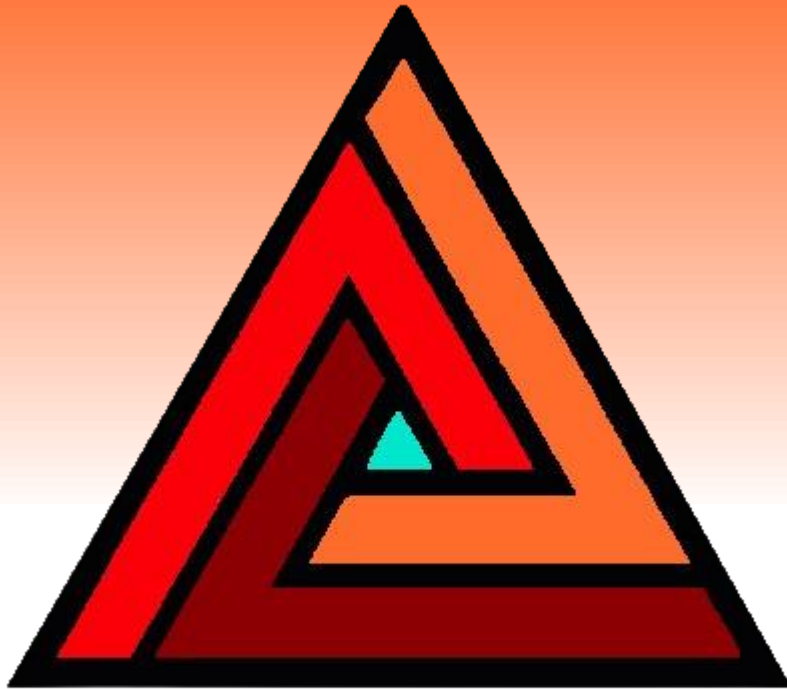


KANKEE BRIEFS

**Resolved: The United States ought to
become party to the United Nations
Convention on the Law of the Sea and/or the
Rome Statute of the International Criminal
Court.**



**Lincoln Douglas
2025 January
February AT File**

**Volunteers: Brett Boelkens (Editor), George Shubitidze, Cyris
Lim, Shreeya Ram, Aalekh Arapalli, Daniel Romero, Evan Liu,
Kallen Zhou, and Neil Marwah**

Letter From The Editor

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Please email me at karkingkankee@gmail.com if you have any questions, comments, or concerns.

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Note

For the sake of clarity for block files, this block file has been sub-divided into two distinct sections, with one half dealing with the ICC and the other dealing with UNCLOS. There ought not be any need to review the UNCLOS section with an ICC aff, or vice versa.

Affirmative (ICC)

AT: Israel DA

Unabated Israeli support causes Iran war and destroys the LIO and US credibility – the aff stabilizes the Mideast by reining in the loose cannon

Hoffman 24 [Jon Hoffman, foreign-policy analyst at the Cato Institute and an adjunct professor at George Mason University, 03-22-2024, "Israel Is a Strategic Liability for the United States", Foreign Policy, <https://foreignpolicy.com/2024/03/22/israel-gaza-biden-netanyahu-security-united-states/>]/Kanke

The war in Gaza should demonstrate that trying to sidestep the future of the Palestinian people is a foolish strategy. But for Netanyahu—and for Biden, by extension—it has perversely deepened a commitment to that status quo. Washington's unwavering support for Israel amid the war in Gaza has also had disastrous regional ramifications. From the Eastern Mediterranean to the Red Sea, a series of different flash points risk dragging the region—and the United States—into full-scale war. Additionally, Washington's continued support of Israel's brutal campaign in Gaza has tarnished Washington's image as a lodestar of liberal values, making a mockery of claims about a U.S.-led "liberal international order." A regional war would be disastrous for the Middle East and the interests of the United States. Nor would such a war be a matter of Israel's survival. No state—including Iran—is about to push Israel into the sea. Israel's military superiority, nuclear arsenal, and strategic alignment with the majority of governments in the region guarantee its security against existential challenges. Washington's stance allows Israel to act with impunity while bending U.S. foreign policy in the Middle East in pursuit of objectives that lie well beyond Washington's interests. U.S. interests in the region include protecting the safety and prosperity of the American people and preventing the emergence of a regional hegemon while upholding the values that the country claims to stand for. Knee-jerk support for Israel does not advance any of these. The pathologies of the special relationship with Israel have hindered Washington's strategic maneuverability in the Middle East and inhibited U.S. leaders' ability to even think clearly about the region. In late 2023, for example, Biden defamed his own country when he declared that "were there no Israel, there wouldn't be a Jew in the world who was safe." This kind of thinking makes sound statecraft impossible. The uneven U.S. relationship with Israel has, for example, hindered Washington's ability to engage diplomatically with Iran while pushing the United States toward the use of military force there. Over the past five months, Israel has repeatedly attempted to pressure the United States into direct confrontation with Iran, despite this being anathema to U.S. interests and regional stability. High-level military drills between Israel and the United States, Israel's recent attack on major gas pipelines in Iran, and continued escalation between Iranian-backed groups and the United States across the Middle East risk sparking a nationwide catastrophe. Washington's engagement with Israel—like any other state—should be driven by the pursuit of concrete U.S. interests. Even U.S. relations with treaty allies such as France or South Korea feature debates, disagreements, and the normal push and pull of diplomacy. By contrast, the special relationship with Israel has fueled some of the worst actors in Israeli politics, encouraged ruinous policies, and generally done violence to the long-term interest of both countries. Washington's subsidies for Israeli policies have insulated Israel from the costs of those policies. What incentive does Israel face to change course when the most powerful state in the world refuses to condition its profound levels of political, economic, and military support? Were Israel forced to bear the full costs of its policies in the West Bank, for example, its pro-settler agenda would become harder to sustain. A special relationship with Israel does virtually nothing for the United States while actively undermining U.S. strategic interests and often doing violence to the values that Washington claims to stand for. It's time to "normalize" the United States' relationship with Israel. This does not mean making Israel an enemy of the United States, but rather approaching Israel the same way that Washington should approach any other foreign nation: from arm's-length. No longer would decisions about military aid, arms sales, or diplomatic cover be rooted in path dependency or muscle memory, but rather in officials' perceptions of the U.S. interests at stake. Instead of enabling, shielding, and subsidizing Israeli policy, the United States should reorient its relationship with Israel on the basis of concrete U.S. interests. This would entail Washington ending its willingness to turn a blind eye to Israeli affronts to U.S. interests, by providing huge amounts of aid, and pushing for a swift end to this disastrous war and a

permanent political solution to the Israeli-Palestinian conflict. The Biden administration faces a choice: continue following the Netanyahu government into the abyss, or forcefully pressure it to change course.

Israel constraints are key to prevent mass terrorism and Iran war

Telhami 23 [Shibley Telhami, Nonresident Senior Fellow for Foreign Policy for the Center for Middle East Policy at Brookings, 10-27-2023, "[Biden's dangerous stance on the war in Israel and Gaza](https://www.brookings.edu/articles/bidens-dangerous-stance-on-the-war-in-israel-and-gaza/)", Brookings, <https://www.brookings.edu/articles/bidens-dangerous-stance-on-the-war-in-israel-and-gaza/>]/Kanke

