can be brought to bear. This is seen in the Baltic states, where there is concern that Russia will seize territory and then make the West back down by threatening an expansion of conflict. While over-the-horizon strike assets, as well as the unmatched U.S. ability to airlift forces into theater, are formidable threats, they are reactive, and they cede the initiative to the aggressor. When ground forces are present, the United States maintains the initiative as potential aggressors know the costs of aggression will be outweighed by any potential gains.

Nowhere is this more evident than on the Korean Peninsula. According to historian Allan Millett, “the withdrawal of the U.S. [Army] Fifth Regimental Combat Team from the approaches to Seoul in June–July 1949, sealed Korea's fate. This action, not careless or careful words uttered in Washington or Seoul, heartened the Communists [to attack in June 1950].”<sup>4</sup> Since the end of the Korean War, the continued forward presence of U.S. land forces has made America's retaliation against a North Korean invasion an almost expected automatic response. Many scholars believe that in the 1970s, China's Mao Tse-tung reined in North Korean leader Kim Il-sung when he threatened to repeat his quest to reunite Korea by force.<sup>5</sup>

Today, combat-ready forward-based American soldiers—armed with guns, tanks, and helicopters—communicate in no uncertain terms that the United States is committed to maintaining the sovereignty of the Republic of Korea (ROK). This forward Army presence, coupled with powerful U.S. and ROK military capabilities, deters North Korean aggression.<sup>6</sup>

Similar to the Army presence in Korea, capable forward-deployed U.S. Army units, as part of a NATO combined force, provided a strong deterrent against Soviet aggression throughout the Cold War. Although some scholars of the Cold War question whether the Soviet Union had designs on Western Europe, we do know the Soviets were opportunistic.<sup>7</sup> The forward presence of U.S. Army forces ensured that no temptation readily presented itself for Soviet opportunism.

Today, U.S. Army Europe is leveraging forward-stationed and rotational Army forces to deter aggression against its NATO allies. This is done, in part, by the Army's contribution to the European partners and allies through its "Strong Europe" approach and cooperation to make the Army forces in Europe of "30,000 Soldiers look and feel like 300,000" toward the defense of Europe.<sup>8</sup> Since Russia's annexation of Crimea and military intervention in Eastern Ukraine, many of our European partners and NATO allies have feared a militarily resurgent and aggressive Russia. "Strong Europe" seeks to both assure our allies and raise the stakes to deter further Russian aggression in the region.

#### Assuring Allies

The enduring, well-developed nature of America's global network of alliances makes it easy to take these relationships for granted. These relationships must be maintained with deeds as well as words. While economic cooperation between the United States and its allies advances the fiscal interests of both sides, rotational and enduring forward Army presence addresses many security needs and tangibly assures our partners of our unwavering commitment. Many rightly regard forward presence as the cement that holds our alliances together.<sup>9</sup>

U.S. Army forward presence also helps to curb dangerous, destabilizing security competitions and prevent the emergence of security dilemmas. Presence helps to facilitate regional stability in many places around the world, to include Europe and East Asia. While the international community still faces a range of wars carried out by nonstate actors and other civil conflicts, U.S. forward presence has helped to temper competition among states in many places around the world. Over the past forty years, there has been a dramatic drop in the quantity and frequency of state-on-state conflicts, and we have seen nothing like the two cataclysmic wars that dominated the first half of the twentieth century.<sup>10</sup> Arguably, one of the principal causes of this trend has been the assurance that U.S. forward presence has provided to our allies.

#### Stemming Regional Arms Races

The certainty that comes with a U.S. security commitment, backed by the forward presence of the Army, persuades many partners and allies not to engage in a security competition with others in the region. Competition more often than not is replaced with cooperation. After the fall of the Soviet Union, former Warsaw Pact members such as Poland and the Baltic states chose to partner with NATO, including the United States. In the Pacific, former foes such as Japan and South Korea now cooperate with the United States to resist Chinese and North Korean threats.

Furthermore, because U.S. presence diminishes the instinctive fear of invasion or armed coercion, nations feel comfortable seeking levels of military force that are unlikely to trigger arms races (and thus regional instability). Over the past several decades, forward-deployed Army air and missile defense units, especially Patriot batteries, have provided assurance to our allies not only in the Middle East but also in East Asia and Europe.

