# **1AC**

Weigh the aff against the K. That is, the aff is the disad to the K.

Prioritize this ROTB for two reasons:

1. Fairness — they can thwart the entire debate since we now have 4 minutes of wasting time, this is a 13:9 time skew
2. Education
   1. More clash — now they have to interact with our links, it's education for both of us and only fair because they can't attack the affs mindset without attacking the specific advocacies
   2. Policy — pitting the K against specific policies forces it to interact with the links, that's the best path toward specific policy reform with the education we take out of this space.

#### **Arbitrary roles jettison the resolutional stasis point and shift goalposts, decking competitive equity.**

Thus, the ROTB should be to vote for the side that best minimizes material violence.

1. **The ICC is eliminating Western double standards. Jones 24**

**Jones 24**, [Owen Jones is a Guardian columnist and the author of Chavs: The Demonisation of the Working Class and The Establishment – And How They Get Away With It] The ICC arrest warrants must bring an end to Israel’s atrocities – and true accountability for all the guilty, https://www.theguardian.com/commentisfree/2024/nov/21/icc-arrest-warrants-israel-atrocities-benjamin-netanyahu-yoav-gallant, Owen Jones, 11-21-2024, Accessed 2-6-2025 //lynne

It is not just Benjamin Netanyahu and Yoav Gallant who should fear accountability for one of the gravest crimes of our age. **If the international criminal court (ICC) had not issued today’s arrest warrants for the Israeli prime minister and his erstwhile defence minister – and indeed Hamas military leader Mohammed Deif – a global legal order already widely regarded with contempt by much of the world would not have survived.** Why? Because of the scale of the alleged crime. Because of the overwhelming body of evidence, not least that accumulated by Palestinian journalists, many of whom acted as the world’s eyes and ears on the killing fields of Gaza before being killed by Israel, often alongside their families. And because few crimes in modern history have been so confessed to – boasted about even – by the perpetrators, from leaders at the top to the soldiers unleashing murderous mayhem on the ground. That the evidence for war crimes and crimes against humanity has met the threshold to satisfy the ICC’s chief prosecutor, an independent panel of esteemed lawyers and now three pre-trial international judges demonstrates the strength of the case – and that nobody who facilitated this historic abomination can plead ignorance. **It is not just Netanyahu and Gallant who should tremble before justice: as well as other Israeli leaders and soldiers, so should the guilty men and women of western governments. Some may consider the threat of arrests to be far-fetched: those charged would need to travel to a state that is a signatory to the ICC, which excludes, for example, the US, and Netanyahu may enjoy a level of immunity in foreign states because he is a head of government.** But as Victor Kattan, an assistant international law professor at Nottingham University, tells me, **the now sacked minister Gallant has no such immunity. “Today’s move is unprecedented,” he tells me, “because we have never had Israelis held accountable for anything they’ve done to Palestinians for the last 70-plus years.”** **That the judges assessed the available evidence and decided there were reasonable grounds to issue an arrest warrant, he says, speaks to “very, very serious crimes we know are likely to be taking place.”** Indeed, the accused were open about their plans to commit these crimes from the start. The western politicians and media outlets that aided and abetted these atrocities know that, which is why their own protestations of innocence should be considered buried under the rubble, along with countless butchered Palestinian families. At the very start, Gallant declared Israel would impose a total siege on Gaza’s population, whom he termed “human animals”, echoed by one of his leading generals who threatened to unleash “hell” on the civilian population. As two US government agencies concluded seven months ago, Israel indeed deliberately blockaded the essentials of life. In the days after 7 October 2023, Gallant promised “Gaza won’t return to what it was before.” If that left room for subtlety, he declared: “Hamas won’t be there. We will eliminate everything.” He told Israeli soldiers that he had “released all the restraints” and “removed every restriction” on them. And so it came to pass. The Israeli onslaught has killed what some public health experts estimated in July could amount to 180,000 Palestinians, and by last December had already destroyed so many buildings that Gaza was a different colour and texture when observed from space. These soldiers often posted their actions online, overwhelmed with glee and triumphalism as they did so. Too many western media outlets not only failed to frame their coverage around Israel’s explicit declarations of intent, they buried them, failed to explain their implications, and in many cases simply did not cover them at all. **Western politicians willingly armed this promised crime: the Biden administration has offered $12.5bn worth of aid since 7 October, and just this week was alone on the UN security council in vetoing a ceasefire.** The White House has already come out to “fundamentally reject” the ICC’s decision to issue arrest warrants. Israel has said Netanyahu would “not give in to pressure” in the war against Hamas and the Iranian “axis of terror” and Gallant previously referred to the warrants as drawing a “despicable” parallel between Israel and Hamas. When the Labour government finally suspended some arms sales to Israel in September, it left 92% intact and bent over backwards to emphasise that Israel remained a staunch ally. While western politicians and media outlets made themselves willing accomplices to an obvious heinous crime, those who took Israeli leaders and officials at their word were demonised, hounded, defamed and silenced. Well, let us be clear here. This crime is simply too depraved, too obscene, too colossal for the complicit not to face accountability. But now is a time to give proper credit to the longsuffering people of Palestine. As the human rights scholar Dr Alonso Gurmendi tells me, “this is the denouement of a long process that the Palestinian leadership started in the early 2010s,” praising their success in “using international law to advance their liberation”. As he also notes, **today’s decision could prove to be a sea change, where the west’s “double standards and conditional commitment to international law will be put to the highest test at the hands of an emerging global south”.** There is a separate case, of course, led by South Africa, at the international court of justice, seeking to prove Israel is committing genocide. But if anything emerges from the rubble of Gaza, let it be this. **Israel’s genocidal onslaught is the most obscene example of how western supremacy is riddled with grotesque hypocrisies.** Let accountability mean that these horrors will never be possible again.

1. **DL/T. Investigations are because of internal reports and big power compliance helps rectify any biases. Hart 18**

Laurel Hart [Outreach & Campaigns Officer UNA-UK], "The International Criminal Court: biased or simply misunderstood?", October 28, 2018, UNA-UK, <https://una.org.uk/magazine/2018-1/international-criminal-court-biased-or-simply-misunderstood>//M**NU - The US can be investigated for crimes in other countries even without being a part of the ICC, which happened in Afghanistan. Ochs 19**

Sara L Ochs, 12-xx-2019, "The United States, the International Criminal Court, and the Situation in Afghanistan", Notre Dame Law Review, <https://scholarship.law.nd.edu/ndlr_online/vol95/iss2/1/> // Lunde

These hostilities bubbled over following the November 2017 request by the ICC Chief Prosecutor, Fatou Bensouda, for the court to open an investigation into alleged war crimes and crimes against humanity committed in Afghanistan since 2003, including those perpetrated by the U.S. military. The U.S. government has always viewed the ICC as an entity designed to infringe on state sovereignty, and Prosecutor Bensouda’s request immediately invited harsh retaliation from the Trump administration. The United States, largely through and at the direction of President Trump’s former National Security Advisor, John Bolton, took significant efforts to block all preliminary investigations into the Afghanistan situation, going so far as to revoke Prosecutor Bensouda’s visa to enter the United States and threatening economic sanctions if the ICC continued its investigation.

**The ICC is good at solving international issues. The ICC kills domestic support for bad leaders Appel 18**

Benjamin Appel, xx-xx-2018, "In the Shadow of the International Criminal Court: Does the ICC Deter Human Rights Violations?," Journal of Conflict Resolution, https://www-jstor-org.ezproxy.ivc.edu/stable/48597287?seq=1, accessed 1-30-2025 //savdharia

In this way, repression in the shadow of the ICC may be a suboptimal policy for ratifiers, leading them to pursue other policy alternatives to achieve their goals. Domestic Support Scholars studying compliance with human rights law argue that **international law can constrain governments by affecting domestic support among elite actors and citizens (**e.g., Conrad and Ritter 2013; Kim and Sikkink 2010; Simmons 2009).10 Theses scholars argue that human rights **treaties establish standards of appropriate behavior that help domestic actors to mobilize against repressive regimes** and demand that they act in accordance with clear legal standards. ICC’s involvement can likewise influence the domestic support of leaders and consequently threaten their political survival and broader policy agenda. This is because **all leaders, even nondemocratic ones, require some level of domestic support to govern effectively and maintain their hold on power** (Croco 2011; Weeks 2008).11 As such, the ICC can increase costs on leaders and reduce the expected benefits of repression by lowering support for them among key domestic actors. ICC’s investigations signal to domestic actors that the government has committed grave abuses in violation of international law. This is because ICC’s involvement contributes to greater awareness among the population that the Court is investigating human rights abuses. For example, the **ICC often establishes field offices** to facilitate the investigation of crimes, as well as **transmits radio broadcasts and engages in education/awareness seminars** that explain their activities in the situation under investigation. In the Central African Republic (CAR), for instance, the ICC field 8 Journal of Conflict Resolution 62(1) offices have held workshops with the media, local nongovernmental organizations, religious leaders, and other civil society actors (Human Rights Watch 2008). The chief prosecutor also organized a series of town hall meetings to discuss the ICC’s involvement in the CAR.

1. **DL/T. No biases - most are self reported, and the aff solves any bias concerns**

Laurel Hart [Outreach & Campaigns Officer UNA-UK], "The International Criminal Court: biased or simply misunderstood?", October 28, 2018, UNA-UK, https://una.org.uk/magazine/2018-1/international-criminal-court-biased-or-simply-misunderstood //MVSG