President Joe Biden has been a strong supporter of Israel throughout his long political career. Yet it has been stunning to watch his seeming tolerance of the calamity that has been visited on the people of Gaza and his reluctance to condemn the actions behind it. Biden was rightly lauded for reaching out to Israelis after Hamas' horrific attack killed and wounded thousands of Israelis, mostly civilians, including many children, and took over 200 hostages. He signaled support for a people under attack during a moment of pain and vulnerability, displaying timely solidarity. Nothing justifies targeting or recklessly endangering civilians, which also constitutes war crimes. But since that first moment, many of the president's actions have been misguided, even dangerous. They serve neither Israeli nor Palestinian long-term interests, and they threaten to undermine the U.S. national interest. The failure of private counsel One charitable take on Biden's approach, privately encouraged by some administration officials, is that Biden's full public support for Israel, without loud, overt calls for restraint, is tactical: to gain leverage with Israeli leaders in the hope of influencing them, while counseling restraint privately. But if this is the intent, the outcome has been a demonstrable failure. Despite Biden's full support for Israel, including a trip to the country, during which he described himself as a "Zionist" and joined a meeting of Israel's war cabinet, his chief accomplishment has been to get a few truckloads of aid to Gaza. If the president counseled Israel to be restrained in its bombing and to avoid a ground attack on Gaza, as has been reported, there is little evidence the Israeli government is taking his advice. Yet this has not stopped Biden from seeking \$14 billion of support for Israel's war effort, which speaks louder than private or public words. Furthermore, despite the president's plea to Americans to reject anti-Palestinian sentiments, his posture on the violence has in practice legitimized Israeli actions that are causing immense human suffering. The president's public support for Israeli actions that have rendered thousands dead and wounded and hundreds of thousands displaced has served to dehumanize Palestinians in the eyes of the public. The president went further in his remarks on October 25, challenging the reported number of Palestinian casualties because, he said, he had "no confidence in the number the Palestinians are using." He also downplayed the thousands of civilian casualties as "the price of waging war." Though Biden has expressed sorrow for the humanitarian crisis, he has often spoken about it as if it were a result of a natural disaster, not the outcome of ruthless actions, using U.S.-supplied weapons and funds, that he has not condemned. Reflecting a broader mood in much of the Arab world and Global South, King Abdullah II of Jordan, a close American ally, declared in response, "The message ... is loud and clear: Palestinian lives matter less than Israeli ones. Our lives matter less than other lives. The application of international law is optional. And human rights have boundaries — they stop at borders, they stop at races, and they stop at religions." Wishful thinking and tone deafness A U.S. strategy hoping that Palestinians and other Arabs would be so struck by the awfulness of Hamas' attack that they would be angrier with the group than with Israel is a fantasy. For such a strategy to have had any chance at all, it would have to offer a credible path toward freedom from 56 years of occupation. Unfortunately, Biden's policy preceding Hamas' attack added significantly to the prevalent Palestinian despair in the West Bank and Gaza, including among those who want nothing to do with Hamas and were not under its rule. The rise of the far-right Israeli government, which had made no secret of its intent to continue depriving Palestinians of their rights, was accompanied by the construction of more illegal Israeli settlements and rising settler violence against Palestinians. Biden did little to defend them or offer a credible path forward. Instead of working to end settlements, his administration worked hard to shield their expansion at the United Nations. Instead of seeking to use the last "big" Arab leverage with Israel — possible peace between Israel and Saudi Arabia — as a lever to end decades of occupation, Biden prioritized mediating a deal that would leave occupation intact. He fueled Palestinian despair instead of hope. It was improbable that Palestinians and Arabs would broadly and suddenly trust what Biden had to sell. What does "destroying Hamas" mean? The Biden administration's complete support for the Israeli aim of "destroying Hamas" seems understandable, given Hamas' actions. But in practice, it is far more problematic than the president and his administration appear to appreciate. It is possible to weaken and hurt Hamas but Israel's conflict with the Palestinians is ultimately a political one — the violence will not end until Palestinians get their freedom. In the short term, the stated military aim of destroying Hamas at any cost has put the fighting on a path toward a large escalation that could easily draw the United States into a regional war. As president of the United States, Biden cannot afford to back Israel's total freedom of action in Gaza. He cannot assume that Israeli aims fully coincide with those of the United States. As Biden himself had noted, this is the most extreme government in Israel's history, with prominent Jewish supremacist ministers whose stated aims conflict with both U.S. interests and values and seek an opportunity to expel Palestinians from what they see as the land of Israel, including Gaza. And Netanyahu is known to have attempted over the years to draw the United States into a war with Iran, something that's decidedly not in the United States' interests. Biden is probably right in assuming that neither Lebanon's Hezbollah nor Iran has an interest in getting into a full war with Israel, despite the limited but increasing Israel-Hezbollah skirmishes in recent days. The assumption is that the deployment of U.S. assets, including two aircraft carrier strike groups, would also act as deterrence. But those assumptions could be rendered useless by the seemingly reasonable, Biden-backed aim of "destroying" Hamas. After more than two weeks of fighting, Hamas has not been destroyed. In his speech to the nation last Friday, Biden seemed to imply that Hamas has yet to pay a "price" for its crimes. Yet Gazan civilians

certainly are. About half of Gazans have been reportedly displaced; many thousands, including children, have been killed and wounded; and conditions at hospitals are catastrophic. If destroying Hamas is possible at all, it would probably entail destroying Gaza itself. The moral implications alone, not to mention the severe violations of international law, should be enough to reject this mission. But put these considerations aside for a minute; also put aside the result of a devastated Gaza with hundreds of thousands of desperate and angry refugees who will surely blame Israel and the United States, giving rise to new militancy. There are more immediate consequences for U.S. interests that cannot be ignored. “He who strikes first is better off” The first is that the ongoing fight to destroy Hamas and the resulting humanitarian horrors could draw Hezbollah and Iran into the fight. One reason is that the scale of destruction and casualties makes it increasingly hard for them to stay out. This goes to the heart of their regional posture as the parties able to stand up to Israel, and as allies of Hamas. Perhaps a bigger reason is that the stated aims of Israeli actions, coupled with Hamas’ early operational success in its attack on Israel, have given rise to a perception of the primacy of the offense: the notion that he who strikes first is better off. Hamas surprised the Israelis and inflicted high casualties. Israel and Hezbollah are drawing their own conclusions about the benefits of going on the offense in a possible fight between them. Like Hezbollah, Israelis prefer to avoid a simultaneous war on their northern front. As for Hezbollah, it likely fears that if Israel is allowed to destroy Hamas — and Gaza along the way — Israel will turn to Hezbollah next, free of battling Hamas at the same time. Such a conflict could draw the United States and Iran into the fight with devastating results. Biden’s decisions may inadvertently set in motion a process of escalation he will increasingly be unable to control. President Barack Obama managed to avoid being pulled into a war with Iran by prioritizing the Iran nuclear deal in his second term. And despite President Donald Trump’s one-sided support for Israel on the Palestinian issue, he also managed to resist a possible war with Iran during his last months in office, served well by his aversion to major conflicts. Given Biden’s posture in Israel and Gaza so far, can we be as confident that he will keep us out of another unnecessary and devastating war in the Middle East? Not if he doesn’t urgently shift course, starting by seeking a cease-fire.

Weapons pause thumps

Flaherty and Boccia 24 [Anne Flaherty, Senior national policy reporter at ABC News, and Chris Boccia, ABC reporter with a MA in IR from St. John's University and a BA from Fordham University, 5-8-2024, "US withheld bomb shipment to Israel out of fears it could be used in Rafah", ABC News, <https://abcnews.go.com/Politics/biden-administration-pauses-ammunition-shipments-israel-us-officials/story?id=109993270>]/Kanke

The Biden administration opted to pause a shipment of some 3,500 bombs to Israel last week because of concerns the weapons could be used in Rafah where more than one million civilians are sheltering "with nowhere else to go," a senior administration official told ABC News. Other weapon transfers from the U.S. to Israel -- including the sale of Joint Direct Attack Munition, or JDAM kits -- are being closely scrutinized as part of a larger review of U.S. military aid to Israel that began last April, the official said. The decision to pause the shipment and consider slow-walking others is a major shift in policy for the Biden administration and the first known case of the U.S. denying its close ally military aid since the Israel-Hamas war began. Asked about the reporting at a Senate hearing on Wednesday, Defense Secretary Lloyd Austin publicly confirmed the U.S. has paused a munitions shipment and that a major Israeli operation in Rafah could change the U.S. calculus on security assistance to Israel. He's the first senior administration official to confirm the U.S. pause on military aid but he added that no "final determination" has been made. "We are currently reviewing some near-term security assistance shipments in the context of unfolding events in Rafah," Austin told a Senate Appropriations subcommittee, emphasizing that supplemental funding Congress recently passed is not in jeopardy. "We've been very clear," he said, "from the very beginning that that Israel shouldn't launch a major attack and Rafah without accounting for and protecting those civilians that are hitting that battlespace. And, again as we have assessed the situation, we paused one shipment of high payload munitions." At the same time, Austin insisted that the U.S.-Israel alliance is "ironclad." South Carolina Republican Sen. Lindsey Graham shot back. "So Israel's been hit in the last few weeks by Iran. Hezbollah and Hamas [are] dedicated to their destruction. And you're telling me you're going to tell them how to fight the war and what they can and can't use when everybody around them wants to kill all the Jews?" he said. "And you're telling me that if we withhold weapons in this fight, the existential fight for the life of the Jewish state, it won't send the wrong signal?" The Biden administration has been reluctant in the past to withhold weapons from Israel despite policy differences because such contracts are typically years in the making, and withholding aid is unlikely to influence Israeli policy decisions in the near term. At the same time, U.S. officials worried that delaying future weapons shipments could put Israel's defense -- a strategic priority for the U.S. -- at risk. According to the senior administration official, who spoke on condition of anonymity Tuesday in order to discuss a sensitive policy decision that hadn't yet been publicly announced, the move came because U.S.-Israeli talks on the humanitarian needs in Rafah "have not fully addressed our concerns." "As Israeli leaders seemed to approach a decision point on such an operation, we began to carefully review proposed transfers of particular weapons to Israel that might be used in Rafah," the official said in a written statement provided to ABC News. More than half of the shipment that was paused last week consisted of 2,000-pound bombs. The remaining 1,700 bombs were 500-pound explosives, the official said. "We are especially focused on the end-use of the 2,000-pound bombs and the impact they could have in dense urban settings as we have seen in other parts of Gaza," the official told ABC News. "We have not made a final determination on how to proceed with this shipment." Other cases that remain under review include JDAM kits, which enable precision targeting of bombs. Several other U.S. officials confirmed the policy decision earlier on Tuesday, the same day Israel began what its officials called a "precise" operation in Rafah. U.S. officials said they did not believe those operations were the beginning of the larger-scale invasion that Israel has been planning for weeks; that timeline remains uncertain, they say. Israeli Prime Minister Benjamin Netanyahu has said operations in Rafah are inevitable and necessary to eliminate Hamas. The White House declined to discuss specifics at a press briefing, instead pointing to the overall U.S. support for Israel. "Our commitment to Israel's security remains ironclad," said White House spokesman John Kirby. "We don't, as a matter of course, talk about individual shipments one way or the other. But again, nothing's changed about our commitment to Israel security." Biden has faced criticism from some Democrats and other voters who say he's not doing enough to stop the mounting death toll of civilians in Gaza. At the same time, support for Israel's operations in Gaza remains strong among Republicans. On Tuesday, top GOP lawmakers were quick to criticize the delay in arms shipments to Israel that were already approved by Congress. "This is not the will of Congress," said House Speaker Mike Johnson. "This is an underhanded attempt to withhold aid, without facing accountability. It's undermining what Congress intended." In a letter to President Joe Biden, Republican Sens. Jodi Ernst and Ted Budd said they were "shocked" and "deeply concerned" about reports that the Biden administration failed to notify Congress before withholding ammunition to Israel. "If these reports are true, then you have once again broken your promise to an American ally," they said. According to the senior administration official, all of the shipments under review come from previously appropriated funds and are not sourced from the latest aid bill passed by Congress. "We are committed to ensuring Israel gets every dollar appropriated in the supplemental," the official said, noting another \$827 million in new future weapons and equipment for Israel has

KANKEE BRIEFS

been approved through Foreign Military Financing. Axios first reported on Sunday that a shipment of ammunition from the U.S. to Israel had been held up.