#### Mitigating Regional Security Dilemmas

U.S. forward presence also prevents the emergence of security dilemmas. These occur when a nation is faced with a decision to either grow its military or to remain vulnerable and thus risk exploitation.<sup>11</sup> For example, Germany developed the Schlieffen plan prior to World War I, fearing it would be in dire peril of losing a war if it were compelled to fight on two fronts against the expected enemies of France in the west and Russia in the east.<sup>12</sup> The plan aimed to quickly defeat France first so Germany could then focus its efforts on defeating Russia in the east, which it believed was the more difficult adversary. The plan hinged on the rapid mobilization of the German army, for which it overtly prepared, in turn heightening nervousness on the continent.

Aware of German anxiety, the situation presented other European states with a choice: heighten their readiness for war (and risk provoking Germany) or remain weak and risk invasion. Thus, one view is that it was not interests but rather tension and insecurity that led to the onset of the "Great War."<sup>13</sup>

Since World War II, U.S. forward presence has reduced such tension and insecurity by assuring allies in Europe and elsewhere that America would reinforce their security in the face of aggression, especially from the threat posed by the Soviet Union (and later Russia). This presence has had a calming and reassuring effect in many regions, and it has helped to stifle rivalries and head off competitions in Europe, East Asia, and other parts of the globe.<sup>14</sup>

#### Geopolitical Management

Finally, assuring allies enables the United States to pursue an effective and efficient geopolitical management strategy. Alliances allow the United States to influence outcomes in important regions. What U.S. Army forces are doing in the Pacific is a good example. Through its Pacific Pathways program, the U.S. Army's Pacific Command is implementing a new concept to assure allies in the region by developing long-term, meaningful relationships with them. By participating in joint and combined arms exercises such as Ulchi Freedom Guardian in Korea and Yama Sakura 65 with Japan's Ground Self-Defense Force, the U.S. Army forward presence is establishing and maintaining bonds that reassure allies regarding U.S. commitments.<sup>15</sup>

Allies who regularly work and train with U.S. Army forward forces contribute to the common defense and shared interests more than they would independently. Through these engagements, developing a comprehensive understanding of each other's method of standards and principles improves interoperability between our forces.

Together, combined U.S. and allied forces who have rehearsed contingencies dissuade other powers or combinations of powers from dominating areas of U.S. interest. Without allies and partners in a given region, the United States would be forced to directly contain emerging powers in the region unilaterally, by maintaining its own large military force there, or to retreat and act according to the rules and preferences of the region's hegemon.<sup>16</sup> Both options are costly, and the latter is exceptionally dangerous.

#### Shaping the Security Environment

Security environments are by their very nature complex. A multitude of factors—ranging from weak state institutions to contested territories—can provoke and sustain armed conflict in a region. Forward-positioned Army forces allow the United States to help shape security environments by reinforcing fragile states where collapse and chaos linger on the horizon, by building partner capacity to prevent revisionist states from seizing territory and by restraining allies and friends from escalating tensions. These actions, which take myriad forms, help temper the propensity for actors to seek to achieve their aims by coercion and force.

One of the most successful examples of the United States shaping a security environment by reinforcing a fragile state is that of Colombia, one of the oldest democracies in South America. For decades, the United States assisted Colombia in its struggle against the Revolutionary Armed Forces of Colombia (FARC). In 2009, Colombia signed an agreement with the United States that allowed U.S. personnel to be stationed at seven military bases in Colombia.<sup>17</sup> Peace talks between the Colombian government and the FARC followed some seven years later, and now Colombia enjoys much greater stability.<sup>18</sup> Additionally, Colombia is now positioned to provide reparations and assistance to the nearly six million internally displaced victims of the fifty-year struggle.<sup>19</sup>

#### Building Partner Capacity

Whether forward-positioned U.S. forces are strengthening mature military forces, fixing the tactical shortcomings of indigenous militaries, or establishing completely new military forces and security institutions, they build the capabilities and capacities required to help maintain stability in a region. This is a central part of U.S. Army Africa's "African Horizons" operational approach, which leverages enduring partnerships to increase stability in both Africa and the broader region. Within this approach, Army forces enable African and European partners to create lasting solutions to conflict in Africa.<sup>20</sup> These partners often contribute to peacekeeping operations sanctioned by the United Nations or the African Union. The

improved militaries of these countries also conduct operations against violent transnational extremist organizations that could otherwise exploit Africa's vast, austere spaces as sanctuaries from which to attack our homeland and interests.