The ICC was designed as a court of last resort to have jurisdiction over persons accused of some of the most abhorrent international crimes - genocide, crimes against humanity and war crimes. The court is currently investigating 11 situations: 10 of which are in Africa. These numbers have sparked backlash against the court, with accusations that it only investigates and prosecutes Africans. So, is the court biased or are we asking the wrong questions? The ICC is also overseeing 9 preliminary examinations –precursors to potential investigations. And the **majority** underway are **not in Africa**. Indeed in its two decades of operation the court has mounted investigations in 25 countries, 12 have been African. The idea that the court turns a blind eye to perpetrators in other regions has gained traction across the African continent. Some political leaders have threatened to withdraw from the court: Burundi - the first and so far only to officially start the process of withdrawing - accused the court of being “a political instrument and weapon used by the west to enslave other states”. Others including South Africa and Gambia have expressed intent to quit as members of the court: Gambia declared its move to withdraw and then rejoined, while South Africa’s position is unclear and is currently in the hands of a court case in SA. The court can receive referrals from the UN Security Council (as seen in Libya and Sudan) but it mainly operates on the principle of consent. Indeed, the **majority** of African countries under current investigation (DRC, Uganda, Mali, CAR I, and CAR II) have arisen from **self-referrals.** In the case of Cote d’Ivoire, it accepted the Court’s ad hoc jurisdiction. Only in two of the African cases now open - Kenya and Burundi - has the ICC actually exercised its right to start investigations. The “African bias” of the ICC is therefore in many cases a symptom of African enthusiasm for the ICC. Indeed, African support was **central** to the establishment of the International Criminal Court (ICC). There are valid criticisms of ICC action: It relies on the cooperation of member states, including those the court may one day have to prosecute. It is also closely tied to the United Nations Security Council: Russia, China and the United States, three of the Permanent Five veto-wielding members of the UN SC have still refused to join the ICC and yet they can decide if the court can investigate atrocities committed by non-court signatories. This poses a legitimacy problem for an ostensibly global court and raises questions over its credibility. If the ICC’s ever going to rid the criticism it receives, it will require that the international community grapple with these political realities, rather than simply demanding that the prosecutor look elsewhere. So, rather than demanding that the ICC not pursue justice, primarily requested by Africans, in Africa, critics should be demanding that investigations elsewhere not be blocked. The useful question to ask here would be: Why hasn’t the ICC been able to **exercise jurisdiction** over atrocity situations outside of Africa? Two reasons come to light: many of these states have **not** joined the ICC and therefore do not recognise the court’s jurisdiction (**34** of 54 African UN member states are parties to the court. 89 of the 139 other UN member states are. While these proportions are similar, the 50 non-African states that have not joined the court include almost all the world’s non-African fragile and conflict affected states). And states that have not joined are protected by veto-wielding powers at the UN Security Council. It is also important to remember that the ICC is a court of last resort and that justice can and has been achieved through other pre-existing mechanisms. While political expediency remains l’ordre du jour, we have seen forward strides in international justice. And ad hoc predecessors in Rwanda and the former Yugoslavia (which were established under the UN Security Council’s authority) have helped pave the way. The ICTY alone has seen ninety individuals sentenced for genocide, crimes against humanity or other crimes. Therefore, focusing on whether the ICC is biased against Africa reflects the court’s jurisdictional limits but distracts from more fundamental questions around the ICC and international justice more broadly ,and doesn’t resolve the deeper political questions concerning sovereignty and power. The ICC was constructed with the idealistic goal to end the presumption of impunity for the powerful. Yet many stronger states that use violence against civilians have **protected** themselves from the court’s jurisdiction. Weaker states, vulnerable to violence, have opened themselves up to the court’s jurisdiction. So rather than a weapon of the weak against the powerful, the court has mostly been used as a weapon of the weak (fragile states) against the weaker (non-state actors). Thus, of the 6 persons in custody (as of September 2018) 2 are state actors and 4 are non-state actors. Laurent Gbagbo is the first-ever head of state to be handed over to the ICC. Meanwhile, impunity still reigns despite equally shocking violations of international law occurring in countries like Myanmar and Cameroon, Yemen and Syria. Attacking the ICC takes the attention away from where it should be focused: on states themselves. Let’s not forget the ICC has come a long way. It has gained increasing acceptance that has strengthened its guardianship of criminal justice. With international **support** and **backing**, the ICC can continue to **set a precedent**; that atrocity crimes are **unacceptable** and justice will be dealt.

#### **Debate about laws good for colonialism—**

#### **1) Plan is an interrogation of specific instances of state repression that radically challenge the squo**

Brenna **Bhandar 13,** Senior Lecturer in Law at SOAS, University of London Strategies of Legal Rupture: the politics of judgment, http://www.forensic-architecture.org/wp-content/uploads/2013/02/BHANDAR-Brenna.-Strategies-of-Legal-Rupture.pdf

Strategies of Rupture In this article, my aim is to consider the use of law as a political strategy of rupture in colonial ¶ and post-colonial nation states. The question of whether and how to use law in order to ¶ transform and potentially shatter an existing political-legal order is one that continues to plague ¶ legal advocates in a variety of places, from Australia, to India, to Canada to Israel/Palestine. For ¶ example, the struggle for the recognition of indigenous rights in the context of colonial settler ¶ regimes has often produced pyrrhic victories.21 The question of indigenous sovereignty is ¶ ultimately quashed, and aboriginal rights are paradoxically recognised as an interest that derives ¶ from the prior occupation of the land by aboriginal communities but is at the same time parasitic ¶ on underlying Crown sovereignty; an interest that can be justifiably limited in the interests of ¶ settlement.22 Thus, the primary and inescapable question remains: how does one utilise the law ¶ without re-inscribing the very colonial legal order that one is attempting to break down?23 I ¶ argue that this is an inescapable dilemma; as critical race theorists and indigenous scholars have ¶ shown, to not avail ourselves of the law in an effort to ameliorate social ills, and to promote and ¶ protect the rights of oppressed minorities is to essentially **abrogate one’s political responsibilities**. ¶ Moreover, the reality of political struggle (particularly of the anti-colonial variety) is that it is of ¶ a diffuse and varied nature, engaging multiple different tactics in order to achieve its ends.¶ The notion of the ruptural defence emerges from the work of Jacques Vergès, a French advocate ¶ and subject of a film by Barbet Schroder entitled Terror’s Advocate. The film is as much a portrait ¶ of Vergès’ life as it is a series of vignettes of armed anti-colonial and anti-imperial struggle during ¶ the decades between the late 1940s and the 1980s. I should say at the beginning that I do not ¶ perceive Vergès as a heroic figure or defender of the oppressed; we can see from his later ¶ decisions to defend Klaus Barbie, for instance, that his desire to reveal the violence wrought by¶ European imperial powers was pursued at any cost. But in tracing the development of what¶ Verges called the ruptural defence, the film takes us to the heart of the inescapable paradoxes¶ and contradictions involved in using law as a means of political resistance in colonial and post-¶ colonial contexts. I want to explore the strategy of rupture as developed by Verges but also in a ¶ broader sense, to consider whether there is in this defence strategy that arose in colonial,¶ criminal law contexts, something that is generalisable, something that can be drawn out to form a¶ notion of legal rupture more generally.¶ To begin then, an exploration of Verges\* 'rupture defence', or rendered more eloquently, a¶ strategy of rupture. At the beginning of the film, Verges comments on his strategy for the trial of¶ Djamila Bouhired, a member of the KLN, who was tried in a military court for planting a bomb¶ in a cafe in Algiers in 1956. Verges states the following in relation to the trial:¶ The problem wasn't to play for sympathy as left-wing lawyers advised us to do, from the¶ murderous fools who judged us, but to taunt them, to provoke incidents that would reach¶ people in Paris, London, Brussels and Cairo...¶ The refusal to play for sympathy from those empowered to uphold the law in a colonial legal¶ order hints at the much more profound refusal that lies at the basis of the strategy of rupture,¶ which we see unfold throughout the film. In refusing to accept the characterisation of Djamila s¶ acts as criminal acts, Verges challenges the very legal categories that were used to criminalise,¶ condemn and punish anti-colonial resistance. The refusal to make the defendants' actions¶ cognisable to and intelligible within the colonial legal framework breaks the capacity of the¶ judges to adjudicate in at least two senses. First, their moral authority is radically undermined by¶ an outright rejection of the legal terms of reference and categories which they are appointed to¶ uphold. The legal strategy of rupture is a **politics of refusal that calls into question** the¶ justiciability of the purported crime by **challenging the moral and political jurisdiction of the¶ colonial legal order itself.¶** Second, the refusal of the legal categorisation of the FLN acts of resistance as criminal brought¶ into light the contradictions inherent in the official French position and the realit zy of the¶ Algerian context. This was not, as the official line would have it, simply a case of French criminal¶ law being applied to French nationals. The repeated assertion that the defendants were¶ independent Algerian actors fighting against colonial brutality, coupled with repeated revelations¶ of the use of torture on political prisoners made it impossible for the contradictions to be¶ "rationally contained" within the normal operations of criminal law. The revelation and¶ denunciation of torture in the courtroom not to prevent statements or admissions from being¶ admissable as evidence (as such violations would normally be used) but to challenge the¶ legitimacy of the imposition of a colonial legal order on the Algerian people made the normal¶ operation of criminal law procedure virtually impossible.24 And it is in this making impossible of¶ the operation of the legal order that the power of the strategy of rupture lies.¶ In refusing to render his clients\* actions intelligible to a colonial (and later imperial) legal¶ Framework, Verges makes visible the obvious hypocrisy of the colonial legal order that attempts¶ to punish resistance that employs violence, in the same spatial temporal boundaries where the¶ brute violence of colonial rule saturates everyday life. In doing so, this is a strategy that¶ challenges the monopoly of legitimate violence the state holds. Verges aims to render visible the¶ raise distinction between common crimes and political crimes, or more broadly, the separation of¶ law and politics.25 The ruptural defence seeks to subvert the order and structure of the trial by¶ re-defining the relation between accuser and accused. This illumination of the hypocrisy of the¶ colonial state questions the authority of its judiciary to adjudicate. But more than this, his¶ strategy is ruptural in two senses that are fundamental to the operation of the law in the colonial¶ settler and post-colonial contexts. The first is that the space of opposition within the legal¶ confrontation is reconfigured. The second, and related point, is that the strictures of a legal¶ politics of recognition are shattered.¶ In relation to the first point, a space of opposition is, in the view of Fanon, missing in certain¶ senses, in the colonial context. A space of opposition in which a genuinely mutual struggle¶ between coloniser and colonised can occur is denied by spatial and legal-political strategies of¶ containment and segregation. While these strategies also exhibit great degrees of plasticity2", the¶ control over such mobility remains to a great degree in the hands of the colonial occupier. The¶ legal strategy of rupture creates a space of political opposition in the courtroom that cannot be¶ absorbed or appropriated by the legal order. In Christodoulidis' view, this lack of co-option is¶ the crux of the strategy of rupture.¶ This strategy of rupture also points to a path that challenges the limits of a politics of recognition, ¶ often one of the key legal and political strategies utilised by indigenous and racial minority¶ communities in their struggles for justice. Claims for recognition in a juridical frame inevitably¶ involve a variety of onto-epistemological closures.2' Whether because of the impossible and¶ irreconciliable relation between the need for universal norms and laws and the specificities of the¶ particular claims that come before the law, or because of the need to lit one's claims within legal-¶ political categories that are already intelligible within the legal order, legal recognition has been¶ critiqued, particularly in regards to colonial settler societies, on the basis that it only allows¶ identities, legal claims, ways of being that are always-already proper to the existing juridical¶ order to be recognised by the law. In the Canadian context, for instance, many scholars have¶ elucidated the ways in which the legal doctrine of aboriginal title to land imports Anglo-¶ American concepts of ownership into the heart of its definition; and moreover, defines¶ aboriginality on the basis of a fixed, static concept of cultural difference. **The strategy of rupture¶ elides the violence of recognition by challenging the legitimacy of the colonial legal order itself**.¶ In an article discussing Verges\* strategy of rupture, Emilios Christodoulidis takes up a question¶ posed to Verges by Foucault shortly after the publication of Verges' book, De La Strategic¶ Jiwuiare, as to whether the defence of rupture in the context of criminal law trials in the colony¶ could be generalised more widely, or whether it was "not in fact caught up in a specific historical¶ conjuncture." In exploring how the strategy of rupture could inform practices and theory'¶ outside of the courtroom, Christodoulidis characterises the strategy of rupture as one mode of¶ immanent critique. As individuals and communities subjected to the force of law, the law itself¶ becomes the object of critique, the object that needs to be taken apart in order to expose its¶ violence. To quote from Christodoulidis:¶ Immanent critique aims to generate within these institutional frameworks¶ contradictions that are inevitable (they can neither be displaced nor¶ ignored), compelling (they necessitate action) and transformative in that¶ (unlike internal critique) the overcoming of the contradiction does not¶ restore, but transcends, the 'disturbed' framework within which it arose.¶ It pushes it to go beyond its confines and in the process, famously' in¶ Marx's words, "enables the world to clarify' its consciousness in waking it¶ from its dream about itself” 29¶ Christodoulidis explores how the strategy of rupture can be utilised as an intellectual resource¶ for critical legal theory and more broadly, as a point of departure for political strategies that¶ could cause a crisis for globalised capital. Strategies of rupture are particularly crucial when¶ considering a system, he notes, that has been so successful at appropriating, ingesting and¶ making its own, political aspirations (such as freedom, to take one example) that have also been¶ used to disrupt its most violent and exploitative tendencies. Here Christodoulidis departs from¶ the question of colonialism to locus on the operation of capitalism in post-war European states. It¶ is also this bifurcation that I want to question, and rather than a distinction between colonialism¶ and capitalism, to consider how the colonial (as a set of economic and political relations that rely¶ on ideologies of racial difference, and civilisational discourses that emerged during the period of¶ European colonialism) is continually re-written and re-instantiated through a globalised¶ capitalism. As I elaborate in the discussion of the Salwa Judum judgment below, it is the¶ combination of violent state repression of political dissent that finds its origins (in the legal form¶ it takes) during the colonial era, and capitalist development imperatives that implicate local and¶ global mining corporations in the dispossession of tribal peoples that constitutes the legal-¶ political conflict at issue.¶ After the Trial: From Defence to Judgement¶ "Les bons juges, comme les hero¶ de la presse du coeur, n'existent pas."30¶ In response to a question from Jean Lapeyrie (a member of the Action Committee for Prison-¶ Justice) during a discussion of De La Strategic Judiciare published as the Preface to the second¶ edition, Verges remarks that there are actually effective judges, but that they are effective when¶ forgetting the essence of what it is to be a judge.51 The strategy of rupture is a tactic utilised to¶ subvert the order and structure of a trial; to re-define the very terms upon which the trial is¶ premised. On this view, the judge, charged with the obligation to uphold the rule of law is of¶ course by definition not able to do anything but sustain an unjust political order.¶ In the film Terror'^ Advocate, one is left to wonder about the specificities of the judicial responses¶ to the strategy deployed by Verges. (Djamila Bouhired, for instance, was sentenced to death, but¶ as a result of a worldwide media campaign was released from prison in 1962). While I would¶ argue that the judicial response is clearly' not what is at stake in the ruptural defence, I want to¶ consider the potentiality of the judgment to be ruptural in the sense articulated by¶ Christodoulidis. discussed above. Exposing a law to its own contradictions and violence,¶ revealing the ways in which a law or policy contradicts and violates rights to basic political¶ freedoms, has clear political-legal effects and consequences. Is it possible for members of the¶ judiciary to expose contradictions in the legal order itself, thereby transforming it? Would the¶ redefinition, for instance, of constitutional provisions guaranteeing rights that come into conflict¶ with capitalist development imperatives constitute such a rupture? In my view, the re-definition¶ of the limitations on the guarantees of individual and group freedom that are inevitably and¶ invariably utilised to justify state repression of rights in favour of capitalist development¶ imperatives, security, or colonial settlement **have the potential to contribute to the re-creation of¶ political orders that could be more just and democratic**.¶ We may be reluctant to ever claim a judgment as ruptural out of fear that it would contaminate¶ the radical nature of this form of immanent critique. Is to describe a judgment as ruptural to¶ belie the impossibility of justice, the aporia that confronts every moment of judicial decision-¶ making? I **want to suggest that it is impossible to maintain such a pure position in relation to law,¶ particularly given its capacity** (analogous to that of capital itself**) for reinvention**. Thus, I want to¶ explore the potential for judges to subvert state violence engendered by **particular forms of¶ political and economic dispossession, through the act of judgment.** In my view, **basic rights¶ protected by constitutional guarantees** (as in the Indian case) have been so compromised in the¶ interests of big business and development imperatives, that re-defining rights to equality, dignity¶ and security of person, and subverting the interests of the state-corporate nexus is potentially¶ ruptural, in the sense of causing a crisis for discrete tentacles of global capitalism.¶ At this juncture, we may want to explicitly account for the specific differences between criminal¶ defence cases and Verges' basic tactic, which is to challenge the very jurisdiction of the court to¶ adjudicate, to define the act of resistance as a criminal one and constitutional challenges to the¶ violation of rights in cases such as Salwa Judum. While one tactic seeks to **render the illegitimacy¶ of the colonial state bare in its confrontation with anti-colonial resistance, the other is a tactic¶ used to re-define the terms upon which political dissent and resistance take place within the¶ constitutional bounds of the post-colonial state.** **These two strategies appear to be each other's¶ opposite**; one challenges the legitimacy of the state itself through refusing the jurisdiction of the¶ court to criminalise freedom fighters, while the other calls on the judiciary to hold the state to¶ account for criminalising and violating the rights of its citizens to engage in political acts of¶ dissent and resistance. However, the common thread that situates these strategies within a¶ singular political framework is the fundamental challenge they pose to the state's monopoly over¶ defining the terms upon which anti-colonial and anti-capitalist political action takes place.