Sanctions thump too

McGreal 24 [Chris McGreal, Guardian correspondent, 02-02-2024, "What does Biden's order against Israeli settlers mean and why did he do it now?", Guardian, <https://www.theguardian.com/us-news/2024/feb/02/biden-executive-order-israeli-settlers-meaning>]/Kanke

Was Joe Biden's announcement of unprecedented US sanctions against Israeli settlers in occupied Palestine a sign of political weakness at home, or of a newly found willingness to assert American influence over Israel? The president signed the executive order imposing financial and travel sanctions on settlers who violently attack Palestinians shortly before a campaign rally in the swing state of Michigan, where the largest Arab American population in the country has rounded on Biden over his largely blanket support for Israel's assault on Gaza. A man looks at his damaged home Joe Biden issues executive order against Israeli settlers in West Bank Read more Some saw the move as a blatant attempt to win back support among Arab American voters, which has plummeted in a state that Donald Trump won in 2016 and Biden took by less than 3% of the vote four years later. Trump could win Michigan again if large numbers of voters who supported Biden in 2020 do not vote, delivering the former president a key piece of the electoral college vote. Yousef Munayyer, the former director of the US Campaign for Palestinian Rights, doubted that the president's executive order would do much to quell Arab American anger over his support for Israel's war on Gaza, which has killed more than 27,000 Palestinians, most of them civilians. But he said the move was nonetheless significant because it represents an unusual US effort to sanction Israelis over their violations of Palestinian rights. "That said, the extent to which it is effective depends a lot on the political will to designate violent Israeli settlers. If done honestly, it could have a significant impact not just on the violent settlers themselves but on an entire transnational financing network," he said. "That is the test that will tell us whether this is a serious effort at addressing a real problem on the ground or an unserious effort at trying to save face for Biden in an election year with voters appalled at his handling of Palestine." Biden's order said there are intolerable levels "of extremist settler violence, forced displacement of people and villages, and property destruction". Attacks have escalated under Prime Minister Benjamin Netanyahu's latest government as far-right ministers push for annexation of all or some of the West Bank. There are concerns in Washington that the violence could result in a full-scale third Palestinian uprising that would make the prospect of a Palestinian state even more distant. Biden's order imposes financial and travel restrictions on those responsible, and named four Israelis who will be immediately subject to sanctions. The order also has provisions to sanction settler leaders, politicians and government officials who encourage violence. If firmly enforced, the order also has the potential to limit American groups from funding the more extreme settlements, some of which are heavily financed by donations from the US.

Congress weapon restraints thump

Matter 24 [Odeliya Matter, program associate for Middle East Policy at FCNL, 12-18-2024, "The Fight to Stop US Arms to Israel is Gaining Momentum", Inkstick, <https://inkstickmedia.com/the-fight-to-stop-us-arms-to-israel-is-gaining-momentum/>]/Kankee

On Nov. 20, Congress held its first-ever vote to block offensive weapons sales to Israel. **Senators voted on three Joint Resolutions of Disapproval (JRDs)** Bernie Sanders had **introduced to prevent the sale of specific offensive weapons used in** well-documented **Gaza** human rights violations. While they did not pass, 19 senators voted in favor, marking **a significant milestone for a growing movement to** end the war in Gaza and a **change in the nature of the US-Israel relationship**. So why was this vote an important step forward for the peace movement despite its end result? The **JRD vote marks the second time this year** Palestinian human rights have been **central to a debate on the Senate floor**. In January, **Sanders forced a vote on Senate Resolution 504**, a bill requiring the State Department to **produce a report on Israeli human rights violations in Gaza and the West Bank**, gaining support from 12 senators. Less than a year later, with this JRD vote, 19 senators voted to block offensive weapons sales to Israel for the first time in our history. Increasingly, **senators are drawing attention to the horrors of the war in Gaza and US complicity in apparent war crimes**. Unprecedented Coalition **An unprecedented coalition of more than 100 diverse national civil society organizations endorsed the JRDs**. These included the **pro-Israel lobby J Street** and the **Service Employees International Union, which represents over two million members**. Together with constituents across the country, these **organizations mobilized to generate hundreds of thousands of calls, emails, in-district meetings, and protests in support of the resolutions**. **Some of these groups had never publicly commented on sending weapons to Israel, marking a shift for influential organizations**. **A key group of lawmakers led efforts to support the resolutions, including six of the eleven Democrats on the Senate Foreign Relations Committee (SFRC)**. Notable senators leading the charge included Senator Jeanne Shaheen, who will become the most senior Democrat on the SFRC in the next Congress, Senator Chris Murphy, Chair of the SFRC Middle East Subcommittee, and Democratic Whip Dick Durbin. Despite significant opposition from pro-Israel lobby group AIPAC and the White House, **the 19 yea votes demonstrate a growing movement to hold Israel accountable**. **American weapon sales are increasingly becoming a mainstream concern**, especially considering the majority of Americans oppose further sales to Israel. Proven Strategy Advocates for the Israel JRD effort are fully aware that ending unconditional US support for Israel will be a long and challenging process, and that this particular resolution would not pass. However, history shows that **forcing votes and debates, even if bills do not pass, can shift policy and influence key partners**. **A clear example of this shift was seen in the Saudi-led war in Yemen**. From 2015 to 2021, the US provided military aid in support of Saudi Arabia against the Houthis, fueling a war and humanitarian crisis resulting in more than 377,000 deaths and bringing millions to the brink of famine. **Through** years of congressional pressure, driven by extensive constituent advocacy and civil society efforts, **policy gradually shifted**. The first JRD on weapons sales to Saudi Arabia, introduced in September 2016 by Senators Chris Murphy and Rand Paul, received 27 votes in favor. In June 2017, the senators' second JRD drew 47 votes in support. In February 2018, Senator Sanders introduced the Yemen War Powers Resolution (WPR), directing the removal of US troops from hostilities in Yemen. The first Yemen WPR vote in March 2018 garnered 44 supporting votes, and by April 2019, the resolution passed both the Senate with 56 votes and the House with 248 votes. Although then President Donald Trump vetoed the Yemen WPR, the **Congressional pressure** created by this legislative effort **led to** significant policy changes, most notably, President Trump's cessation of US mid-air refueling for Saudi warplanes, **the United Arab Emirates' military withdrawal from Yemen, and support for the Hodeida port ceasefire**. Upon taking office, President Joe **Biden ended additional forms of US assistance for offensive operations in the war, which helped lead to a regional truce and increased aid access** — all of which likely saved hundreds of thousands of lives.

Undeniable Momentum The results of the **JRDs votes show the power of the movement to end unconditional support for Israel**. While the resolutions did not immediately halt weapons sales, and the devastation continues to worsen in Gaza, **these votes forced a critical congressional reckoning**, compelling senators who had long avoided the issue to take a public stance and go on the record in a way that will be documented in history. **This vote shattered the glass ceiling on US-Israel relations**, and although the fight to end this support is far from over, the momentum is undeniable.

Past soft regime change efforts thump and prove the moderation link turn

Keating 24 [Joshua Keating, senior correspondent at Vox covering foreign policy and graduate of Oberlin College, 3-14-2024, "4 ways in which Biden can pressure Israel on Gaza — if he really wanted to", Vox, <https://www.vox.com/world-politics/24101020/biden-netanyahu-israel-gaza-pressure-leverage-arms-un>]/Kanke

The bully pulpit Another idea gaining some momentum is that Biden should sidestep Netanyahu altogether and make his case directly to the Israeli people. Richard Haass, an influential veteran US diplomat and former president of the Council on Foreign Relations, has been the most prominent figure making the case that the president should travel to Israel and make a speech, perhaps to Israel's parliament, laying out the case for why Israel must change course in Gaza. "It's increasingly clear that the United States does not have a partner with this Israeli prime minister or government," Haass told Politico. "A speech over the prime minister's head would clearly show what the U.S. believes and could lead to a real debate in Israel." Biden's visit to the country in the immediate aftermath of the October 7 attacks was widely praised across the political spectrum in Israel. Though his approval there has likely faded a bit in recent months — particularly among right-wingers, given his administration's sanctions on settlers — it's still a safe bet that he's more popular than Netanyahu, who only 15 percent of Israelis say should stay in office after the war. "The president of the United States, as a lifelong friend of Israel, has a well of political capital right now with the Israeli people because he was so there for them in a moment of need and crisis," Jeremy Ben-Ami, president of the liberal Middle East peace lobbying group J Street, told Vox. Ben-Ami feels that a high-profile speech in Israel that affirmed US support for the country and acknowledged the atrocities of October 7, but also laid a case for why Israel's current course of action in Gaza is ultimately undermining the country's security, would be a more effective way to exert influence than "reacting to events and doing things in a sort of one-off, tactic-by-tactic way." Even if it didn't change the Israeli government's policies, it could change the tenor of the public debate in Israel and also answer critics of the Biden administration's policies at home heading into a closely fought presidential election. But such a strategy also carries risks. Koplow, of the Israel Policy Forum, says that while Netanyahu may be personally unpopular due to a range of controversies that predate the war, "something that maybe the White House underestimates is just how many people in Israel support Netanyahu's goal of defeating Hamas come hell or high water. If there's a perception that the US is putting pressure on the Israeli government to stop the operation against Hamas before the government is ready, and before the IDF is ready, I think that is going to backfire."