The Army has had several such successes in Africa in recent years. In Uganda and Burundi, U.S. forward forces greatly assist in the fight against al-Shabaab by training forces deploying to the African Union Mission in Somalia. This enables a slow but steady improvement in the security situation in Somalia.<sup>21</sup> Similarly, U.S. partnerships with nations in the Lake Chad basin involving regionally aligned Army forces, special operations forces, and other joint forces are steadily degrading the Islamic State-allied Boko Haram and decreasing its territorial control. They are setting the theater and enabling the joint force to support the multinational effort. For example, a U.S. Army forces deployment early in 2017 to conduct base operations support integration in Cameroon is just one part of this effort against Boko Haram.<sup>22</sup> These and other accomplishments in training and engagement often go unheralded, but they are significant contributions to regional security and world order.

**It dramatically reduces death.**

**Barnett '11** [Thomas; Chief Analyst @ Wikistrat; March 7; World Politics Review; "The New Rules: Leadership Fatigue Puts U.S., and Globalization, at Crossroads,"

<https://www.worldpoliticsreview.com/the-new-rules-leadership-fatigue-puts-u-s-and-globalization-at-crossroads/>] tristan

It is worth first examining the larger picture: We live in a time of arguably the greatest structural change in the global order yet endured, with this historical moment's most amazing feature being its relative and absolute lack of mass violence. That is something to consider when Americans contemplate military intervention in Libya, because if we do take the step to prevent larger-scale killing by engaging in some killing of our own, we will not be adding to some fantastically imagined global death count stemming from the ongoing "megalomania" and "evil" of American "empire." We'll be engaging in the same sort of system-administering activity that has marked our stunningly successful stewardship of global order since World War II.

Let me be more blunt: As the guardian of globalization, the U.S. military has been the greatest force for peace the world has ever known. Had America been removed from the global dynamics that governed the 20th century, the mass murder never would have ended. Indeed, it's entirely conceivable there would now be no identifiable human civilization left, once nuclear weapons entered the killing equation. But the world did not keep sliding down that path of perpetual war. Instead, America stepped up and changed everything by ushering in our now-perpetual great-power peace. We introduced the international liberal trade order known as globalization and played loyal Leviathan over its spread. What resulted was the collapse of empires, an explosion of democracy, the persistent spread of human rights, the liberation of women, the doubling of life expectancy, a roughly 10-fold increase in adjusted global GDP and a profound and persistent reduction in battle deaths from state-based conflicts. That is what American "hubris" actually delivered. Please remember that the next time some TV pundit sells you the image of "unbridled" American military power as the cause of global disorder instead of its cure. With self-deprecation bordering on self-loathing, we now imagine a post-American world that is anything but. Just watch who scatters and who steps up as the Facebook revolutions erupt across the Arab world.

While we might imagine ourselves the status quo power, we remain the world's most vigorously revisionist force. As for the sheer "evil" that is our military-industrial complex, again, let's examine what the world looked like before that establishment reared its ugly head. The last great period of global structural change was the first half of the 20th century, a period that saw a death toll of about 100 million across two world wars. That comes to an average of 2 million deaths a year in a world of approximately 2 billion souls. Today, with far more comprehensive worldwide reporting, researchers report an average of less than 100,000 battle deaths annually in a world fast approaching 7 billion people. Though admittedly crude, these calculations suggest a 90 percent absolute drop and a 99 percent relative drop in deaths due to war.

## 1. Recruitment; 2) Military Code

**It decks recruitment and presence.**

**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

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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 service member 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.”

### 3) Fear of litigation chills action.

Dallas ’6 [Research Associate @ Henry L. Stimson Center, MA from Tufts University; March; Stimson Center; “On Trial: The US Military and the International Criminal Court,”

[https://www.stimson.org/wp-content/files/file-attachments/US\\_Military\\_and\\_the\\_ICC\\_FINAL\\_website\\_1.pdf](https://www.stimson.org/wp-content/files/file-attachments/US_Military_and_the_ICC_FINAL_website_1.pdf)] tristan

The United States holds a unique responsibility – vulnerability, some argue – as the most forward deployed nation in the world, with significant military forces in operations designed to preserve international peace and security.<sup>123</sup> Due to the size and sophistication of American capabilities, the United States often plays an active role worldwide in response to perceived threats. Some fear more situations where the US military actions are heavily scrutinized by the international community. This is especially likely when the US makes controversial decisions or takes action that is not presumed to adhere to the standards embodied within international humanitarian law and the laws of war.