On the underview:

1. Grant new responses in rebuttal, links into their standards on knowledge formation, allows for more educational debate.
2. Also its a time skew - we only get part of constructive whereas they get a whole 4 minutes

# **Our first argument is ICC Legitimacy**

## **The International Criminal Court is critical to upholding justice.**

### **Simmons 16 of UPenn**

(Hyeran Jo, specialist in international institutions, international law, and political economy; Beth Simmons, Professor of Law and Political Science at the University of Pennsylvania, formerly employed at the International Monetary Fund, director of the Weatherhead Center for International Affairs at Harvard, and president of the International Studies Association; n.d., 2016; Cambridge University Press; “Can the International Criminal Court Deter Atrocity?”; https://doi.org/10.1017/S0020818316000114, ask for PDF) BC rc Shiwen

Model 2 looks at the effect of ICC actions, the three-year moving average of previous preliminary examinations, investigations, and warrants by the OTP. According to the incidence-rate ratio based on Model 2, **one** additional **investigation each year** over the three-year term is estimated to **reduce[s] intentional civilian killing by a factor of 0.570**. (See Table 1 for an estimate of lives spared, which is substantial.) Note that the significant effect of ICC actions is robust even after including post-ICC regime, a variable that captures the court's existence, but not its actions. It is therefore quite unlikely that the effect of ICC actions is merely an artifact of some general violence-reducing temporal trend or the result of a passive court. Rather, **[The] ICC** actions **represent[s] new information**, available to all actors, **demonstrating** that **the ICC is operational, authoritative, and** that the prosecutor means to **bring[s]** perpetrators to **justice**.

## **But the main barrier to the ICC’s extreme potential is the absence of US membership.**

### **Gordin explains**

**Gordin**, Matthew. “Leadership and Democracy Lab.” Leadershipanddemocracy.ca, leadershipanddemocracy.ca/oped13. No date but after 2017. Accessed 5 Feb. 2025.

For many countries the court represents a possibility for change. In underdeveloped countries, the ICC represents a channel to voice their interest on the international stage; in countries like Fiji and Chili, the ICC comes as an added security check against revolting anti-democratic forces; in many countries, participation in the ICC simply symbolizes their respect for the rule of law and their solidarity with the principles of the court (Walker, 255). Key Issues Many states however are skeptical of an international institution which can hold them accountable against their sovereign will. **The major powers which have not ratified the statute** into their domestic law are China, India, Russia and **most notably the United States**. Each state has their own rational for not ratifying however their largest concern is accountability. While in theory every state should cooperate with the ICC once they have ratified the Rome Statute, **it is naive to think that states will follow through when there are no big players to hand out repercussions**. **By not having powers** such as the China, India, and **most importantly the US**, **the ICC’s credibility is damaged and states are less likely to cooperate with an international organization that can not call on major states to help reinforce their power.** **We have seen in the past how a hegemon’s absence in international institutions has led to their failure.** After WW1 the **League of Nations** was created to ensure world peace, however its **credibility was largely weakened by the absence of the US and it was not effective in preventing the second world war.** The key to improvement lies in changing the current ICC cooperation model. The court must begin to act not only as a legal entity, but a political one, acting in accordance with current political realities and convincing states that cooperating with the court will not diminish their sovereignty, but enhance it (Banteka, 530). By doing so, the court can increase its chances of gaining support from the major powers which will not only give them more power to enforce cooperation, but also enhance their legitimacy. Article 42 of the Rome Statute currently states that “The Office of the Prosecutor (OTP) shall not act on instructions from any external source... or yield to political considerations” however, being an actor on the international stage, the ICC’s decisions are inherently political and to claim otherwise only reflects as a weakness of the court (Banteka, 531). The OTP has complete discretion in launching investigations, choosing which charges to bring, and to whom; often acting on behalf of the entire international community and taking into account the interests of civilians and states (Bensouda, 437). A court which is overly idealistic will never bring change, but a court which embraces modern political realities and uses them to navigate the international sphere to capitalize on their unique power can make all the difference in the world (Banteka, 532). Cooperation is not the only issue faced by the court. The Rome Statute itself, is one of the largest barriers to the ICC’s success. In order to amend the Rome Statute, an amendment request would need to come from either a member state, a majority of judges, or the prosecutor (Kacker, 118). The Rome Statute indicates if the state does not comply, the ICC may refer the matter to the UNSC, but provides no further instruction on how the ICC may enforce state cooperation (Barnes, 1600). Further, the Rome Statute says the title of ‘Head of State’ does not automatically imply immunity from prosecution but does mention ‘diplomatic immunity’ which can be interpreted as such, and gives no clarification if this immunity applies to only nationals or all indicted individuals (Barnes, 1600). Lastly, the Statute indicates the possibility for immunity or excusal in the case of existing agreements with third parties, but gives no clarification on what kind of agreement justifies an excusal (Barnes, 1600). This is problematic because it is difficult to punish a state that has breached the Rome Statute, and to determine when an individual has valid immunity (Barnes, 1600).

## **Fortunately, affirming solves this in two key ways**

# **First is Funding**

## **The ICC is chronically underfunded**

### **Elcano 24 confirms**

**Elcano**. “The Budgetary Instrumentalisation of International Criminal Justice - Elcano Royal Institute.” Elcano Royal Institute, 7 Mar. **2024**, www.realinstitutoelcano.org/en/commentaries/the-budgetary-instrumentalisation-of-international-criminal-justice/. Accessed 2 Feb. 2025.//VCHS HL

On 1 February 2024 Armenia became the 124th State Party to join the Rome Statute of the International Criminal Court (ICC). Located in The Hague (the Netherlands), the ICC’s mandate is to prosecute individuals for the [most serious crimes of international concern](https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf), such as genocide, war crimes, crimes against humanity and the crime of aggression, when national criminal jurisdictions are unwilling or unable to do so. Despite the controversies surrounding the nature of the Court, new scepticism towards its prospects of survival has arisen vis-à-vis financial impediments and budgetary constraints.

The revitalised interest in international criminal justice must become an incentive to increase financial support to the ICC

**ICC mass atrocity investigations,** although intrinsically more challenging and difficult to prosecute than domestic ones, **have long been** [**subject to underfunding**](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733700). The illusory expectations for the ICC to deliver on such a broad utopian mandate have been crystallised in an omnipresent [sentiment of crisis](https://doi.org/10.1017/S0922156518000675) in the international criminal justice project. **The Court’s** financial deficit and budgetary burden have been observed since its establishment. The **ever-expanding workload and jurisdiction** over a vast geographical area **has not been paralleled by a proportionate increase in State Parties’ financial support.** The year 2015 marked a critical juncture in the Court’s prospects for increased budgetary contributions when **most of the** [**largest financial contributors**](https://www.ipsnews.net/2011/09/concern-over-icc-funding/) **–Japan, Germany, the UK, France and Italy– vocally opposed the Prosecutor’s initiative for** a ‘[Basic Size](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP14/ICC-ASP-14-21-ENG.pdf)’ **core budget needs.** This objection ultimately reinforced the fallacious conception of ICC budgets being overly inflated and, in refraining from demonstrating the harm inflicted to the Court’s efficiency, it wrongly signalled that increased budget cooperation was optional.