Regime change? One precedent both governments may have in mind is 1991, when President H.W. Bush controversially held up loan guarantees to Israel until it agreed to halt settlement building in the West Bank and Gaza and join a peace conference with the Palestinians. Though it may not have been Bush's intention, the fight, and the sense that the all-important relationship with the US was suffering, badly damaged then-Prime Minister Yitzhak Shamir's standing and likely contributed to his defeat by Yitzhak Rabin in the 1992 elections. Fast forward to today, the Biden administration hasn't exactly been subtle about the fact that it would much prefer to be dealing with a new prime minister. Last week, Benny Gantz, who is both a member of Netanyahu's war cabinet and his leading political rival, met with senior officials in Washington including Vice President Kamala Harris — despite the Israeli prime minister's opposition to the trip. Harris said in an interview several days later that Americans should "distinguish or at least not conflate the Israeli government with the Israeli people," which could be taken to imply that the former is less worthy of support than the latter. Then there was the striking language in the US Intelligence Community's annual Worldwide Threat Assessment, released this week. Contrary to Netanyahu's stated desire to eliminate Hamas entirely, the report concluded that Israel would likely "face lingering armed resistance from HAMAS for years to come." As for Netanyahu himself, the report stated that his "viability as leader ... may be in jeopardy" and that distrust of his rule "has deepened and broadened across the public from its already high levels before the war". America's spies concluded, with what seems like guarded optimism, that "A different, more moderate [Israeli] government is a possibility". This did not go over well in Jerusalem: An unnamed Israeli senior official told the press in a statement that "Israel is not a vassal state of the U.S." and "we expect our friends to act to overthrow the terror regime of Hamas and not the elected government in Israel." On Thursday, Senate Majority Leader Chuck Schumer, both a close ally of the White House and longtime staunch supporter of Israel, upped the ante with a speech on the Senate floor calling for new elections in Israel and describing Netanyahu as an

“obstacle to peace.” “The Netanyahu coalition no longer fits the needs of Israel ... the Israeli people are being stifled right now by a governing vision that is stuck in the past,” he said. Still, backlash from Netanyahu’s allies would become even more bitter if Biden actually did attempt to make a case directly to the Israeli people. Ben-Ami made clear that while he thinks Biden should clarify his opposition to the Israeli government’s current conduct regarding the war in Gaza, he should stop short of trying to directly undermine Netanyahu. “It’s a very bad course of action for the United States to do anything with regard to any country where the explicit goal is to interfere in the domestic politics of the other country,” he said. Of course, if Biden did attempt an end run around Netanyahu in the Knesset, the prime minister would hardly be in a position to complain: Netanyahu did exactly the same thing in the US Congress in 2015 to make the case against Obama’s nuclear deal. Netanyahu’s allies have not exactly been subtle about the fact that they would prefer to be dealing with President Trump right now. But while both governments wait for the other’s potential downfall, it does little to move the war toward a conclusion, or stem the suffering of Gazans.

Recent polls prove Netanyahu hatred – his removal would be appreciated by Israelis

TOI 24 [Times of Israel Staff, 6-24-2024, "Poll: 66% of Israelis want Netanyahu to leave politics, 85% support Oct. 7 probe", Times of Israel, <https://www.timesofisrael.com/poll-66-of-israelis-want-netanyahu-to-leave-politics-85-support-oct-7-probe/>]/Kanke

Some **two-thirds of Israelis believe** Prime Minister Benjamin **Netanyahu should leave politics and not seek reelection**, according to a television poll published on Friday, after a tense week in Israeli politics following the High Court's history ruling on drafting ultra-Orthodox yeshiva students into the military. The poll cemented former prime minister Naftali Bennett's standing as the leader of a potential new rightwing alliance. It also indicated that a majority of Israelis support Haredi conscription along with an investigation into the failures of October 7. **Sixty-six percent of poll respondents said Netanyahu should not compete in the next elections, compared with 27% who thought he should, and 7% who don't know.** **Among** voters for parties in **the** premier's **right-religious bloc, 37% opposed Netanyahu's seeking reelection**, though 53% said they think Israel's longest-serving leader should stay in office, Channel 12 said. Two polls in the past week found that the elections would be upended by a faction led by four of Netanyahu's former proteges: ex-prime minister Naftali Bennett, Yisrael Beytenu party leader Avigdor Liberman, New Hope party leader Gideon Sa'ar and former Mossad chief Yossi Cohen. Surveys from Channel 12 and Channel 13 found such a formation could pick up the largest number of Knesset seats in an election; the channels' polls awarded the party 25 and 33 seats, respectively, of the Knesset's 120. In Channel 12's Friday poll, Bennett emerged as by far the favorite to lead the right-wing dream team. The former prime minister was considered the preferred leader by 30% of respondents to the Channel 12 survey, including 50% of opposition voters. Liberman and Cohen followed with 10% each, and Sa'ar picked up 4% support. The remaining respondents said they either did not know or favored none of the options. Bennett, who retired from politics in 2022 after the demise of his uneasy, diverse coalition, has hinted at a return. He received a boost when a recent Channel 12 poll found that **respondents considered the former premier to be better-suited than Netanyahu to the job.** Asked whether a state commission of inquiry should be formed to probe failures leading up to Hamas's October 7 massacre, 85% of respondents said yes, 6% said no, and 9% said they didn't know. Among Netanyahu's supporters, the percentage of respondents calling for a probe was only slightly lower, at 76%, 11%, and 12%, respectively. The High Court of Justice on Friday gave the state until July 28 to explain why it hasn't yet formed a state commission of inquiry into Israel's failures leading up to Hamas's October 7 massacre and the subsequent war in Gaza.

Netanyahu is massively unpopular and ending US support encourages a snap election to oust Netanyahu

Erlanger 24 [Steven Erlanger, chief diplomatic correspondent in Europe at NYT, 2-5-2024, "Many Israelis Want Netanyahu Out. But There Is No Simple Path to Do It.", NYT, <https://www.nytimes.com/2024/02/05/world/middleeast/israel-netanyahu-americans-elections.html>]/Kankee

Prime Minister Benjamin **Netanyahu** of Israel **is on his last legs**, it is widely believed, **and will be forced to relinquish his post** once the war against Hamas in Gaza ends. **He is historically unpopular** in the opinion polls **and blamed for** the governmental and **security failures** that led to the Oct. 7 attack by Hamas, the killings of an estimated 1,200 Israelis **and the difficult war** that has followed. **He faces a long-running trial on a variety of corruption charges**. And **he** has **defied** President **Biden on American efforts** to create a postwar path to a **two-state solution**, with a demilitarized Palestine alongside Israel. While opposition to a Palestinian state is popular among Israelis, **defiance of Washington is considered risky**. But Mr. Netanyahu, 74, known everywhere as "Bibi," has been a remarkable dancer through the complicated choreography of Israeli politics, having survived many previous predictions of his downfall. And new elections in Israel are not legally required until late October 2026. "We'd all like to look past Bibi," said Anshel Pfeffer, an analyst with the left-leaning newspaper Haaretz. "But there is no way to force him to resign." So how might Mr. Netanyahu leave office before then? Here are the most likely paths, together with their pitfalls. Path 1: His Coalition Collapses **The simplest route to ousting Mr. Netanyahu is for his coalition to fall apart**. He rules with 64 seats in the 120-member Knesset, or Parliament. So **the defection of only five members would bring down the government, forcing elections within three months**. Mr. Netanyahu leads the Likud party, which won 32 seats in November 2022, the most of any party. But **to form a government he had to bring in five other parties, including two tiny far-right parties** led by Bezalel Smotrich and Itamar Ben-Gvir. Their combined 13 seats keep Mr. Netanyahu in power, while they act as a kind of far-right opposition within the government itself. Mr. Smotrich and Mr. Ben-Gvir are not part of the wartime security cabinet that also includes center-right opposition figures like Benny Gantz and Gadi Eisenkot, who agreed to join the government after Oct. 7, strengthening the coalition for now. And Mr. Smotrich and Mr. Ben-Gvir have been fierce in their opposition to any idea of a Palestinian state, while trying to promote Israeli civilians' resettlement of Gaza after the war. More painful for Mr. Netanyahu, they have opposed any hostage-for-prisoner deal that would be necessary for a long-term Israeli cease-fire in Gaza — like the one being negotiated right now. If Mr. Smotrich and Mr. Ben-Gvir were to leave the government, a strong possibility if Mr. Netanyahu should agree to a cease-fire deal, another opposition party led by Yair Lapid could step in temporarily to save the hostage deal, but not to prevent early elections. Or Mr. **Smotrich and Mr. Ben-Gvir might decide to abandon Mr. Netanyahu in order to force elections**, where they would run as leaders of the parties that would allow Israeli settlement to continue and block any effort to create an independent Palestine. Their goal in this scenario is to win many of Likud's right-wing voters disgusted with Mr. Netanyahu and his party for their failures on Oct. 7. Path 2: 'Constructive No Confidence' A second and more complicated path is a vote of "constructive no confidence." In principle, any member of Parliament who can get the support of a majority of its members can become prime minister. In the current Likud-led government, that challenge is most likely to come from a party member. Amnon Abramovich, a political analyst on Channel 12, an Israeli news outlet, and Mr. Pfeffer of Haaretz said that at least five Likud legislators would have to break with the current government and decide on a replacement for Mr. Netanyahu from within their party, then get a majority of the legislators to agree with their pick. The point of the mechanism is to pull down one government while installing another with minimal disruption. That would have the advantage of keeping Likud in power while staving off early elections.