While the Court is intended to promote justice and human rights around the world, Court critics have argued that it could do more harm than good in reducing threats to international peace and security if non-members fear being judged by the Court. With the Court’s extended jurisdiction, some policymakers and military leaders suggest that states may be deterred from deploying forces in response to a large scale humanitarian crisis, for example. Such a “fear to respond” mentality could affect American personnel – soldiers, commanders or generals – if they believe their actions will be evaluated and critiqued by an international judge. US officials have argued that those called to serve in international interventions or peace enforcement operations deserve a certain amount of “exemption” from the court’s jurisdiction, due to the current nature of war where often an unintended consequence is civilian casualties.<sup>124</sup> In addition to impacting strategic decisions, others have worried that fear of the Court could impact tactical decisions in the field, leading military personnel to consider limiting the use or type of fire power and/or the type of weapons that are employed.

These anxieties are often raised by those unfamiliar with the Court, although not exclusively.<sup>125</sup> Part of the concern is focused on how the Court would evaluate US decision-making. US military actions involve thousands of discussions and decisions relating to policy and planning. Each decision requires significant evaluation and assessment, and may use classified information from various agencies and individuals with expertise in operational law and doctrine. New threats to the United States emerge daily, and discussions about protecting national security interests with military actions must remain classified and carried out in a closed door setting. It is not possible for even a neutral body, such as the ICRC, to observe the process of determining targets, troop numbers and fire power.

Linked to this argument is the likely evaluation by both civilian and military leaders as to what constitutes a vital versus a non-vital mission, such as humanitarian interventions or peace operations, which could delay a response by the international community.<sup>126</sup> Conversely, a similar strategic decision by commanders may be to limit the number of troops deployed within an operation or to withdraw troops entirely from a mission where significant civilian casualties are likely.

Several senior US military personnel raised the fear that military commanders will be forced to consider constraining their operations in order to protect their troops from possible ICC prosecution, and by doing so, may put US troops at risk if they act without sufficient force. While the Geneva Conventions are clear in qualifying a non-combatant as an unlawful military target, civilians are certainly used as shields or decoys by enemies utilizing unconventional tactics. Reining in American troops could result in the exposure of non-combatants to greater violence.<sup>127</sup>

A former US diplomat articulated this concern that the US military will be evaluated in an international setting: Did the US apply just war theory? Has the response of the US military been proportional to the offenses committed? Was the target a legitimate military target? To a certain degree officials have noted that there is already an inherent questioning of the US military system within the larger international community along these lines. Other questions are likely about the aggressiveness of the US military during combat, the appearance of the use of excessive force, and the means by which the US has chosen to investigate and prosecute, where applicable, past offenses.

These concerns are broad, and relate to the fundamental concern about judgment of US actions on an operational basis, as discussed earlier. Most concerns are not directly related to specific gaps between US and ICC jurisdiction over American actions, but more characteristic of the **deep anxiety military leaders have about the largely-unknown Court**, whether realistic or not.

**Several senior military leaders interviewed** for this project **saw** the lack of oversight and **involvement by an outside institution over the actions** of the Court **as troubling and unacceptable**. Indeed, its critics argue that **the Court could be corrupted without such checks**. Such a concern is inherent with all international institutions, but the ICC evokes this possibility by its independence.

The US questions the Court's overall ability to maintain impartiality and objectivity when faced with possible corruption on behalf of judges or prosecutors. Some **US policymakers and Administration officials maintain that an international body** that is not held accountable to other institutions, but instead **relies on member states** to serve as the checks and balances, **will become inherently politicized. This could leave US personnel open to political prosecutions because the US lacks international support for many of its current policies and military actions. This, in turn, would leave those Americans carrying out US policy most vulnerable to exposure to the Court.**

As designed, **the Court** is not accountable to other international bodies, leading to charges that it **lacks sufficient checks and balances<sup>128</sup> to rein in a rogue ICC Prosecutor<sup>129</sup> or judge<sup>130</sup>**. Participants raised the question of the ICC facing political pressure from its member states that do not favor US unilateral actions – military or otherwise. **The lack of checks and balances on the actions of the ICC**, they argued, **could too easily allow its Prosecutor to engage in politically-motivated investigations and prosecutions.**