In 2023, following the war of aggression against Ukraine and the anomalous increase in the judiciary workload, the ICC requested the [biggest increase](https://hrij.amnesty.nl/are-there-hidden-costs-of-the-icc-prosecutors-campaign-for-additional-budget-support-voluntary-contributions-and-secondments/) to its budget since the years of its establishment. The latter contravened and undermined the largest contributors’ consensus **advocating** [**zero-nominal growth**](https://www.hrw.org/news/2022/11/22/human-rights-watch-briefing-note-twenty-first-session-international-criminal-court) **in the budget.** This position was sustained by alleged national fiscal constraints and also as a measure to enhance institutional efficiency and effectiveness. Nevertheless, scholars demonstrate the underlying flaws in the [budget efficiency argument](https://ssrn.com/abstract=3371046) as –unlike preceding ad hoc tribunals like the International Criminal Tribunal for the Former Yugoslavia (ICTY)– the ICC permits victim participation and has salaries irrevocably determined by the United Nations’ common system of salaries. As a result, the budget is left with more financial commitments and little room for readjustments, with State Parties’ reluctance to support the Court directly jeopardising budgetary long-term sustainability.

**The substantial disparity between the resources** being **allocated and the Court’s workload has hindered judicial efficacy and victims’ prompt access to justice**. In light of this dysphoric situation, the Prosecutor was compelled to act accordingly and introduced the possibility of providing [voluntary contributions and secondments](https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-contributions-and-support-states-parties-will) of personnel to partially alleviate the financial pressures. The ICC Committee on Budget and Finance rapidly clarified that the two proposed options should only be regarded as [complementary and supplementary](https://hrij.amnesty.nl/the-2023-budget-the-true-test-of-state-parties-support-for-the-icc/) mechanisms to the core budget required in an attempt to deter future budgetary downsizing.This notwithstanding, concerns persisted over the implications for the [Court’s independence](https://hrij.amnesty.nl/voluntary-contributions-solution-to-the-iccs-funding-crisis-or-threat-to-its-independence-and-effectiveness/), its long-term effective functioning and the inevitable creation of an informal two-tier system whereby the Office of the Prosecutor (OTP) would obey donor demands and thus direct resources to the State’s favoured prosecutions. In the face of such legitimate scepticism, the Prosecutor openly rejected the possibility of applying earmarked voluntary contributions and affirmed that the Court’s assessments would be the only determinants for resource allocation in the Court’s criminal investigations and procedures. Despite this, the public was confronted with the stark reality: budget constraints were soon followed by controversial decisions inherently compromising the ICC’s effectiveness and independence. For instance, the Western states –notably Canada, the UK and Germany– have been opposed to open investigations on Israel’s alleged crimes committed in the occupied Palestinian territory. As a consequence, we may observe how these political considerations have materialised in the OTP’s decision to allocate nearly [five times more resources](https://hrij.amnesty.nl/the-2023-budget-the-true-test-of-state-parties-support-for-the-icc/) to the Ukraine investigation compared with the new Palestine investigation. This unequivocal instrumentalisation of international criminal justice has further sustained the advancement of Western nations’ geopolitical endeavours. Therefore, to the detriment of fundamental principles of justice, the legitimacy that emanates from the apolitical nature of the Court could be at risk and left at the mercy of the Western powers’ manipulations to further foreign policy goals.

This comes as no surprise to scholars and policymakers as it is coherent with the vast array of past accusations against the Court as a neo-colonial instrument for Western control and geopolitical dominance. Such double standards are corroboration of what sceptical scholars from the Global South have consistently referred to as a [privatisation of justice](https://doi.org/10.1215/9781478007388) that is contingent upon Western influence. In this regard, ICC [funding patterns](https://doi.org/10.1080/14754835.2022.2156276) largely reflect its position as a tool of powerful states. Consequently, Africa becomes a disproportionate target for criminal prosecution, selective justice is exacerbated and the Court is more susceptible and vulnerable to powerful states’ manipulation.

Budgetary constraints may also be associated with examples of bypassing administrative judicial procedures and ‘[deprioritising](https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application)’ certain cases, such as alleged US Armed Forces war crimes in Afghanistan. Once again, institutional legitimacy and judicial effectiveness are discredited, with delays undoubtedly leading to the loss of evidence and diminished trust amongst citizens, victims and affected communities.

For all these reasons, the ICC’s structural deficiencies in budgetary support and resource allocation should only entail robust discussions addressing increased financial support by State Parties with a long-term outlook. It is a country’s financial backing for specific types of justice that demonstrates its commitment to justice rather than mere rhetoric. The above-mentioned initiative by the Prosecutor to allow voluntary contributions and secondments constitutes an admission of the chronic and [systemic underfunding](https://coalitionfortheicc.org/news/20220330/OpenLetter_ICCresources) of the Court. What is more, it sheds light upon the increased politicisation and selectivity bias towards the Global South that has endured. It is worth noting that voluntary contributions are not detrimental to effective and independent criminal justice per se. However, they must be accompanied by close and transparent monitoring of their allocation and must be elements supporting rather than replacing long-term strategies to strengthen the organisation’s annual budget. Likewise, it is vital to provide satisfactory reparations to remedy the harm inflicted upon the victims. A non-partisan alternative to voluntary contributions is, inter alia, supporting the [Trust Fund for Victims](https://www.trustfundforvictims.org/en) whilst emphasising that the contribution’s magnitude is still vital. To this end, countries like Spain have departed from the clearly [inadequate contribution](https://www.trustfundforvictims.org/en/about/our-donors) of €40.000 in 2020 towards a more [substantial commitment](https://www.icc-cpi.int/news/spain-reaffirms-its-commitment-trust-fund-victims-substantial-increase-its-contribution) of €250.000 as announced in December 2023.

Resolute investments are a sine qua non to ensure that the ICC remains an independent and effective instrument for international criminal justice. Amidst a period marked by political turmoil and persistent scepticism over the Court’s legitimacy, **failing to match the increased workload with commensurate budget support could only exacerbate its vulnerability** **to criticism and further erode its public credibility.** The invasion of Ukraine and the ongoing armed conflict in Gaza have reinvigorated the importance of individual criminal responsibility for violations of jus in bello: the Law of Armed Conflict or International Humanitarian Law. The revitalised interest in international criminal justice must become an incentive to increase financial support to the ICC, in a move to safeguard the effective prosecution of perpetrators of international crimes and deliver on the Rome Statute mandate to provide just, equitable and adequate reparations to the victims, irrespective of national and partisan considerations. We are now experiencing a momentum for international criminal accountability. **Only firm** and non-arbitrary **budgetary increases will be able to obstruct the degradation of the ICC’s legitimacy**, independence **and accountability to fight against impunity.**

## **However, demands for funding are only increasing**

### **Ford ‘23**

**Ford**, Stuart. “Funding the ICC for Its Third Decade.” SSRN Electronic Journal, RELX Group (Netherlands), Jan. **2023**, https://doi.org/10.2139/ssrn.4323894. Accessed 3 Feb. 2025. // kellyliu

**In its proposed 2023 budget, the ICC** asked the ASP for 186 million Euros, which represented an increase of 22 million Euros over its 2022 budget of 154 million Euros.15 This was a **proposed [a budget] increase of 20%**.16 This is a striking figure. Some members of the ASP have been pushing for the past decade to freeze the ICC’s **budget**, a so-called “zero growth” budget.17 Perhaps in response to these pressures, in recent years, the court has been proposing quite small annual increases. For example, in 2018, the court asked for an increase of 4.4%.18 In 2019, the court proposed an increase of 2.6%.19 In 2020, it proposed an increase of just 1.6%,20 and then in 2021, the court actually proposed a reduction in its budget of 0.5%.21 This pattern changed in 2022, when the court asked for an increase of nearly 10%.22 And then, this year, it asked for an **increase** of **20%.**23 Why the sudden request for such a large increase? Part of the requested increase is being driven by what the Court delicately calls “worldwide inflationary pressures.”24 This is a reference to the effect of Russia’s invasion of Ukraine, which has caused a sharp rise in global inflation.25 This has resulted in an increase in the cost of goods and services that the court needs to operate.26 But, more importantly, it has also caused an increase in salaries, 27 which represent the largest driver of costs at the ICC.28As a result, nearly **40% of the court’s increase in its requested budget is caused by inflation.**29 **The rest** of the requested increase **is driven by** what the court describes as **a significant increase in the volume of its work**.30 The court says that its “overriding objective” is to achieve “an effective, efficient, and universal system of international justice” and that it will do so by “independently conduct[ing] fair and expeditious investigations and trials.”31 In effect, while the overall goal of the ICC is ending impunity and promoting an effective system of international criminal justice,32 the principal work of the court involves investigations, trials, and appeals.33 Conducting those investigations, trials, and appeals requires sufficient resources. In 2023, the Office of the Prosecutor (OTP) will be participating in a number of pre-trial proceedings, trials, and appeals,34 but its investigations remain the most resource-intensive part of its work.35 The OTP will be operating in sixteen geographically distinct “situations,”36 while also conducting three additional preliminary examinations.37 This is a significant workload and the OTP does not believe that it has the necessary resources to carry out its mandate.38 **It needs additional resources, particularly additional personnel.**39 The OTP needs additional **investigators and analysts to assist with evidence collection and analysis,**40 and additional forensic capacity, particularly in relation to the situation in Ukraine.41 The court also plans to open a number of new field offices in 2023,42 and the OTP needs additional staff so that it can deploy personnel “close to or in situation countries wherever possible.”43 As a result, the OTP asked for an increase in its budget of 26.6%.44 The ICC also predicted a significant increase in the workload of the various Chambers. The court anticipates that three trials will take place during 2023 and two additional cases will be at the deliberation stage, requiring the “simultaneous use of the three courtrooms with the corresponding support capacity” throughout the year. 45 The court also stressed the complexity of its cases compared to “most domestic proceedings.”46 The large number of ongoing trials will also result in an increase in the number of people in detention, with an attendant increase in costs.47 The court also expects at least one confirmation of charges proceeding as well as five reparations proceedings.48 Finally, the Appeals Chamber is expected to hear final appeals from two cases as well as “a number of interlocutory appeals in pending situations and cases.”49 As a result of this increasing workload, the court requested a 22% increase in the budget for Chambers.

## **Affirming means the US would provide a substantial increase in funding by law**

### **Brahm 23 explains**

[Eric Wiebelhaus-Brahm](https://www.tandfonline.com/author/Wiebelhaus-Brahm%2C+Eric) “The Evolution of Funding for the International Criminal Court: Budgets, Donors and Gender Justice.” Journal of Human Rights, 2023, www.tandfonline.com/doi/full/10.1080/14754835.2022.2156276#d1e257, https://doi.org/10.1080//14754835.2022.2156276. Accessed 4 Feb. 2025.//VCHS HL‌ recut

Once the overall budget is set, state parties’ individual contributions are calculated. During treaty negotiations, there was a proposal to fund the Court through the United Nations. The primary opponents were the United Nations’s biggest contributors—namely the United States, Germany, and Japan—and the idea was abandoned (Schabas,

[**Citation**](https://www.tandfonline.com/doi/full/10.1080/14754835.2022.2156276#)

[**2020**](https://www.tandfonline.com/doi/full/10.1080/14754835.2022.2156276#)). However, assessed **contributions for the Court are calculated** in **the same way** as **for the United Nations**. **Per Article 117 of the Rome Statute, “contributions of States Parties shall be** assessed in accordance with an agreed scale of assessment, **based on the scale adopted by the United Nations** for its regular budget and adjusted in accordance with the principles on which that scale is based.”