AT: Drone Strikes DA

Mass drone strikes cause terrorism – it's a massive propaganda win if America indiscriminately kills the families of potential recruits via collateral murder

Ludvigsen 18 [Jan Andre Lee Ludvigsen, Senior Lecturer in International Relations and Politics with Sociology at Liverpool John Moores University, 2018, "The portrayal of drones in terrorist propaganda: a discourse analysis of Al Qaeda in the Arabian Peninsula's Inspire," *Dynamics of Asymmetric Conflict* <https://sci-hub.ru/https://www.tandfonline.com/doi/full/10.1080/17467586.2018.1428764>

DYNAMICS OF ASYMMETRIC CONFLICT 3 AQAP articulate their grievances and perceptions over the US drone campaign(s) in attempts to radicalize Western-based, English-speaking Muslims, the target audience of Inspire, radicalization is for the purpose of the discussion defined as: The process by which an individual or collective increasingly adheres to a selectively literalist interpretation of any identity narrative (e.g., ideology), a response to triggered and catalyzed by perceptions of crisis that may lead to legitimization of and engagement of violence against perceived others as a solution to those crisis. 18 Further, "home-grown" terrorism, for the purpose of the discussion, is terrorism perpetrated by "citizens and residents, born, raised and educated within the countries they attack". 19 In the study's next section, the drone campaign in Yemen and terrorist propaganda are contextualized. Following this, an account of the literature speaking to drone "blowback" is given. After this, the data collection from Inspire and used method, a discourse analysis, is explained. In the penultimate section, the study's results are presented and elaborated on with regards to existing literature. Finally, the findings are summed up and the implications these findings may have for the wider debate on drones' effectiveness are discussed. Literature Review Since 2010, number of drone strikes in Yemen has increased significantly. With the US "drone war" taking a geographical switch from the Federally Administered Tribal Areas (FATA) in Pakistan, where drones had targeted and successfully eliminated leaders of the Al Qaeda's Core (AQC) – towards Yemen. The number of confirmed drone strikes in Yemen is estimated to be in the region of between 156 and 176 (Figure 1). Drones have taken out key AQAP- leaders, including founder and previous Emir Nasir al-Wuhayshi, 20 propaganda-spokesman Anwar Al-Awlaki and Inspire-editor, Samir Khan. 21 In addition to drone-performed targeted killings eliminating AQAP's upper-echelon, 22 numerous signature strikes 23 have targeted low-level fighters and training camps. 24 A consequence of signature strikes, usually less surgical than targeted killings, is greater chances of civilian deaths. 25 This, however, is not to claim targeted killings do not cause collateral damage. In Yemen, estimates hold that drones have claimed around 68 civilian deaths since 2011. 26 This means that despite successes in eliminating high-profile leaders – civilian deaths cause distress and anger among local Yemenis, while the presence of drones 4 J. A. LEE LUDVIGSEN creating concerns over Yemeni sovereignty. 27 Potentially, Yemeni citizens' distrust of drones can cause "serious backlash". 28 However, collateral damage caused by drones does not merely cause distress and anger among local populations. For organizations like AQAP, also targeting Western audiences with propaganda efforts, civilian deaths and grievances over eliminated leaders provide opportunities for portraying drone strikes, and this method of warfare, in a way that attempts to justify the terrorists' ideology. 29 Essentially, it should not be neglected that AQAP may communicate grievances in their propaganda, caused by drones in other regions, such as Pakistan, Afghanistan or Somalia, targeting Al Qaeda affiliates. Nonetheless, it is assumable it is primarily the campaign in Yemen, AQAP, through Inspire, articulate "most" of their grievances over. This because the number of strikes in Yemen has increased remarkably since 2010, and since Inspire was first published, the summer 2010, the majority of US drone strikes have taken place in Yemen, in the JSOC and CIA-led campaign. 30 Jihadist Propaganda to a global audience Following the view deeming terrorists rational actors with coherent political goals and objectives, 31 it is to be assumed that terrorists have political grievances they express, that should not be merely disregarded. 32 In order to communicate their goals to the wider audience, terrorist groups have historically utilized the media in order to "(1) legitimate the movement, (2) propagate the group's message and (3) intimidate opponents". 33 Furthermore, facilitated by the rise of the Internet, terrorist organizations have been able to drift away from relying on television, radio and newspaper outlets for this. Terrorists constantly seek to catch up with technological developments, 34 also with their propaganda efforts, which to a greater degree can be aimed at a global audience, assisted by developments such as the Internet and social media. 35 The Internet provides clear advantages over "old" platforms such as television and radio, 36 and gives terrorist organizations direct control over their "strategic media messaging". 37 Moreover, it certainly eases the speed and reach of propaganda efforts. Consequently, terrorist organizations consider the media to be a "critical arena for jihad", 38 and according to former AQAP "cleric" Anwar al-Awlaki, the Internet constitutes "a great medium for spreading the call of Jihad and following the news of the mujahideen". 39 Drone (in)effectiveness and "blowback" The overall effectiveness of drones in counterterrorism remains contested. A growing body of literature deals with this issue, but a consensus is yet to emerge on to what extent this strategy is effective. Among the studies looking at this issue, Javier Jordan maintains that the drone campaign targeting AQC in FATA achieved its purpose. 40 Others note how the overall threat Al Qaeda posed after being targeted by drones, was significantly lower than before drones started eliminating their leaders. 41 Other studies, relying on quantitative data in order to answer the same question, have also forwarded arguments suggesting that drones, at least in the shorter-term are effective in preventing terrorism. 42 Further, leadership decapitation is found to reduce the overall effectiveness and increase the mortality rate of terrorist organizations, primarily because of the leaders' amplified importance in terrorist organizations. 43 On

the other hand, others find drones to have little significant impact on violent terrorist activity, 44 or whilst being effective in some regions, have restricted effect in others.⁴⁵ Jenna Jordan argues that decapitation strategies are, at best, ineffective, and counter-productive at worst,⁴⁶ whilst other commentators have emphasized the difficulties in reaching a consensus due to methodological obstacles.⁴⁷ Moreover, propaganda production has been used to determine a drone campaign's effectiveness. Ultimately, Al Qaeda has traditionally employed their propaganda machinery to legitimize their mission, undermine US objectives and goals, while intimidating the wider audience. ⁴⁸ Discourses in propaganda are regarded by terrorists as an instrument in the pursuit of objectives of broadening social support, delegitimizing opponents' arguments and bolstering recruitment. ⁴⁹ Crucially, propaganda production is now a highly central function of Al Qaeda, likewise to the ability to carry out attacks.⁵⁰ Therefore, a previous study hypothesized that drones are likely to degrade the organization's ability to generate propaganda.⁵¹ On the contrary, and of greater relevance to this article, some sustain that, if anything, **drones boost overall terrorist activity, including propaganda efforts and generation.**⁵² Additionally, it is often claimed that **terrorist organizations may experience an increase in recruitment post-drone strikes,** ⁵³ **or will engage in revenge attacks.** ⁵⁴ Hence, "blowback" is often used to describe those unintended consequences of drone warfare.⁵⁵ Consequences which have made some commentators question drones' overall effectiveness, despite successfully decapitating high-profile terrorists. As Hudson et al. write, **the increased number of strikes in Yemen is likely to cause distinct forms of blowback.**⁵⁶ To state the obvious; drones firing Hellfire-missiles, aimed at terrorist leaders or militants, also bear a considerable chance for civilian casualties. Since this study is concerned primarily with examining AQAP propaganda, the "blowback"-argument thus speak to those **grievances terrorists can communicate over dead civilians** – occasionally **children and women** – in addition to popular leaders, **perceived as heroes.** Usually, both **terrorists and civilians killed by drones are presented as martyrs.** ⁵⁷ Hence **drones provide terrorist organizations an opportunity of portraying the US's actions and behavior as unreasonable, unjust and cruel,** to the mass audience they seek to influence.⁵⁸ However, the audiences these drone-grievances are articulated to are not merely the populations in the region(s) in which an organization physically operates, since groups such as Al Qaeda now possess a global reach with propaganda efforts, which Inspire illustrates, being a magazine targeting Western Muslims.⁵⁹ Hence, drone-related propaganda is also directed at individuals who may find themselves in a radicalization or pre-radicalization process,⁶⁰ not necessarily located in the areas affected by drone strikes. Logically, through a negative portrayal of drones and the US's actions in their propaganda, not only may the terrorists' political stance be legitimized by the audience(s) – but **the perceived enemy, the USA, can be castigated, adding fuel to the fire.** This, of course, is an unintended consequence of drone warfare. Unsurprisingly, **drones provide terrorists the opportunity of communicating that the US seemingly not care about, nor significantly take into consideration civilians' welfare in the state where drones are deployed.** ⁶¹ As noted by Cronin, **drones allow for the framing of Americans as "immoral bullies," careless over the fact that drones may be a form of indiscriminate violence.** ⁶² Similar arguments are expressed by Igoe Walsh, noticing how **drones allow for portrayal of drones as "unfair exploitation of technology",** by a more powerful actor unwilling to risk its own soldiers.⁶³ In the only study systematically examining the relationship between drones and propaganda, as far as the author's knowledge, this is empirically found in Powers' quantitative analysis of Al Qaeda propaganda pre-drone strikes, compared to propaganda during the drone campaign. Here, Powers finds that Al Qaeda propaganda in the "drone era" contained more specific accusations of the US for being cowards, committing criminal acts and killing innocents indiscriminately. ⁶⁴ Thus, she argues drones have provided Al Qaeda of "newfound explanations" of the US. ⁶⁵ Further, it is known that **AQAP has used drones in propaganda videos, with accounts from militant survivors, where fighters are lionized and civilian deaths are condemned, with the aim of creating public anger.** ⁶⁶ Essentially, portraying **drones** this way through propaganda has led some commentators to argue it **contributes to bolstered recruitment into Al Qaeda.**⁶⁷ The logic behind this argument is that **individuals who may have lost a family or tribal member in a drone strike,** ⁶⁸ or are heavily influenced and angered by propaganda efforts, seek revenge and perceived justice for drone strikes, may physically travel to areas in which the organization operates, to **join a life of terrorism.** ⁶⁹ As Boyle writes, **drones in Yemen caused "hundreds, if not thousands" vengeful Yemeni tribesmen to join AQAP and other militant groups.** ⁷⁰ Furthermore, **anger over drones may lead individuals to provide indirect support to terrorists by financial donations.** ⁷¹ Yet, these arguments, perhaps the most known argument against drones, are notoriously hard to prove with concrete evidence and precise figures.⁷² In the case of AQAP however, there is little doubt membership figures are higher than in 2010, although it is impossible to estimate how many of these who joined solely because of drones. ⁷³ Available at: <https://www.state.gov/j/ct/rls/crt/2015/257523.htm>; Boyle, "The Costs and Consequences of Drone Warfare", 19. Although the population in a country affected by drone strikes may be more likely to – and of geographical reasons, can easier join a terrorist group or insurgency, there are suggestions that individuals outside the regions in which drones operate, have used drones as motivation for terrorism. This is oft-illustrated by the case of would-be Time Square car-bomber, Faisal Shahzad. Shahzad used anger over US drone strike to justify his attempted terrorist