## That leads to **increased** human rights abuses

**Ruys '18** [Tom Ruys (Professor of International Law, Ghent Rolin-Jaequemyns International Law Institute, Ghent University, Belgium), Criminalizing Aggression: How the Future of the Law on the Use of Force Rests in the Hands of the ICC, European Journal of International Law, Volume 29, Issue 3, August 2018, Pages 887–917, <https://doi.org/10.1093/ejil/chy053>] PGR + squasha

It is clear that the expansion of the ICC's jurisdiction to crimes of aggression, as defined in Article 8bis of the Rome Statute,<sup>6</sup> is inspired by the determination 'to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes'.<sup>7</sup> In other words, it is inspired in part by the idea that the prospect of ICC prosecution will serve as a deterrent vis-à-vis (some) potential aggressors and make them think twice before embarking upon military adventures abroad. At the same time, several **scholars have warned that there is a downside to all of this, in that the risk of prosecution by the ICC could actually deter political and military leaders from launching military interventions serving a legitimate goal and promoting community interests**. In particular, a number of scholars have argued that it may produce **a 'chilling effect' vis-à-vis (unilateral but) 'genuinely humanitarian' interventions** and could **lead states to stand aside and allow horror to unfold**.<sup>8</sup> Thus, in the run-up to the Kampala Review Conference, several scholars insisted that states parties to the Rome Statute ought to agree on an exception for those engaged in bone fide unilateral humanitarian interventions.<sup>9</sup>

During the conference, the USA effectively put forward a draft 'understanding' that held that 'an act cannot be considered to be a manifest violation of the [UN] Charter unless it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith, and thus an act undertaken in connection with an effort to prevent the commission of any of the crimes contained in Articles 6, 7 or 8 of the Statute would not constitute an act of aggression'.<sup>10</sup> The proposal failed to garner sufficient support. In the wake of the conference, several scholars have continued to call for additional guarantees that leaders will not be prosecuted for launching (genuine) humanitarian interventions, occasionally insisting – in vain – that further negotiations ought to be held on the matter prior to the activation of the Court's jurisdiction.<sup>11</sup> One suggestion that has surfaced in scholarly debate, and which remains relevant, is the possibility for states to declare a partial 'opt-out' from the ICC's jurisdiction under Article 15bis(4) of the Rome Statute with regard to humanitarian interventions.<sup>12</sup>

As a preliminary remark, it is probably safe to say that the risk of being found responsible for a breach of the prohibition on the use of force by an international court or tribunal has not played a determining role in state decisions pertaining to military operations abroad. Thus, it is doubtful that in the run-up to Operation Allied Force in 1999 member states of the North Atlantic Treaty Organization (NATO) were heavily preoccupied with the prospect that Serbia might hire the late Ian Brownlie and institute proceedings in The Hague. This is related to the fact that there have been few proceedings in which states were found responsible for breaches of the jus contra bellum and to the consensual nature of interstate judicial dispute settlement.<sup>13</sup> In all, the 'legal exposure' at the state level is probably less of a factor inducing compliance than other elements, such as the concern with world public opinion and the desire to be perceived as a rule-abiding member of the international community, the likelihood of sanctions or the risk of a downturn in diplomatic relations with other states.

Of course, **state responsibility is one thing, individual criminal responsibility is quite another**. In particular, **fears of being individually held liable** for the crime of aggression may **weigh** more **heavily** in the hearts and minds of leading government figures than the mere prospect of state responsibility.<sup>14</sup> There has so far been limited research into the deterrent impact of the ICC.<sup>15</sup> As for the crime of aggression, it is all the more difficult to foretell what its deterrent impact will be. It would certainly be interesting to conduct a survey with legal advisers at the national level to inquire about the (potential) deterrent effect of Article 8bis of the Rome Statute. In the meantime, it appears at least plausible that, following the activation of the Court's jurisdiction, the ICC will occasionally be dealing with allegations of aggression. At the same time, notwithstanding the theoretical possibility of a United Nations (UN) Security Council referral,<sup>16</sup> the deterrent impact of the ICC<sup>17</sup> remains a priori limited to nationals of states that have ratified the Kampala Amendments.<sup>18</sup> It is no secret that some countries with a historical record of military intervention abroad are unlikely to accept the ICC's jurisdiction over the crime of aggression or have no intention of ratifying the Rome Statute in the first place.