In other words, **states are assigned a proportion of the** overall **budget** that is essentially **based on the size of their economies**. As such, our data available on the Harvard Dataverse site show that the ICC’s largest funders are large European economies, Japan, South Korea, Australia, and Brazil.

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## **Thus, the relative economic wealth makes the top provider of contributions the US.**

**United Nations** “How We Are Funded | United Nations Police.” Un.org, 2017, police.un.org/en/how-we-are-funded. Accessed 5 Feb. 2025.//VCHS HL

Every Member State is legally obligated to pay their respective share towards peacekeeping. This is in accordance with the provisions of [**Article 17 of the Charter of the United Nations**](http://www.un.org/en/sections/un-charter/chapter-iv/).

The [**General Assembly**](https://peacekeeping.un.org/en/role-of-general-assembly) apportions peacekeeping expenses based on a special scale of assessments under a complex formula that Member States themselves have established. This formula takes into account, among other things, **the relative economic wealth** of Member States, with the five permanent members of the Security Council required to pay a larger share because of their special responsibility for the maintenance of international peace and security.

The General Assembly reaffirmed these and other general principles underlying the financing of peacekeeping operations in [**resolution A/RES/55/235**](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/235) (23 December 2000).

More on how [**UN Peacekeeping is financed**](http://www.un.org/en/ga/fifth/pkofinancing.shtml).

See the scale of assessments applicable to UN peacekeeping operations in the [**selected General Assembly documents**](https://peacekeeping.un.org/en/how-we-are-funded#gadocs2).

How much does peacekeeping cost?

The approved budget for UN Peacekeeping operations for the fiscal year 1 July 2021 - 30 June 2022 is $6.38 billion. ([**A/C.5/75/25**](https://undocs.org/pdf?symbol=en/A/C.5/75/25))

This amount finances 10 of the 12 United Nations peacekeeping missions, including the liquidation budget for the United Nations – African Union Hybrid Operation in Darfur (UNAMID), supports logistics for the African Union Mission in Somalia (AMISOM), and provides support, technology and logistics to all peace operations through global service centres in Brindisi (Italy) and a regional service centre in Entebbe (Uganda). The remaining two peacekeeping missions, the UN Truce Supervision Organisation (UNTSO) and the UN Military Observer Group in India and Pakistan (UNMOGIP), are financed through the [**UN regular budget**](https://undocs.org/A/res/75/254A-C).

By way of comparison, this is less than half of one per cent of world military expenditures (estimated at $1,981 billion in 2020).

The 2021-2022 budget represents an average of 2.1% decrease on the approved budget for 2020-2021. ([**A/C.5/74/18**](https://undocs.org/A/C.5/74/18))

**[makes] The top** 10 **provider**s **of assessed contributions to U**nited **N**ations peacekeeping **operations** for 2020-2021 are:

1. **United States** (27.89%)
2. China (15.21%)
3. Japan (8.56%)
4. Germany (6.09%)
5. United Kingdom (5.79%)
6. France (5.61%)
7. Italy (3.30%)
8. Russian Federation (3.04%)
9. Canada (2.73%)
10. Republic of Korea (2.26%)

# **The Second way the affirmative solves is through accountability**

## **US participation in the ICC is necessary to stop human rights abuses, both via information sharing and legitimacy.**

### **Zvobgo 23**

(Kelebogile Zvobgo, Provost’s Distinguished Associate Professor of Government at William & Mary, founder and director of the International Justice Lab; October 19, 2023; Foreign Affairs; “It’s time for America to join the International Criminal Court”; https://www.foreignaffairs.com/ukraine/time-america-join-international-criminal-court-vladimir-putin) Shiwen

Such open **hypocrisy undermines the legitimacy and effectiveness of [the ICC]** a court that already struggles to prove to the world that it can apply justice fairly and achieve real outcomes. **The ICC needs help** in **compiling evidence about abuses in Ukraine. But** the sad truth is that **as long as the U**nited **S**tates **remains outside the ICC, the desperately needed help** the country is providing with regard to Ukraine **could** also **damage the court’s** reputation and greater **aims**. Even if Biden and Congress have the best intentions, they also have dismantled the clearest arguments the United States ever had for not joining the court and for claiming that U.S. forces cannot be prosecuted in The Hague. Perhaps surprisingly, most Americans, in fact, support the United States joining the ICC. Russia’s war in Ukraine has only made clearer **the contradictions in U.S. policy**, and **it is time** for the United States **to** finally **join the court.** HAVING IT BOTH WAYS In 1998, 120 countries adopted the Rome Statute establishing the ICC, a multinational body tasked with investigating and prosecuting individuals accused of atrocities—notably war crimes, crimes against humanity, and genocide. The United States helped draft the treaty, and President Bill Clinton signed it in 2000. But the United States never became a full member. The U.S. Senate did not ratify the Rome Statute—nor did most people expect it to. By signing the Rome Statute without it being likely that Congress would ratify it, Clinton apparently wanted the United States to have its cake and eat it, too. As a signatory, Washington could, according to the ICC’s rules, continue to have a seat at the table in future negotiations about the court’s jurisdiction. Clinton’s successors, Presidents George W. Bush, Barack Obama, and Donald Trump, then took every opportunity to shield U.S. military and intelligence professionals from ICC scrutiny, particularly for crimes allegedly committed on territories over which the ICC has jurisdiction. In 2002, Bush “unsigned” the Rome Statute, telling the international community that the ICC did not have jurisdiction over the United States. After launching the “war on terror,” he also worried that allies could hand over U.S. personnel to the ICC, and he conditioned many offers of aid on “bilateral immunity agreements” that shielded U.S. military and intelligence personnel from potential arrest and transfer to the ICC. That did not stop the ICC from launching a preliminary examination in 2006 into suspected war crimes and crimes against humanity in Afghanistan, including possible torture committed by U.S. personnel. Afghanistan is an ICC member, and the court’s jurisdiction relies more on where alleged abuses occurred than on who committed them. A FEINT TOWARD JUSTICE Obama rewrote Bush’s playbook slightly, providing the ICC diplomatic and logistical support for select investigations. But he continued to reject the possibility of ICC investigations into U.S. service members. Because Clinton had signed the Rome Statute, the Obama administration participated in a 2010 review conference to consider amendments to the treaty. That conference added a fourth international crime to the list the ICC could prosecute: aggression, or “the use of armed force by a State against the sovereignty, integrity or independence of another State.”The principle of nonaggression is foundational to the rules-based international order. Yet it has been challenged again and again, including when powerful countries such as the United States, Russia, and China have threatened, and in some cases committed, aggression. At the 2010 conference, however, the U.S. delegation successfully lobbied for an important distinction: that, in prosecuting aggression, the ICC would not have jurisdiction over the nationals of nonmember states. This apparent win for the United States was a loss for the ICC.When Trump took office in 2017, he went to even more extreme lengths to shield U.S. nationals as well as those of Israel, a key U.S. ally. After the ICC expanded its preliminary examinations of suspected crimes in Afghanistan and in the Palestinian territories into full investigations, in 2020 Trump put economic sanctions on the ICC’s chief prosecutor, Fatou Bensouda, and her deputy, Phakiso Mochochoko. Trump threatened to do the same to any individuals or organizations that helped the ICC in these investigations. DOUBLE JEOPARDY Facing international pressure, in April 2021, Biden reversed Trump’s sanctions. But U.S. Secretary of State Antony Blinken reiterated that the ICC does not have jurisdiction over U.S. or Israeli forces acting anywhere. Perhaps trying to gain the favor—and aid—of the United States for the ICC’s work, the court’s chief prosecutor, Karim Khan, announced in September 2021 that he would deprioritize the investigations into U.S. personnel in Afghanistan. Now, however, by supporting the ICC’s investigations against Russia for its acts in Ukraine, the White House and Congress have said the quiet part out loud: the United States believes the ICC does, indeed, have jurisdiction over acts committed by nonmember-state forces—just not over U.S. forces and the forces of its select allies such as Israel. If the United States held Russia to the standard to which it holds itself, it would have to reject the ICC’s claim of jurisdiction over Russians in Ukraine, and the Russian military would enjoy impunity for its serious crimes. But the United States has made an exception for its rival. This is a huge problem because it makes the United States’ double standard explicit. Such double standards corrode the very principle of an international rule of law. And it particularly undermines the ICC, which has been beleaguered since its inception by accusations of bias. The ICC’s first set of charges—but likely not its last—against Putin concern the unlawful transfer of hundreds of Ukrainian children from Ukraine to Russia. Putin, who is accused alongside another Russian official involved in the transfer, Maria Lvova-Belova, is the fourth sitting head of state that the ICC has formally accused of serious crimes. Russian propagandists, however, are already **degrading the court’s efficacy** **by weaponizing the United States’ double standard.** They argue that behind the West’s principled rhetoric lies a purely selfish wish to protect its interests and hurt the interests of its adversaries. The West, that argument goes, **is no better than Russia** and must be resisted at all costs.

JOIN THE CLUB

In the coming weeks and months, the ICC may pursue further charges against Putin, Russian soldiers, and Russian intelligence operatives. **Intelligence sharing between** Washington **[the US] and [the ICC]** The Hague **will** **improve the chances of successful trials.** U.S. intelligence agencies ha[s] already reportedly collected evidence of Russian plans to target civilian infrastructure, in addition to evidence concerning the deportation and transfer of children. None of this is to say that the United States cannot help the ICC without formally joining the court. It can. But the long-standing fear that joining the ICC would expose U.S. citizens to unfair prosecution is likely a boogeyman: according to the court’s “complementarity” rule, if a country undertakes genuine investigations into its own personnel and, where appropriate, prosecutes offenders, the ICC, which is a court of last resort, will not have jurisdiction over their citizens. The ICC has upheld its side of this principle in the past, withdrawing from Colombia in 2021 and proving its promise to defer to national governments that conduct their own proceedings. Well beyond Ukraine, **the U**nited **S**tates **can better promote democratic values such as** accountability and **human rights as an ICC member** than as a nonmember. The United States simply does not like to defer to supranational bodies unless it is in the driver’s seat. But in the case of the ICC, this notion has now come to its limit. The “law for thee but not for me” that the United States wishes to apply to Russia is simply not tenable—legally, politically, or morally.