attack in 2010. When pleading guilty, Shahzad stated: Well, the drone hits in Afghanistan and Iraq, they don't see children, they don't see anybody. They kill women, children, they kill everybody. It's a war, and in war, they kill people. They're killing all Muslims...⁷⁴ Furthermore, Shahzad outlined the drone killing of Pakistani-Taliban leader Baitullah Mehsud as one of the motives behind his planned attack in New York.⁷⁵ Hence, it is clear that anti-American sentiment and perceived injustice over drone warfare, to the extent of being open for carrying out an attack exist, also outside regions affected by drones. Herein, possible retaliation or radicalization caused by drone distress should not merely be seen as a possibility in countries like Yemen, Afghanistan or Pakistan, as the example of Shahzad, an American citizen, proves.

Drones fail – terrorists win hearts and minds, allowing them to easily recoup losses.

Only winning the ideological battle with local communities can beat terrorism

Zimmerman 23 [Katherine Zimmerman, fellow at the American Enterprise Institute with a BA in political science and modern Middle East studies from Yale University, 05-06-2023, "Managing the Terrorism Threat with Drones", Critical Threats, <https://www.criticalthreats.org/analysis/managing-the-terrorism-threat-with-drones/>]/Kankee

Certainly, drone strikes and counterterrorism raids will continue to deliver measurable tactical successes by killing or capturing the individuals behind terrorist threats. Their ability to achieve broader operational effects by weakening terrorist groups over the short- and medium-term is well documented.⁷⁰ And, at times, they are the only viable option to address an imminent attack. Moreover, the mere threat of drone strikes imposes costs on terrorist groups. Al Qaeda, which has relied on a popular base of support in multiple theaters to operate, recognized a reduction in such support in areas where drone strikes were frequent as civilians weigh the cost that they might be caught in such a strike.⁷¹ Al Qaeda leaders noted in 2010 that drones affected their own security; they had to reduce movement, stop operations, and increase resources toward counterespionage.⁷² As Osama bin Laden wrote on security, "[t]here is no room for mistakes."⁷³ The Islamic State's late leader Abu Bakr al Baghdadi was reported to have conducted high-level meetings in minibuses transporting vegetables to avoid having his location revealed, such was the extent of how drones shifted operating behavior.⁷⁴ Unfortunately, **the threat of death has proven insufficient as a deterrent** measure against al Qaeda, the Islamic State, or any other likeminded group.⁷⁵ Even the U.S. military dropping its most powerful nonnuclear bomb—a 20,000-pound "mother of all bombs" (MOAB)—on a well-fortified tunnel complex **did not stop the Islamic State's** threat or eventual growth in Afghanistan.⁷⁶ **Adherents to the ideology behind** al Qaeda, the Islamic State, and other such groups **perceive themselves to be one fighter in a long line fighting for Islam.**⁷⁷ **Drone strikes**, like other counterterrorism tools used to target terrorists, keep emergent and imminent threats at bay, but **have yet to deliver lasting effects.** Like the current counterterrorism approach, which is focused on achieving military successes against terrorist groups, **the impact of drone strikes will only be temporary without an effort to eliminate terrorist groups' ability to reconstitute.** Whether the United States will be even able to sustain a tempo of **targeted strikes** against al Qaeda and the Islamic State **to keep sufficient pressure on the groups is unclear.** Already, **the intelligence community's counterterrorism resources have decreased while the scope and range of threats**—from Salafi-jihadi networks to burgeoning racially and ethnically motivated violent extremist transnational networks⁷⁸—**have increased demands** on those resources.⁷⁹ Moreover, the U.S. military's light footprint in many theaters reduces the "type, quantity, and quality of intelligence collected," intelligence that is critical for effective drone targeting and reducing the risk of civilian casualties.⁸⁰ The U.S. military has sought to strengthen intelligence networks to fill gaps in Afghanistan, though some intelligence officials still question whether it has been enough.⁸¹ Indeed, even in theaters with a small U.S. presence, **intelligence gaps exist and U.S. capabilities are reduced.**⁸² After the U.S. military withdrew from Somalia, U.S. troops spent much of their time on the logistics of their so-called "commute[] to work" and, while operating in country, mostly maintained security around the base.⁸³ A gap in targeting occurred after their departure: the last U.S. airstrikes targeting al Shabaab—not in support of Somali partner forces—occurred on January 19, 2021, days after the U.S. military left and the next such strike occurred on October 1, 2022.⁸⁴ About 450 U.S. troops redeployed to Somalia in May 2022, and since then, the tempo of strikes overall picked up.⁸⁵ The Somalia case study presents compelling evidence that a lack of deployed forces on the ground significantly decreases the ability to target terrorists with drone strikes. Worse, the current counterterrorism approach rests on subcontracting or outsourcing—depending on the theater—the ground fight against terrorist groups to local partner forces. Certainly, recapturing terrain and **degrading terrorist or insurgent networks' capabilities are crucial to success, but such efforts do not strike at the groups' core strength—its relationship with local communities.**⁸⁶ These carefully cultivated **connections**, some of which formed through coercive measures, **enable terrorist groups to recover from military losses because they become points for reentry.**⁸⁷ Instead of examining the underlying assumptions to the U.S. approach to countering these groups, the United States has simply shifted the burden of combating the local group onto others. U.S. troops now provide training, advising, and assistance to partner forces to win militarily in a struggle that is about more than just combat power.⁸⁸ **This approach will weaken terrorist groups but will not defeat them, leaving unaddressed the very conditions that enabled them to strengthen initially.** These same foundations proved inadequate elsewhere, including Somalia and Yemen, where local forces have had to retake the same territory from al Shabaab and al Qaeda in the Arabian Peninsula respectively over the years. Even assuming such an outcome is acceptable, local partners are often unable or unwilling to act without assistance. Many cannot bring the same capabilities as the U.S. military to bear against al Qaeda and the Islamic State, creating a higher

margin of error. Few militaries in the world have access to the types of intelligence collection and analysis tools, the degree of tactical and operational competency throughout the force, and the weapons and munitions to replicate what U.S. forces can do on the battlefield. Additionally, local partners often accept higher risks of civilian casualties or infrastructure damage than the U.S. military would.⁸⁹ They are also more prone to committing human rights abuses than U.S. forces, and the population may perceive them as enforcing the will of a predatory state.⁹⁰ All of these actions have the potential to strengthen, rather than weaken, the local insurgencies that give life to al Qaeda and the Islamic State. Finally, local politics can divert partner forces from counterterrorism missions, creating security vacuums for al Qaeda and the Islamic State to fill.⁹¹ Challenges to this partner-centric approach are already surfacing. Al Qaeda and the Islamic State have expanding terrorist sanctuaries across the African continent, in Afghanistan, and elsewhere, which create spaces for them to plan and develop transnational attacks.⁹² Nearly all these sanctuaries are on dangerous trajectories. Local jihadi groups do not always stay local, and the U.S. intelligence community has missed local group's decisions to pursue global jihad previously.⁹³ Moreover, the global pivot away from counterterrorism activities means fewer resources, including intelligence, to identify new threats across growing geographic and digital spaces. While drone strikes can disrupt terrorist activity, that activity must first be identified and then precisely located, tasks made more difficult when the intelligence picture is less clear. Arguments over the effectiveness of drone strikes in counterterrorism miss that they support tactics used to implement a strategic approach that is, in and of itself, not effective over the long term. Essentially, the United States has focused on the threats that al Qaeda and the Islamic State pose to Americans worldwide and relied heavily on counterterrorism actions to disrupt plots and degrade their support networks.⁹⁴ It has then sought to defeat al Qaeda and the Islamic State militarily, whether directly or through its counterterrorism partners. Related U.S. foreign assistance programming has sought to strengthen partners' counterterrorism capabilities and security infrastructure or targets specific radicalization pathways.⁹⁵ This enemy-centric approach has succeeded at weakening the Islamic State, though it took a major military intervention, but has not actually defeated the group in Iraq and Syria.⁹⁶ In fact, the United States has had to increase operations against the group in Syria in recent months and the group still seeks to conduct transnational terrorist attacks.⁹⁷ While the current approach may appear sustainable and desirable, it merely manages the problem. Way Ahead Today's counterterrorism approach will not deliver the decisive victory against groups like al Qaeda or the Islamic State that has eluded the United States for decades. Instead, to reduce costs, it compromises on U.S. objectives by shifting them from defeating terrorist groups to managing the terrorism threat.⁹⁸ The result is a "partner-led, U.S.-enabled" strategy reliant on others and augmented with U.S. direct action operations, primarily drone strikes, to target the most dangerous terrorism elements.⁹⁹ While the approach appears viable—drones' short-term efficiency masquerades for long-term effectiveness—its illusion of sustainability disappears over a longer time horizon as resources spent bolstering local security forces do not lead to success on the battlefield. How the requirement to combat al Qaeda and the Islamic State ends, given the inadequacy of today's approach in preventing their geographic growth, remains unanswered. The United States must reframe its fight against al Qaeda and the Islamic State to focus on how they generate strength. The strategy must go beyond counterterrorism and lean heavily into longer-term solutions to the local problems that allow such extremists to expand.¹⁰⁰ Taking back terrain and targeting terrorists would be a component of such a strategy, not the main effort. Investing in foreign assistance programs to compete with the pragmatic offerings al Qaeda and the Islamic State employ to gain entry into various communities—security provision and dispute resolution as examples—in complex and fragile environments will yield better future dividends for the United States.¹⁰¹ In this strategy, drones should play a supporting, not lead role. It is time for the United States to stop managing al Qaeda's and the Islamic State's threat and start ending it.