## Contention 2 is Conflict Escalation

Currently, the ICC has no mechanisms to intervene in conflict, whether international or local.

"International Criminal Court: What is the ICC and what does it do?" **BBC**, 21 November **2024**, <https://www.bbc.com/news/world-11809908>. Accessed 2 February 2025. /SR

The ICC has no police force of its own to track down and arrest suspects. Instead it must rely on national police services to make arrests and seek their transfer to The Hague. A prosecutor begins an investigation if a case is referred either by the UN Security Council or by a ratifying state.

## **The ICC doesn't even have a deterrent effect.**

### **Philips 16**

[Christen Romero Philips, "The International Criminal Court & Deterrence: A Report to the Office of Global Criminal Justice, U.S. Department of State", June 2016, Stanford Law School: Law & Policy Lab, <https://law.stanford.edu/wp-content/uploads/2016/07/Philips-The-International-Criminal-Court-and-Deterrence-A-Report-to-the-U.S.-Department-of-State.pdf>]/stav vz

Individuals who are committing mass atrocities that constitute crimes within the ICC's jurisdiction are not rational actors, which is the presumption underlying any deterrence model, and thus they will not be deterred by traditional cost-benefit analyses. Deterrence depends on a rational actor model, whereby the individual calculates the perceived benefit from the crime to be lower than the perceived cost (taking into account severity of sentence and certainty of punishment). However, some have argued that individuals who are committing the types of crimes under the ICC jurisdiction are not rational actors, and have a skewed view of the costs and benefits of committing those crimes. <sup>46</sup> Cronin-Furman distinguishes between those leaders who affirmatively order violence against civilians for tactical purposes from those who simply allow subordinates to commit atrocities. <sup>47</sup> Her research suggests that the former category may have overriding interests that skew the cost-benefit analysis, preventing them from being deterred as might be expected. On the other hand, she concludes that the latter should be able to be deterred by the threat of ICC prosecution if it is severe and certain enough.<sup>48</sup>

## **ICC cases prolong wars and war crimes—they trade off with stopping atrocities with force.**

**Carpenter 22** (Charli Carpenter is a professor of political science at the University of Massachusetts Amherst, a senior research fellow at Harvard University's Belfer Center for Science and International Affairs, and director of Human Security Lab. "War Crimes Trials Aren't Enough" *Foreign Policy* <https://foreignpolicy.com/2022/04/05/bucha-ukraine-war-crimes-trial-russia-icc/> April 5, 2022)

The International Court of Justice has called on Russia to cease and desist; the chief prosecutor of the International Criminal Court (ICC) has opened an investigation into war crimes and crimes against humanity in Ukraine. The newly defined crime of aggression may be prosecuted in national courts under the doctrine of universal jurisdiction. And the United Nations has opened a Commission of Inquiry to gather evidence to fuel trials at these and any other tribunals that might be envisioned. Ukraine has asked the ICC to look at Bucha specifically. U.S. President Joe Biden has called for tribunals, and U.S. Congress has held a hearing.

These efforts are laudable. In the aftermath of war, international courts have real teeth. One of the greatest victories for humanity has been the indictment, trial, conviction, and punishment of generals and heads of state at The Hague.

Col. Gen. Ratko Mladic, the Bosnian Serb commander who carried out the Srebrenica massacre, was indicted, tried, and convicted by the International Criminal Tribunal for the former Yugoslavia (ICTY). His civilian counterpart who ordered such atrocities, Radovan Karadzic, evaded justice for 13 years but was finally caught, extradited, and tried. Even former Serbian President Slobodan Milosevic, who had bankrolled the Bosnian Serb genocide against Bosnian Muslims, was eventually deposed and turned over to The Hague, where he died disgraced while awaiting sentencing.

But calls for war crimes trials while war crimes are ongoing can have two significant downsides.



First, early indictments foreclose off-ramps, further backing authoritarian regimes into a politico-strategic corner. As the South African former judge Richard Goldstone has argued, trials during ongoing conflict can be counterproductive toward bringing about a cessation of hostilities.