**And Grono 12 explains**

Grono 12 [Nick Grono, 10-6-2012, "The deterrent effect of the ICC on the commission of international crimes by government leaders," International Crisis Group, <https://www.crisisgroup.org/global/deterrent-effect-icc-commission-international-crimes-government-leaders> ] //🇫🇷s

**There is some evidence that suggests national leaders are increasingly aware of the possibility of ICC prosecution, and that this can influence their decision-making calculus, for better or worse. And if ICC prosecution factors into a regime or leader’s determination to cling to power, it is not unreasonable to conclude that such a fear may also, in certain circumstances, act to curtail abuses and shift the calculus in favour of avoiding war crimes or crimes against humanity. Though there are plenty of examples in which the threat of criminal prosecution has failed to deter perpetrators of crimes against humanity or atrocities, this does not mean that deterrence has not worked or could not work. Those who argue against deterrence often focus on “specific deterrence”, that is, the possibility that prosecutions can deter leaders who have already committed war crimes or crimes against humanity from committing them in the future. But these are, in fact, the very situations where prosecutions are most unlikely to deter. In such situations, prosecution by the International Criminal Court will more likely represent an existential threat to a ruler, or ruling party, and is thus more likely to cause national leaders to seek to entrench themselves, and hence maintain or even escalate an abusive or criminal campaign. We have seen this in Sudan, where President Bashir’s indictment by the ICC has done little to halt attacks on civilians in both Darfur and, more recently, South Kordofan. Instead our focus should be on longer-term legal deterrence and the entrenchment of human rights norms. Over the longer term prosecutions can act to dissuade future generations of leaders from the commission of such crimes.**

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## **The impact is ending mass atrocities globally, Brauer 19 finds**

Brauer 19 [Jurgen Brauer, Emeritus Professor @ Augusta University, 1-1-2019, Mass Atrocities and

their Prevention, College of the Holy Cross, Mass Atrocities and their Prevention,

https://crossworks.holycross.edu/cgi/viewcontent.cgi?article=1169&amp;context=econ\_working\_papers,

Willie T.]

Abstract: Counting conservatively, and ignoring physical injuries and mental trauma, data show **about 100 million mass atrocity-related deaths** since 1900. Occurring in war- and in peacetime, and of enormous scale, severity, and brutality, they are geographically widespread, occur with surprising frequency, and can be long-lasting in their adverse effects on economic and human development, wellbeing, and wealth. As such, they are a major economic concern. This article synthesizes very diverse and widely dispersed theoretical and empirical literatures, addressing two gaps: a “mass atrocities gap” in the economics literature and an “economics gap” in mass atrocities scholarship. Our goals are, first, for noneconomists to learn how economic inquiry contributes to understanding the causes and conduct of mass atrocities and possibly to their mitigation and prevention and, second, to survey and synthesize for economists a broad sweep of literatures to serve as a common platform on which to base further work in this field.

# **Our second argument is US Intervensionism**

## **We are in the era of military interventionism**

### **Kavanagh ‘23**

**Kavanagh**, Jennifer, and Bryan Frederick. “Why Force Fails.” Foreign Affairs, 30 Mar. **2023**, www.foreignaffairs.com/united-states/us-military-why-force-fails. Accessed 2 Feb. 2025. //recut kellyliu

**American soldiers have been deployed abroad** almost **continuously since** the end of **World War II**. The best-known foreign **interventions—in Vietnam, Afghanistan, and Iraq**—**were large, long, and costly**. But there have been dozens of other such deployments, many smaller or shorter, for purposes ranging from deterrence to training. Taken as a whole, these operations have had a decidedly mixed record. Some, such as Operation Desert Storm in 1991, which swept the Iraqi dictator Saddam Hussein’s forces out of Kuwait, largely succeeded. But others—such as those in Somalia, Haiti, Afghanistan, Iraq, Libya, and elsewhere—were disappointments or outright failures. It is these unsuccessful post–Cold War interventions that have engendered serious doubts among policymakers and the public about the role of force in U.S. foreign policy. Even so, U.S. decision-making still has a strong bias in favor of military intervention. When crises emerge, the pressure for a U.S. military response is often immediate, on the grounds that it is better to try to control the situation than to do nothing. **But in many cases, the U**nited **S**tates **could** likely have **achieve**d **its goals without intervening militarily**. To explore how often U.S. military interventions have advanced U.S. objectives, we built a database of conflicts and crises that involved U.S. interests between 1946 and 2018. Conflict cases were drawn from the Uppsala Conflict Data Project and crisis cases came from the International Crisis Behavior data set. To identify cases involving U.S. interests, we looked for conflicts and crises that posed a direct threat to the U.S. homeland or to a U.S. treaty ally, occurred in a region of high strategic importance for the United States, or involved a large-scale humanitarian crisis. We then identified those conflicts and crises that prompted the deployment of U.S. military forces. To be counted as an intervention, the U.S. forces had to meet certain thresholds (at least 100 personnel for a full year, or a larger presence for a shorter time in the case of ground interventions). For each conflict or crisis, we also collected information on several outcome measures including conflict or crisis duration, intensity, changes in economic development and democratic institutions in the country affected by the conflict or crisis. Of the 222 conflicts and crises from 1946 to 2018 that involved U.S. interests, the United States chose to intervene on 50 occasions and not to intervene on 172. Our findings flip the conventional wisdom on its head: irrespective of whether the United States intervened, the outcomes were largely the same. Across each of the dimensions we considered, there was no statistically significant difference between the cases that prompted an intervention and those that did not. In other words, the evidence that U.S. military interventions are consistently achieving their goals is sparse. But this does not mean that all interventions fail. A closer look suggests that there is a subset of operations that is more likely to advance U.S. interests and achieve U.S. objectives: those that had clear, achievable goals and were informed by accurate assessments of local conditions. **Washington desperately needs to rethink its relationship to military force**. Above all, it needs to **stop regarding** mil**it**ary adventures **as the** go-to **solution for all** potential **threats**. At the same time, however, it cannot view every potential intervention as an inevitable disaster that will divert resources from domestic priorities. The real danger is not military interventions per se but large ones with expansive objectives that are out of touch with the reality on the ground. Those are the ones that gamble with U.S. blood and treasure.

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## **The US routinely abuses executive power to break international law in military operations – the ICC is the only way to hold the US accountable and incentivize restraint.**

### **Khan ‘22**

**Khan**, Sahar. “The ICC’s Potential to Check US Warmongering.” Inkstick, 14 Jan. **2022**, inkstickmedia.com/the-iccs-potential-to-check-us-warmongering/. Accessed 2 Feb. 2025. //recut kellyliu

Advocates of a restrained foreign policy often lament executive overreach, **the unchecked authority to commit US forces to military actions abroad**, and the curtailment of civil liberties as consequences of war. **The US executive has gained** entirely **too much power in its ability to wage war**, originally delegated to Congress. This can be seen in the authorization of limited warfare in the 1973 War Powers Resolution or, since 9/11, Congress has delegated executive authority for waging war through the Authorization for Use of Military Force. While the tug-of-war between the White House and Congress is generally a domestic issue, **there are other institutions that could rein in the abuse of US** executive power to wage war, **such as the International Criminal Court** (ICC). In his “Second Treatise of Government,” an inspiration to the American Declaration of Independence, **John Locke affirmed** that, “**Where there is no law, there is no freedom.”** Law, therefore, is the alternative to arbitrary power. **The rule of law in foreign policy is** just as **essential to human freedom** as the rule of law in domestic governance. Foreign policy realists, however, recognize that powerful state actors — chief among them **the United States** — **don't often abide by the rules of international law,** the laws of war, and state sovereignty. To restrain the executive and uphold human rights,the US has two choices: **Join the ICC** or create laws that **will hold its officials** and armed services **accountable to war crimes**, crimes against humanity, **genocide**, and **aggression overseas**. The best option, however, is to do both. For law to fill its role, there have to be incentives for all to abide by it, including the powerful and the weak, the large and the small, the just and the unjust. International institutions like **the ICC** certainly have their own set of problems, but ultimately can **serve as** **tool**s **to hold states responsible for their** questionable **behavior**, especially powerful states like the US. For the US, joining the ICC is actually a sound strategy. By cooperating with the ICC,the US would put in place an incentive structure to rein in lawless behavior, including overreach on the part of the US executive. **Committing the US to international law and human rights** in our decisions about foreign policy and war, therefore, **creates a safeguard against executive overreach, which is essential if we want to end endless wars**. As a president who has spoken about refocusing US foreign policy several times, President Joe Biden is well-positioned to pivot US foreign policy away from war and more toward restraint. Seeing the ICC as a way to improve US foreign policy and standing in the world, however, requires thinking outside the box and political will, both of which may be lacking in today’s White House. WHY THE ICC? Many have railed against the ICC as an infringement on sovereignty because it restricts power, but that is the point of a constitution: To subject power to law. Not only is accountability for gross atrocity crimes well precedented in international law, but sovereignty is no excuse to shield policymakers from perpetrating these crimes. Popular criticisms of the ICC cover three elements: Jurisdiction, the potential for political power play, and weak enforcement mechanisms. These criticisms, however, are not only overblown but also unreasonable. ICC jurisdiction is narrowly defined and reserved only for the most heinous offenses, such as genocide, war crimes, crimes against humanity, and aggression. The complementarity principle ensures that the Hague could only investigate and prosecute American officials where, according to Article 17 of the Rome Statute, the US is either “unable or unwilling.” More importantly, a US investigation into its own conduct essentially prohibits any ICC jurisdiction over US officials. Unfortunately, these investigations either get swept under the rug, like we’ve seen with recent US drone strikes, or war criminals like Eddie Gallagher are all together commuted. In theory, updating the US legal code to include these atrocity laws is enough to address this concern, but there are significant gaps. The US has already signed and ratified the 1949 Geneva Conventions as well as the 1948 Genocide Convention. Additionally, in 2007, the Genocide Accountability Act was signed into law, further codifying genocide in the US penal code. While there is no international treaty with regards to crimes against humanity, the ICC refers to the “widespread or systematic attack directed against any civilian population,” including murder, extermination, torture, and sexual violence, among other heinous crimes. Yet, those systematic crimes, individually illegal in US law, are not codified in such a way to curtail executive and military abuse overseas.

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## **The impacts of US interventions are large-scale and long-lasting**

### **Brown University ‘23 quantifies that**

“Civilians Killed & Wounded | Costs of War.” The Costs of War, 2023, watson.brown.edu/costsofwar/costs/human/civilians#:~:text=Civilian%20deaths%20have%20also%20resulted,4.5%2D4.7%20million%20and%20counting. Accessed 3 Feb. 2025. //kellyliu

People in war zones are killed in their homes, in markets, and on roadways, by bombs, bullets, fire, improvised explosive devices (IEDs), and drones. Civilians die at checkpoints, as they are run off the road by military vehicles, when they step on mines or cluster bombs, as they collect wood or tend to their fields, and when they are kidnapped and executed for purposes of revenge or intimidation. Many times more people die from [reverberating effects](https://watson.brown.edu/costsofwar/papers/2023/IndirectDeaths) like the destruction of infrastructure and resulting consequences for population health. For example, war refugees often lose access to a stable food supply, resulting in increased malnutrition and vulnerability to disease. In Israel, Gaza, the West Bank, and elsewhere since October 7, 2023, war costs such as forced displacement and the destruction of hospitals will inevitably lead to [far higher numbers of deaths](https://watson.brown.edu/costsofwar/papers/2024/IndirectDeathsGaza) than direct war violence. After one year of war, [96 percent](https://watson.brown.edu/costsofwar/papers/2024/IndirectDeathsGaza) of Gaza’s population (2.15 million people) faced acute levels of food insecurity. According to an October 2, 2024 letter to President Biden from a group of U.S. physicians, [62,413](https://watson.brown.edu/costsofwar/papers/2024/IndirectDeathsGaza) people in Gaza have died of starvation. **The U.S.** post-9/11 wars **in Iraq, Afghanistan, Pakistan, Syria, Yemen, and** [**Somalia**](https://watson.brown.edu/costsofwar/papers/2023/CounterterrorismSomalia) have taken a tremendous human toll. The total **death toll** in these **war zones**, including direct and indirect deaths**, is at least** [**4.5**-4.7 **million**](https://watson.brown.edu/costsofwar/papers/2023/IndirectDeaths)and counting. Of these, an estimated [408,000](https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll) civilians died directly from war violence. Precise mortality figures remain unknown. In Afghanistan, **even after the withdrawal of U.S. troops** in 2021, **people continue to die due to the** war-induced **breakdown of the economy, public health, security, and infrastructure.** The majority of the population faces impoverishment and [food insecurity](https://watson.brown.edu/costsofwar/Afghanistanbeforeandafter20yearsofwar).