Drones are allowed under IHL – this is the rest of the neg Alberstadt card.

Alberstadt 14 [Rachel Alberstadt, Analyst at United States Department of Defense and Civil Servant at U.S. Africa Command, 2014, “Drones under International Law” Open Journal of Political Science, <https://www.scirp.org/journal/paperinformation?paperid=50570>]/Kankee

In addition to the general prohibition on the use of force, there exist established rules which govern warfare in the event of conflict. For example, under customary laws, indiscriminate weapons are prohibited, an issue that affects the implementation of drones rather than the weapon itself (Military Commander, 2012). Applicable rules which govern conflict activities are international humanitarian laws codified in the 1946 Geneva Conventions, the 1907 Hague Conventions, the 1977 Additional Protocols, and interlinked to the three aforementioned, customary international law (Cryer, Friman, Robinsin, & Wilmshurst, 2007).

Legal regulations allowing use of drones appear fairly straightforward – if in compliance with international laws regulating force, deployment of drones is allowed. Otherwise, the legal uncertainty follows from case law where few courts have expressly or consistently issued judgments on drones, for instance in relation to targeted killing. If employed as a weapon (as opposed to surveillance or intelligence usages) the legality of the use of drones largely predicates on targeting restrictions. Overall, the dichotomy between combatant and non-combatant or civilian status, and collateral damage in relation to proportionality exemplify several IHL restrictions which inform the lawfulness of targeting (Cryer, Friman, Robinsin, & Wilmshurst, 2007). In addition, restrictions on launching missiles extend from civilian protection of humans to protection of civilian objects as well, such as churches or cultural buildings (Kalshoven & Zegveld, 2011). As a fundamental rule, IHL prohibits targeting civilians and non-combatants (Cryer, Friman, Robinsin, & Wilmshurst, 2007) found in both Additional Protocol I (AP I) and the fourth Geneva Convention of 1949 (Kalshoven & Zegveld, 2011). Importantly, IHL prohibits indiscriminate attacks (Vogel, 2011) as well as attacks which directly target civilians or civilian objects (Gill & Fleck, 2010; Kalshoven & Zegveld, 2011; Military Commander, 2012). IHL holds restrictions upon warfare, wherein it essentially seeks to prevent unnecessary harm or otherwise, any actions deemed beneath human dignity. Indeed, specific rules pertaining to aerial warfare, found in the guidelines of the Hague Rules on Aerial Warfare, uphold these principles in which this convention expressly prohibits aerial bombings of targets other than military objectives (Hague Rules, 1923). However, as IHL developed in attempt to regulate warfare, acknowledgement that casualties and other harm remains as a predictable consequence. As such, “destruction and death will occur even in lawfully conducted conflict” (Cryer, Friman, Robinsin, & Wilmshurst, 2007). While these regulations exist, they have not necessarily been expanded upon by international legal forums. In particular, the use of drones to date has not been litigated upon by international courts. As such, these next two sections will evaluate existing jurisprudence before the International Court of Justice (ICJ) and the International Tribunal for the former Yugoslavia (ICTY) which address and engage with IHL before international courts and thus provide useful guidance for lawful use of drones. The ICJ section will set out general prohibitions that could relate to the function and usage of drones. The ICTY section will evaluate the ICTY report by the Committee to review the aerial strikes used by the North Atlantic Treaty Organization (NATO) within the former Federal Republic of Yugoslavia from March until June 1999.

3.1. International Legal Jurisprudence on IHL—The ICJ and Indiscriminate Weapons As mentioned before, the activities of warfare are not without limitations. Weaponry is not unlimited, tactics are restricted, and altogether there are principles which constrain the behaviour of belligerents involved—these limitations are fulfilled by the pivotal role of IHL. However, as modes of warfare change and evolve, regimes governing the means and methods of warfare must also adapt to afford safeguards and protections to those involved as well as those affected by the conflict. The ICJ discussed these safeguards regarding humanitarian principles, where it upheld in the Nuclear Weapons Advisory Opinion that weaponry available for use by the parties is not unlimited. The Court cited the principle of distinction as a cardinal rule of IHL (Gill & Fleck, 2010). For instance, attacks which cannot discern from lawful and unlawful targets (meaning military and civilian objects respectively), are prohibited (Cryer, Friman, Robinsin, & Wilmshurst, 2007). This demonstrates a key principle that weapon deployment in conflict must be intended for legitimate combat purposes, meaning actions pursued must be pursuant to achieving military purposes. In addition, in the Nuclear Weapons Advisory Opinion the Court contended that “States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets” (Nuclear Weapons Advisory Opinion, 1996). In relation to this topic regarding drones in warfare, it is contended that while drones provide improved accuracy capabilities, like every weapon, they fundamentally aim to harm. As such, while they do not fall under inherently indiscriminate weapons (Nuclear Weapons Advisory Opinion, 1996) they could nonetheless be used indiscriminately and as such could incur culpability for breaches of IHL regulations. In light of the fact that drones are often employed in areas that are complicated by difficult flying conditions and or otherwise considered dangerous or risky situations, using drones may aid the precision of the mission’s objective. However, if its mission is for armed sorties, then this aim would not be without risk of harming, either indirectly or incidentally, civilians. Indeed, in her dissenting opinion, Judge Higgins discusses this dilemma and does argue that if executing a legitimate target would cause additional harm, this act would not be prohibited (Higgins Dissent, 1996). Overall, the legality of the strikes would predicate on the respect of proportionality and the weight of the anticipated harm against the anticipated military advantage;