This, in turn, is problematic not only for peace prospects but also for civilians in war because, as political scientist Alexander Downes has shown, the longer wars continue, the more war crimes violations on all sides increase in likelihood and severity. Political scientists Jack Snyder and Leslie Vinjamuri have argued that amnesties, not trials, are often required to bring about peace: “Justice does not lead,” they write, “it follows.”

Consider: If the ICC were to indict Russian President Vladimir Putin, the indictment itself would surely become a bargaining chip in any potential peace settlement. If the West stuck by its guns, insisting that the Russian people replace and extradite Putin in return for lifting sanctions, this would only raise the stakes for Putin in winning at any cost. It would make him less likely to cave, more likely to take drastic actions, and more paranoid domestically, tightening the noose around his own inner circle and the public.

On the other hand, if the ICC were to give in, after issuing an indictment, to a Russian demand for immunity in return for peace, it undermines the entire purpose of international justice. This is why war crimes indictments are arguably best left until after a war is concluded.

But there is a perhaps more insidious problem: Tribunals can get in the way of deterring war crimes by substituting them for genuine action. They can create the impression that the international community is holding an aggressor accountable while enabling the international community to avoid the hard choices that could actually save civilian lives and enforce the U.N. Charter.

## **The ICC removes incentives for peace negotiation.**

**Kersten 2014** [Mark Kersten is the Deputy Director of the Wayamo Foundation and a Fellow at the Munk School of Global Affairs. “The ICC and its impact: more known unknowns,” ORIGINALLY PUBLISHED: November 5, 2014, <https://www.openglobalrights.org/icc-and-its-impact-more-known-unknowns>]

When it comes to the ICC’s impact on peace processes, we actually know very little, which may be because we are asking the wrong questions. It’s time to create a stronger analytical framework—including examining cases of ICC non-intervention—to properly understand the positive and negative effects of the Court. The debate over whether pursuing international criminal justice is helpful or harmful to peace processes has become a fixture in the realms of international relations and international law. Should justice be pursued in the context of ongoing conflicts? Should it be delayed or shelved altogether? Questions about the International Criminal Court’s (ICC) impact center around the dilemma of whether it is helpful (or not), to pursue accountability in the context of ongoing or recently concluded conflicts. While not unique to the ICC, the nature of this dilemma has been both heightened and made permanent by the establishment of the Court. While some of its predecessor tribunals ended up indicting active participants in wars, the ICC was specifically designed—and is increasingly expected—to intervene in the context of active conflicts. Political violence is often still raging when the Court is requested to intervene. As the recent crises in Syria and Palestine demonstrate, the ICC is often expected to intervene as a first responder to emergent political violence. Many opponents and proponents of the ICC have become entrenched between two harshly dichotomous positions: there is no peace without justice or there is no justice without peace. Advocates of the ICC argue that the Court’s interventions can deter crimes, marginalize potential perpetrators and induce warring parties to negotiate peace. Critics counter that the ICC removes the incentives of its targets to negotiate peace, instigates greater levels of violence and deflects from alternative—and potentially more