**And in total,** **Lucas 15**

Lucas, James A. “The U.S. Has Killed More Than 20 Million People in 37 “Victim Nations” Since World War II” GlobalResearch — Centre for Research on Globalization. 11/27/2015, 11/20/2022.

<https://www.globalresearch.ca/us-has-killed-more-than-20-million-people-in-37-victim-nations-since-world-war-ii/5492051>

Let us put this in historical perspective: the commemoration of the War to End All Wars acknowledges that 15 million lives were lost in the course of World War I (1914-18). The loss of life in the second World War (1939-1945) was on a much large scale, when compared to World War I: 60 million lives both military and civilian were lost during World War II. (Four times those killed during World War I). The largest WWII casualties were China and the Soviet Union, 26 million in the Soviet Union, China estimates its losses at approximately 20 million deaths. Ironically, these two countries (allies of the US during WWII) which lost a large share of their population during WWII are now under the Biden-Harris administration categorized as “enemies of America”, which are threatening the Western World. NATO-US Forces are at Russia’s Doorstep. A so-called “preemptive nuclear war” against China and Russia is on the drawing board of the Pentagon. Germany and Austria lost approximately 8 million people during WWII, Japan lost more than 2.5 million people. The US and Britain respectively lost more than 400,000 lives. This carefully researched article by James A. Lucas documents the **more than 20 million lives lost resulting from US led wars, military coups and intelligence ops carried out** in the wake of what is euphemistically called the “post-war era” (**1945**- ). **[not including] The extensive loss of life in Lebanon, Syria, Yemen, Ukraine and Libya** is not included in this study. Continuous US led warfare (1945- ): there was no “post-war era“. And now, a World War III scenario is contemplated by US-NATO. Michel Chossudovsky, Global Research, September 17, 2022 \*\*\* After the catastrophic attacks of September 11 2001 monumental sorrow and a feeling of desperate and understandable anger began to permeate the American psyche. A few people at that time attempted to promote a balanced perspective by pointing out that the United States had also been responsible for causing those same feelings in people in other nations, but they produced hardly a ripple. Although Americans understand in the abstract the wisdom of people around the world empathizing with the suffering of one another, such a reminder of wrongs committed by our nation got little hearing and was soon overshadowed by an accelerated “war on terrorism.” But we must continue our efforts to develop understanding and compassion in the world. Hopefully, this article will assist in doing that by addressing the question “How many September 11ths has the United States caused in other nations since WWII?” This theme is developed in this report which contains an estimated numbers of such deaths in 37 nations as well as brief explanations of why the U.S. is considered culpable. The causes of wars are complex. In some instances nations other than the U.S. may have been responsible for more deaths, but if the involvement of our nation appeared to have been a necessary cause of a war or conflict it was considered responsible for the deaths in it. In other words they probably would not have taken place if the U.S. had not used the heavy hand of its power. The military and economic power of the United States was crucial.

# **2AC**

1. **DL. African states are key parts of the courts deicsion making process Kersten 12**

Mark Kersten [Assistant Professor in the Criminology and Criminal Justice Department at the University of the Fraser Valley in British Columbia, Canada, and a Senior Consultant at the Wayamo Foundation in Berlin, Germany], "Is the ICC Racist?", February 22, 2012, Justice in Conflict, https://justiceinconflict.org/2012/02/22/is-the-icc-racist/ //MVSG

No honest, self-reflecting advocate of international criminal justice can say he or she is satisfied with the reach of the ICC. It is selective and that is a problem. Further, some, including myself, are wary that the ICC’s practice of eagerly cozying up to the UN Security Council will only act to entrench the selectivity and bias of international criminal justice further. But, while problematic, the Court’s **selectivity does not mean that the ICC is a racist institution.** Defenders against charges of the ICC being a neo-colonialist institution often point to the fact that **thirty-three African states are signatories of the Rome Statute and members of the Court.** That’s no paltry number. Furthermore**, African states have engaged**, and continue to engage, **on a significant level, with the Court.** African **states lobbied heavily to successfully ensure that an African,** Fatou Bensouda, **was named the successor** to Luis Moreno-Ocampo **as the Court’s top prosecutor**. Some **states have seen cooperation with the Court strategicall**y. The Government of Uganda, for better or worse, viewed its self-referral to the ICC as an opportunity to increase pressure on the Lord’s Resistance Army. One might now ask, well then why do some African member-states describe the ICC as neo-colonial? There are a few reasons for this. First, in the context of African politics it is important to realize that it remains popular to describe international institutions as neo-colonialist bodies unduly and unfairly targeting Africa and Africans. The charge is seemingly levied as much because it retains purchase in domestic politics as it is because its authors truly believe the ICC is a neo-colonialist institution bent on focusing on Africa. Second, while the rhetoric against the ICC may be lofty, much of it is intended for the ICC as it has functioned under the direction of Moreno-Ocampo. It was telling when Jean Ping, the African Union Commission’s Chairman and a vociferous opponent of the ICC’s role in Africa, remarked: “Frankly speaking, we are not against the International Criminal Court. What we are against is Ocampo’s justice — the justice of a man.” The face of a racist institution? The bad blood between many African states and the ICC does not derive from the obvious fact that all of the ICC’s official investigations and prosecutions have taken aim at African contexts. As William Schabas rightly argues, “The root of the problem is not an obsession with Africa but rather a slow but perceptive shift of the Court away from the apparent independence shown in its early years towards a rather compliant relationship with the Security Council and the great powers.” African states have always been skeptical of the UN Security Council’s permanent five, a group from which they have continuously been excluded, being the determinant of international peace and security. In this context, the increased proximity of the ICC to the realpolitik machinations of the UN Security Council make African states uneasy. One reason so many African states supported and joined the Court was precisely because it retained independence from the Security Council. That independence has shrunk in recent years and, with the Court enthusiastically taking on the Council’s referral to Libya and subsequently being instrumentalized by the intervening powers, the Court’s independence may well be on shaky ground. None of the above, however, addresses what I believe to be the worst implication of calling the ICC racist. If the Court is racist, then it holds that African states have supported and engaged in a racist process. The racist critique would suggest that these African states have been somehow fooled into joining the Court by duplicitous, white, Western states. But who truly believes that states like South Africa, Ghana, Uganda, etc. are, to put it bluntly, that stupid? What African state would willingly join a Court that was racist against it? Claiming that the ICC is racist is thus to believe that African states and Africans in support of the Court are virtually agent-less in their conduct as states. In this account, they could not have decided upon their own volition, out of their own political interest, or out of a commitment to end impunity to join the ICC. They must have been powerless against the persuasion of Western states to join the Court and aren’t smart or strong enough to not join an institution that is racist against them. Not only is this an erroneous reading of the relationship between the Court and African states, but, in the end, isn’t this removal of agency part of the problem in racism itself? There are serious problems facing the ICC. It is selective and its independence today is not as secure as before. But to call it racist is not only wrong, it deflects from the real problems facing international criminal justice.

#### **The use of legal solutions as a heuristic recodes hegemonic conceptions of agency and articulates power as a contingently created system that can be infiltrated and changed – refusing the law fails to capture any of the dialogic benefits of my methodology.**

**Zanotti 14** [Dr. Laura Zanotti, Associate Professor of PoliSci, Virginia Tech. “Governmentality, Ontology, Methodology: Re-thinking Political Agency in the Global World.” Alternatives: Global, Local, Political, Vol. 38, p. 288-304. A little unclear if this is late 2013 or early 2014 – the stated “Version of Record” is Feb 20, 2014, but was originally published online on December 30th, 2013.] LASA-MMV

By questioning substantialist representations of power and subjects, inquiries on the possibilities of political agency are reframed in a way that focuses on power and subjects’ relational character and the contingent processes of their (trans)formation in the context of agonic relations. **Options for resistance** to governmental scripts **are not limited to** ‘‘**rejection**,’’ ‘‘revolution,’’ or ‘‘dispossession’’ to regain a pristine ‘‘freedom from all constraints’’ or an immanent ideal social order. **It is found** instead **in** multifarious and **contingent struggles** that are **constituted within the scripts of governmental rationalities and** at the same time exceed and **transform them**. This approach questions oversimplifications of the complexities of liberal political rationalities and of their interactions with non-liberal political players and nurtures a radical skepticism about identifying universally good or bad actors or abstract solutions to political problems. International **power interacts in complex ways with diverse political spaces** and within these spaces it is appropriated, hybridized, redescribed, hijacked, and tinkered with. **Governmentality as a heuristic** focuses on performing complex diagnostics of events. It **invites** historically **situated explorations** and careful differentiations **rather than overarching demonizations of** ‘‘**power**,’’ romanticizations of the ‘‘rebel’’ or the ‘‘the local.’’ More broadly, theoretical formulations that conceive the subject in non-substantialist terms and focus on processes of subjectification, on the ambiguity of power discourses, and on hybridization as the terrain for political transformation, open ways for reconsidering political agency beyond the dichotomy of oppression/rebellion. These **alternative formulations** also **foster an ethics of political engagement**, to be continuously taken up through plural and uncertain practices, **that demand continuous attention to** ‘‘**what happens**’’ **instead of fixations on** ‘‘**what ought to be**.’’83 **Such** ethics of **engagement would** not await the revolution to come or hope for a pristine ‘‘freedom’’ to be regained. Instead, it would constantly attempt to twist the working of power by playing with whatever cards are available and would **require intense** processes of **reflexivity on the consequences of political choices**. To conclude with a famous phrase by Michel Foucault ‘‘my point is **not** that **everything is bad, but** that **everything is dangerous**, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to hyper- and pessimistic activism.’’