effective—means of conflict resolution. In some instances, both sets of arguments can be witnessed concurrently. In the case of the ICC's intervention in northern Uganda, some researchers claim that the Court's arrest warrants for Joseph Kony and four other senior members of the Lord's Resistance Army (LRA) prodded them into attending the Juba peace negotiations. Others argue that the ICC arrest warrant for Kony presented an insurmountable barrier to achieving a comprehensive peace agreement between the LRA and the Government of Uganda. It is also commonplace to hear observers and scholars insist on the need to move beyond the so-called "peace versus justice" debate. But this is misguided. There is no reason to doubt that the tensions and dilemmas of pursuing international criminal justice in the context on ongoing conflicts are real. Likewise, there is no reason to doubt that the project of international criminal justice complicates conflict resolution. It certainly does. The problem is that we still don't know why or how. And we are very far away from knowing whether or not, on the whole, ICC interventions are having a positive influence on conflict, peace and justice processes. Given the amount of ink spilled on elaborating the ICC's impacts, it may be surprising that we actually know very little about the Court's effects on peace processes and conflict resolution. Indeed, as the former Chief Prosecutor of the International Tribunal for the Former Yugoslavia and the former Director of the International Crisis Group, Louise Arbour, observed: "We all repeat the mantra that there can be no lasting peace without justice; and that's true enough. But I don't think that we have yet resolved the inevitable tensions between the two in a workable fashion." This is at least in part because we haven't been asking the right questions. To achieve a firmer grasp of the effects and non-effects of the ICC, three issues need to be explored in greater depth. First, how is a situation referred to the ICC? It surely matters whether the ICC intervenes in a conflict at the behest of the UN Security Council versus a referral by a member-state. Different referral mechanisms bring with them different kinds of political baggage for the ICC to sort through. Crucially, the Court needs to achieve cooperation in collecting evidence and to potentially enforce arrest warrants. That cooperation depends on the referring party—and likely means that they won't be targeted for prosecution. This, in turn, leads to asymmetrical attribution of accountability and responsibility for political violence and atrocities. In this context, it should come as little surprise that Security Council referrals have led the ICC to primarily target government officials while self-referrals by ICC member-state have resulted in the Court targeting government adversaries and rebel groups. This brings us to a second issue: who is targeted for prosecution and who isn't? Research on the ICC has focused primarily on the targets of judicial sanction. It has assumed similar behaviour across target-types. Potential differences in targeting a head of state like Muammar Gaddafi versus a hardened rebel like Joseph Kony are rarely considered. Instead, they are both said to either have the same incentives to negotiate because of the ICC, or the same predilection to dig their heels in and fight to the death because of the ICC. More attention needs to be focused on how the Court's interventions affect non-targeted parties. In Libya, the ICC's intervention against the Libyan regime bolstered the resolve of the opposition to reject negotiations with the "criminal" Gaddafi and emboldened rebel forces to pursue a military solution to the war. In Uganda, the ICC's intervention legitimized the Government of Yoweri Museveni, which was able, in turn, to rescue its reputation after a disastrous—and possibly criminal—handling of the war in northern Uganda. Lastly, it is critical for scholars of the ICC to consider what other contextual dynamics of peacemaking and conflict waging can explain developments that would otherwise be ascribed to the ICC. To use the example of the LRA committing to the Juba peace talks in 2006, research suggests that the 2005 Comprehensive Peace Agreement between Sudan and South Sudan (both of which were proxies in the war between the LRA and Uganda) had as much, if not more, of an impact on pressuring the LRA to come to the negotiation table. Here it would also be useful for researchers to examine cases of ICC non-intervention. All things being equal, Syria is a case in which



few would deny a Court intervention is warranted, but where an ICC investigation simply cannot take place because Syria is not a member-state of the ICC and the Security Council has not referred Syria to the Court. Yet many of the presumed effects of ICC interventions—failed peace negotiations, prolonged violence and the continued commission of atrocities—can be seen in Syria. Learning from cases of non-interventions can help scholars better refine analytical frameworks for studying the impacts of the ICC and the interplay between the Court's interventions and key causes and drivers of political violence. The original claims on both sides of the peace-justice debate are stagnant, stubborn and consistently recycled. But the solution to the impasse is not to do away with the debate altogether. What we need are more analytically nuanced and empirically rich accounts of how the ICC affects the conflicts in which it intervenes—as well as how it doesn't. This starts with asking the right questions and accepting the old adage that the more we know, the more we know what we don't know.

### **ICC involvement prolongs conflict – numbers prove Prorok 17**

[Alyssa K. Prorok, Spring 2017, "The (In)compatibility of Peace and Justice? The International Criminal Court and Civil Conflict Termination", Pro Quest,

<https://www.proquest.com/docview/1898588260/fulltextPDF?accountid=3611&parentSessionId=CYznjJKAinczM96QyKYefFPhHHj3L41V3oiwVoAJ420%3D&pq-origsite=primo>]/stav vz

As expected, **ICC involvement significantly decreases the likelihood of conflict termination** in Model 1, thereby lengthening war. Figure 1 demonstrates that this effect is sizeable: **the predicted probability of termination without ICC involvement is 21 percent, but drops to 11 percent when the ICC is involved, a 47 percent decrease in the likelihood of termination.** Model 2 tests the conditional hypothesis. ICC involvement is again negative, as is the civilian deaths disparity, while the interaction term is positive. Because this is a nonlinear model with an interaction, I turn to first differences and predicted probabilities to determine the significance and substantive impact of ICC involvement, conditional on the threat of domestic punishment.