#### **Radical positions that refuse the system *cede the political* – that risks extinction and turns their impacts – it’s try or die for engaging the state.**

**Boggs 97** [Carl Boggs, Senior Fellow at the National University. “The great retreat: Decline of the public sphere in late twentieth-century America.” Theory and Society, Volume 26, Number 6, December 1997.] A Classic

The decline of the public sphere in late twentieth-century America poses a series of great dilemmas and challenges. Many **ideological currents** scrutinized here – localism, metaphysics, spontaneism, post-modernism, Deep Ecology – intersect with and reinforce each other. While these currents have deep origins in popular movements of the 1960s and 1970s, they remain very much alive in the 1990s. Despite their different outlooks and trajectories, they all **share** one thing in common: **a depoliticized expression of struggles** to combat and overcome alienation. The **false sense of empowerment** that comes with such mesmerizing impulses **is accompanied by a loss of** public **engagement**, an erosion of citizenship and a depleted capacity of individuals in large groups to work for social change. As this ideological quagmire worsens, **urgent problems** that are destroying the fabric of American society **will go unsolved** – perhaps even unrecognized – only to fester more ominously in the future. And such problems (**eco**logical **crisis, poverty**, urban decay, spread of infectious **diseases**, technological displacement of workers) cannot be understood outside the larger social and global context of internationalized markets, finance, and communications. Paradoxically, the widespread retreat from politics, often inspired by localist sentiment, comes at a time when agendas that ignore or sidestep these global realities will, more than ever, be reduced to impotence. In his commentary on the state of citizenship today, Wolin refers to the increasing sublimation and dilution of politics, as larger numbers of people turn away from public concerns toward private ones. By diluting the life of common involvements, we negate the very idea of politics as a source of public ideals and visions. 74 In the meantime, **the** fate of the **world hangs in** the **balance**. The unyielding truth is that, even as the ethos of anti-politics becomes more compelling and even fashionable in the United States, it is the vagaries of political power that will continue to decide the fate of human societies. This last point demands further elaboration. The shrinkage of politics hardly means that corporate colonization will be less of a reality, that social hierarchies will somehow disappear, or that gigantic state and military structures will lose their hold over people’s lives. Far from it: the **space abdicated by** a broad **citizenry**, well-informed and ready to participate at many levels, **can** in fact **be filled by authoritarian** and reactionary **elites** – an already familiar dynamic in many lesser-developed countries. The fragmentation and chaos of a Hobbesian world, not very far removed from the rampant individualism, social Darwinism, and civic violence that have been so much a part of the American landscape, could be the prelude to a powerful Leviathan designed to impose order in the face of disunity and atomized retreat. In this way the eclipse of politics might set the stage for a reassertion of politics in more virulent guise – or it might help further rationalize the existing power structure. In either case, the state would likely become what Hobbes anticipated: the embodiment of those universal, collective interests that had vanished from civil society. 75

**2] Most robust empirical studies show ICC prevents aggression - our ev cites a study which takes into account many variables that would explain the results, which other studies don’t do.**

**Ford 20** [Stuart Ford,  **Professor of Law, through a comprehensive study,** at UIC John Marshall Law School in Chicago, Illinois. “Can the International Criminal Court Succeed? An Analysis of the Can the International Criminal Court Succeed? An Analysis of the Empirical Evidence of Violence Prevention Empirical Evidence of Violence Prevention” Winter 2020 Loyola of Los Angeles International and Comparative Law Review and Comparative Law Review, Volume 43 Number 2 Article 1]

Ultimately, there will always be caveats associated with statistical studies – there is always the possibility that the model is effected by variables you have not accounted for.168 Nonetheless, the [when] authors took pains to **control for the variables** (other than the ICC) that were most likely to explain the results. By controlling for such variables, they sought to disentangle the impact of the ICC from the impact of other variables that might affect the results. These efforts help ensure the results are robust.

With the exception of Professor Dancy’s work,169 [Footnote 169: Professor Dancy has studied a different phenomenon from the other authors cited in this article and his work is treated separately below. See infra text accompanying notes 177-186.] these [ these] studies, each using a different data set and a different methodology, independently came to essentially the same conclusion – **the ICC does prevent violence**. Professor Hillebrecht found that the ICC’s intervention in Libya reduced civilian casualties.170 Professor Meernik found that states with a strong commitment to the ICC had fewer human rights violations than other states, independent of their overall commitment to the rule of law.171 Professors Jo and Simmons found that the ICC reduced civilian deaths caused by both the government and rebel groups, though the effect was more dramatic for government forces.172 Professor Appel found that joining the ICC was associated with a reduction in serious human rights abuses.173

We can now say with reasonable confidence that the ICC does prevent violence. Ratification of the Rome Statute is associated with a reduction in violence. Criminalizing violations of international criminal law in domestic law is associated with a reduction in violence. And when the ICC acts, whether to open an investigation, issue an arrest warrant, or try an accused person, there is a reduction in violence. Moreover, these effects appear to be additive.174 There are **no empirical studies** showing that it increases violence.175

While a single article might not settle the question, **a whole series of articles** using different datasets and different methodologies that all come to the same conclusion is **much more persuasive**. In short, when considered together, **the available [all] empirical studies** strongly suggest that the **ICC does prevent violence**. Considering how “highly contested” this question has been amongst scholars,176 the **uniformity** of the empirical results is **particularly striking**.

**Scheffer ’23** [David; Professor of Law @ Northwestern Pritzker School of Law, Former US Ambassador @ Large for War Crimes Issue, Chief Negotiator of the Statue that Established the Court; July 17; Lieber Institute West Point; “The United States Should Ratify the Rome Statute,” https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/] tristan

The ICC **cannot** **exercise** **jurisdiction** over Ukraine for the **crime** of **aggression** because of the constraint built into Article 15bis(5) of the **Rome** **Statute**. This creature of the Kampala Amendments process in 2010, at the time strongly supported by the United States and some other major powers, reads, “In **respect** of a **State** that is **not** a **party** to this **Statute**, the Court shall **not** **exercise** its **jurisdiction** over the **crime** of **aggression** when **committed** by that State’s nationals or on its **territory**.” Consider for a moment how surreal that sounds, particularly if one recites it to the mother of a young girl who died from the impact of a Russian missile fired from across the border in Russia and hitting a civilian neighborhood in Ukraine.

There is a **solution** to the particular problem of the **crime** of **aggression**. Official U.S. **statements** **condemning** the Russian **aggression** against Ukraine **ring** rather **hollow** when the Biden **Administration** fails to support the **creation**, through a procedure involving a UN General Assembly resolution and a treaty between the United Nations and Ukraine, of an international Special **Tribunal** for Ukraine on the **Crime** of **Aggression** that can **deny** head of **state** **immunity**. Instead, the **U**nited **S**tates has **opted** for “an **internationalized** national **court**” in the Ukrainian legal system some day for the crime of aggression—a **weak** **option** that **invites** head of state **immunity** and **hardly** **deters** massive and continuous acts of **aggression** by Russia against Ukraine.

Recently, I attended a closed-door meeting in Washington with a senior government lawyer and, when asked, that official simply could not answer the question of why the Biden Administration would continue to uphold the longstanding and awkwardly hypocritical immunity interpretation, particularly in light of both the Russian actions against Ukraine and the Administration’s support for new laws that **enable** U.S. **cooperation** with the **ICC** to investigate Russian conduct. It also proves difficult to explain the ICC’s **investigation**, without any noticeable U.S. **objection**, of **Myanmar** **officials**, whose country is a **non**-**party** **State**, for atrocity crimes against the Rohingya who were persecuted and forcibly deported onto the territory of neighboring Bangladesh, a State Party, beginning in 2017.

I firmly believe that whatever the merits of the immunity interpretation 25 years ago, it has been overtaken by the march of customary international law combining both state practice and opinio juris, by judicial decisions, by persuasive scholarly work, by a renewed recognition of fundamental principles of criminal law and of sovereign decision-making, and frankly by common sense. Related to the immunity interpretation is the debate playing out in Washington over the implementation of ICC cooperation legislation that President Biden signed into law on December 29, 2022. Administration officials have delivered tortured testimony before Senate committees in recent months when confronted by Senators over the failure of the Administration to follow through on cooperation efforts with the ICC that are mandated by U.S. law regarding the Court’s investigation of Russian atrocity crimes in Ukraine.

In a recent Senate Appropriations defense subcommittee hearing, Senators Lindsay Graham (R-SC) and Dick Durbin (D-IL) pressed Secretary of Defense Lloyd Austin on the Pentagon’s resistance to the legal mandate. Austin said that he was concerned about the issue of reciprocity. Such views are **old think** and reflect the concern that someday the **tables** will be **turned** and the ICC will be **investigating** and **prosecuting** U.S. actions and that we would not want other governments to cooperate with the ICC in its investigative work. The **cooperation train** left the station **decades ago**. All of America’s **allies**, with the exception of Israel and Turkey, are States **Parties** to the **Rome Statute** and are **obligated** to **cooperate** with ICC **investigations**.

But there is no comparison in modern times with what is transpiring in Ukraine. Ambassador-at-Large for Global Criminal Justice Beth Van Schaack answered Austin quite effectively when asked on the PBS NewsHour recently. She said, “I think there is virtually **no** **equivalency** or comparison to what **Russia** has done here to anything that might **involve** **U.S. personnel** or service members. We have a full-scale war of aggression being committed through the systematic and widespread commission of war crimes, crimes against humanity. There’s **no** **comparison** here. And so I do not see a concern that this would set any sort of a precedent that might redound badly to the United States.”

Austin’s statement also reflects a presumption that should be challenged. During the Clinton Administration, my instructions as the U.S. chief negotiator of the Rome Statute were based on the intent of building an international criminal court which the United States one day would join. The instructions were not to negotiate for six years to build a court that the United States would never join. When I signed the Rome Statute, the intent was to signal that the United States would remain on deck with the treaty and work towards one day joining the Court, not to stand in permanent opposition to it.

President Bill Clinton conceded in his signing statement that the treaty would not (during Clinton’s remaining three weeks in office) and should not be submitted by his successor to the Senate until “fundamental concerns are satisfied,” a primary one being to “observe and assess the functioning of the court.” That opportunity to “observe and assess” began on July 1, 2002, when the ICC became operational following ratification of the Rome Statute by 60 nations. We have had 21 years to “observe and assess” and while there are some imperfections in the workings of the ICC, as there are with every legal system, the ICC’s professionalism and track record merit Washington’s respect.

In any event, U.S. policy towards the ICC today should not be premised on, structured, or implemented as if the United States intends to be a permanent non-party State. Such isolation was never the Clinton Administration’s position and never reflected my negotiating instructions.

The immunity interpretation was not advanced by the United States in order to permanently keep the United States out of the ICC, but rather to explain its status and non-exposure to ICC jurisdiction until Washington ratified the treaty. Otherwise, why did we negotiate and sign the treaty?

Rationalizations for permanent non-party status may attract the support of those seeking that outcome, but such thinking defies all that was negotiated into the Rome Statute and its supplemental documents to protect U.S. interests, including due process protections, complementarity, Security Council backstop under Article 16, precise definitions of the crimes, judicial oversight of the Prosecutor’s investigations, tough admissibility standards, high approval requirements for amendments, precise rules of procedure and evidence, comprehensive elements of crimes, and much more.

If the **U**nited **S**tates were to **become** a State **Party** of the **Rome** **Statute**, the **immunity** **interpretation** would become **irrelevant**—a **non**-**issue**—for the United States **even** **if** Washington **wished** to **argue** its **merits** for **Israel**, Turkey, Pakistan, North Korea, **China**, Iran, Myanmar, Libya, Egypt, **Russia**, Belarus, India, Saudi Arabia, Indonesia, Cuba, and other **non**-**party** States.

Those who express concerns about “reciprocity” unfortunately convey an intimidated attitude about the ICC. Rather than be on the defensive about the ICC, the U.S. **Government** and particularly the Pentagon should **take** the **offensive** and **recognize** how the **ICC** in fact **advances** critical U.S. **values**, particularly against an **aggressor** **State** like Russia. The United States can weigh in and **influence** gravity requirements at the ICC and how the Prosecutor can best utilize his discretion, not to mention placing an **American** **judge** on the **bench** and perhaps one day greeting an **American** **chief** **prosecutor**. Washington can use its **diplomatic** **clout** to **advance** ICC **investigative** and prosecutorial **objectives** globally and in ways that are **compatible** with U.S. **foreign** **policy** and global security needs. The ICC should become **part** of this nation’s **lawfare** **strategy**. In other words, Washington should **weaponize** the **ICC** for **worthy** **objectives**—such as justice in Ukraine and Darfur—that reflect critical American values rather than taking an anemic defensive posture towards the Court.

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