incidental harm is lawful only if it is not excessive in nature (Higgins Dissent, 1996; Gill & Fleck, 2010; Kalshoven & Zegveld, 2011; Cryer, Friman, Robinsin, & Wilmshurst, 2007). This balancing of objectives leads into foreseeability and intent issues, which will be addressed in the next chapter. 3.2. International Legal Jurisprudence on IHL—The ICTY and Aerial Bombardments In addition to the ICJ, the ICTY has also expanded upon principles of the laws of armed conflict but does so from within the scope international criminal law. This paper will use the report issued to the prosecutor addressing NATO aerial bombardments in Kosovo as an analogous example to the use of drones in international warfare. From 24 March until 9 June 1999 NATO conducted aerial sorties over the Yugoslavian territory. These strikes were subsequently criticized for excessive casualty results, the majority of which were civilians, which Amnesty International, amongst others, alleged resulted in breaches of IHL (Final Report, 2000). Amnesty International released a report to the tribunal to explain and defend its reasoning that NATO committed war crimes in its aerial bombardment campaign. It argued that in NATO's 38,000 combat sorties and 10, 848 strike sorties, roughly 400 to 600 civilians were killed (Amnesty International, 2000). It concluded by stating it believed "civilian deaths could have been significantly reduced if NATO had fully adhered to the laws of war. NATO did not always meet its legal obligations in selecting targets and in choosing means and methods of attack" (Amnesty International, 2000). While Amnesty International contended that casualties are realities of war, they rightfully argued that direct attacks on civilian objects and excessive civilian harm due to failure to take precautionary measures constitute war crimes. One example which Amnesty International discussed was NATO's alleged failure to distinguish its targets from civilian to military objectives, resulting in indiscriminate aerial bombing. A partial reason for this indiscriminate use of aerial bombing was the change in altitude to avoid risking the pilot (Amnesty International, 2000) leaving the onus of risk on the civilians below as flying at higher altitudes lessens visual clarity. Failure to give efficient warnings, failure to suspend or alter attacks after ground circumstances changed, and failure to distinguish between military and civilian targets embody three key characteristics the report contended embodied war crimes (Amnesty International, 2000). Interestingly, Amnesty found that only a third of the weapons used by NATO's aerial bombing campaign were precision-guided munitions, and of those 33% of munitions, only 70% effectively reached their desired target (Amnesty International, 2000). While the investigations by the ICTY committee ultimately did not find that NATO committed war crimes, it did provide useful elaboration on circumstance where aerial bombardments could constitute war crimes (Final Report, 2000). The committee re-iterated the premise that indiscriminate attacks are fundamentally unlawful but also elaborated on the negative impact of aerial bombardments, for example, on the natural environment (Final Report, 2000). It also assessed how sufficient use of precautionary measures (such as target verification, a matter discussed in chapter IV) demonstrates lack of intent or objective purpose to cause harm, either with negligence or recklessness (Final Report, 2000). This provides a comparison with that of drones, which possess improved capabilities since the late 1990s, and consequently could aid in greater precision mechanisms. For instance, a key reason NATO pilots flew higher, potentially decreasing targeting efficiency, was due to danger of being targeted themselves from ground forces and so on—with drones, this risk substantially decreases, especially as the pilot's life is not in immediate danger in the mission. As such, the ICTY committee did find that NATO was obligated to take precautionary measures in distinguishing targets, but the committee did not find that NATO aerial bombardments failed this obligation simply due to flying higher as other technology was used to verify that which could not be done with the naked eye (Final Report, 2000). However, despite technological improvements with drone capabilities, it nonetheless remains for the pilot and commander to effectively issue judgements in determining lawful conditions for executing missile launch (Final Report, 2000). Thus, a key qualification for war crimes resulting from breaches of IHL rests upon either intent or recklessness in causing harm, which was elaborated upon in the ICTY report (Final Report, 2000). 3.3. General State Practice and Drones in Compliance with IHL While it is doubtful to think drones were invented with a humanitarian consciousness over say, military advantage, they do provide States with improved capabilities for targeting discrimination (Lewis, 2012)². The factual qualities of drones described earlier, their accuracy (both in context and in targeting) provide improved mechanisms for compliance with IHL (Schmitt, 2011; Lewis, 2012). The evolution of weaponry development, such as the emergence of drones, could provide States with improved methods for IHL compliance. For example, drones have specialized, focused targeting mechanisms, which sufficiently meets the "capable of discriminate attacks" criteria (Schmitt, 2011). However, that is not to say that States fulfil their IHL obligations and use drones purely within lawful activities, but drone actions resulting in violations of IHL are more often deliberate actions which will be discussed in the following section. Prohibitions governing indiscriminate attacks do not, however, mean that any attacks which cause harm to civilians are forbidden, but rather indiscriminate attacks which fail to distinguish between combatants and civilians would be disallowed (Gill & Fleck, 2010). This distinction theoretically could be complied with and still result in incidental, but legal harm to civilians if the attack was not carried out directly against the civilians but the harm occurred incidentally under proportionality and necessity criteria (Gill & Fleck, 2010). This again demonstrates the potential effectiveness of utilizing drone technology whereby the accuracy in targeting combined with the play-by-play data sent to the pilot allows for firing the missiles only when the "window of opportunity" meets IHL criteria. Also helpful is to demonstrate that those who use drones (for this paper, this strictly pertains to a State's apparatus) as in those responsible for flying them and firing the weaponry from remote locations, receive training and are informed of IHL laws—something that the media and academia either disregards or perpetuates ignorance of. This is partly due to the secrecy or transparency deficit with State defensive units, intelligence, military capabilities, and general extra-territorial defensive operations fall under the continued dogmatic "shield" of State sovereignty (Schmitt, 2011). What attention is brought to the issue falls more often under unfortunate failures or mistakes than of a balanced perspective of successes—this again relates to the lack of transparency, where defensive departments are reluctant to share information regarding their operations, leaving them open to criticism by the international community. IHL is addressed to States, requiring the belligerent parties involved to inform and enforce (and if need be, to punish) compliance with established rules of war.

However, war crimes are perpetrated by individuals, whether under criminal liability as an accessory to the crime, as a commander, or as a primary perpetrator. Legally, pilots of drones, whether via civilian intelligence or contractors, are considered to have unprivileged participant status for the duration of their targeted drone killing activities (Lewis, 2012; Alston, 2010; Vogel, 2011). This is significant as it makes them lawful targets for the temporal scope of their participation (Alston, 2010). 4. Drones, Jus in Bello, and War Crimes under ICL

Alberstadt concludes drones are legal under IHL

Alberstadt 14 [Rachel Alberstadt, Analyst at United States Department of Defense and Civil Servant at U.S. Africa Command, 2014, “Drones under International Law” Open Journal of Political Science, <https://www.scirp.org/journal/paperinformation?paperid=50570>]/Kankee

5. Conclusion This paper has argued that while drones are not without issues, and indeed their use could result in commission of international criminal offenses; they fit within compatible existing legal frameworks such as IHL and customary law. Essentially, it is not whether or not there are laws sufficient to govern the facilitation of drone use but whether these existing laws are compliantly followed (Vogel, 2011). While acknowledging flaws with drone use, this paper has in part sought to illuminate common areas of misconception with academics and legal scholars on the legality of drone use. While this paper has argued that drones do not represent an ungoverned phenomenon of weaponry, it will contend that use of drones by non-State actors, such as armed groups, does continue to pose a present concern. Ultimately, if the target is lawful, the weaponry platform used to deliver the attack is irrelevant (that is, unless the weapon itself is not prohibited under IHL). Just as an outbreak of war fails to result in a legal vacuum, so too does the development of new weaponry fail to result in a legal void.

AT: Consult ICJ CP

Soft, non-binding approaches are perceived as the US hypocritically circumventing international and causes fears of flipflopping. Hard commitments are key in light of past revoked soft commitments and current political opposition

Depetris 24 [Daniel R. Depetris, Fellow at Defense Priorities, 5-23-2024, "The U.S. and the ICC Have a Love-Hate Relationship", Newsweek, <https://www.newsweek.com/us-icc-have-love-hate-relationship-opinion-1903717/>]/Kankee

The reactions on and off Capitol Hill were swift. House Speaker Mike Johnson announced that the House was prepared to vote on sanctions targeting the ICC for in effect suggesting Netanyahu and Israeli Defense Minister Yoav Gallant were possible war criminals who needed to be at the Hague. President Joe Biden, in a terse statement, bluntly called the ICC prosecutor's decision "outrageous." Testifying in front of a Senate Appropriations subcommittee this week, Secretary of State Antony Blinken even stated that the administration would "welcome" working with Congress on sanctions against the ICC. Whether or not Khan's decision to charge Netanyahu is merited (international jurists and experts on human rights law will come to their own respective conclusions on the merits), there's no question that it has once again exposed the decades-long fault line between the ICC and the United States. The relationship between the two has been rocky ever since the ICC was created by the 1998 Rome Statute, which Washington had a significant role in drafting. It didn't take long before the U.S. pointed out the treaty's deficiencies. After signing, former President Bill Clinton wrote that "we are concerned that when the Court comes into existence, it will not only exercise authority over personnel of states that have ratified the Treaty, but also claim jurisdiction over personnel of states that have not." Clinton's successor, George W. Bush, despised the ICC even more than Clinton did. In 2002, Bush in essence removed Washington's signature from the Rome Statute, declaring that from now on, no decision by the ICC would be binding on the United States. While the Bush administration had an aversion to multilateral organizations in general, its opposition to the ICC was based on a fear that the international prosecutor's working for the court would start prosecuting U.S. troops fighting overseas. Those concerns turned out to be prescient; in 2017, the ICC chief prosecutor requested the Court authorize an investigation against U.S. military personnel in Afghanistan, which the ICC green-lit in 2020 (the U.S. was dropped a year later as a main subject of the inquiry). Former President Donald Trump took an even harder line on the ICC than Bush did. The Trump administration reiterated early on that the U.S. would not cooperate with the court in any capacity. In 2018, during his address to the U.N. General Assembly, Trump said that, "As far as America is concerned, the ICC has no jurisdiction, no legitimacy, and no authority." The relationship got worse from that point on. In 2019, then-Secretary of State Mike Pompeo let it be known that the U.S. was revoking or denying the visas of any ICC prosecutor investigating U.S. troops in Afghanistan. In June 2020, Trump signed an executive order permitting the freezing of assets and visa bans on any ICC official who was involved in any effort to investigate U.S. personnel or personnel of a U.S. ally (Biden would lift sanctions on ICC officials during the first months of his presidency). Yet at times, the U.S. has cooperated with the ICC when it concluded that doing so was in its own interest. In 2005, the Bush administration supported a U.N. Security Council Resolution that allowed the ICC to launch an investigation against Sudanese government officials for war crimes and crimes against humanity in Darfur (Sudanese dictator Omar al-Bashir was indicted in 2009 and 2010). In 2011, the U.S. did the same thing, this time supporting the referral of Libyan officials to the ICC. And in 2023, the Biden administration ordered the U.S. to hand over evidence to the ICC to buttress its case on Russian war crimes in Ukraine; Russian President Vladimir Putin, of course, is now wanted for the crime of unlawful deportation of a population from occupied areas of Ukraine to Russia. This murky, topsy-turvy history, combined with the ICC's war crimes inquiry against Israeli conduct in Gaza, puts the Biden administration in a very uncomfortable position. On the one hand, Biden's senior advisers are threatening the court with legislatively-induced sanctions. Yet on the other, those same advisers are on record supporting the court's work at its pertains to unearthing Russian atrocities in Ukraine. The same day Blinken was in front of Congress flirting about possible sanctions, his colleague, Defense Secretary Lloyd Austin, was at the Pentagon telling reporters that the U.S. will "continue to provide support to the ICC" on the Russia investigation. To the vast majority of the world, this stance looks like blatant hypocrisy. For those in Africa, Latin America, the Middle East, and swaths of Asia who are already disposed toward viewing U.S. foreign policy as shamelessly self-serving, Washington's position on the ICC will only confirm their suspicions. The U.S. is thus far unapologetic about its strategy. But as time goes on, U.S. officials will find it more difficult to make their case and not get laughed out of the room.

AT: Illegal/Unconstitutional

The Rome Statute is constitutional. Independently, even if they win its not, durable fiat means a new constitutional amendment passes to make the aff constitutional, which solves their offense

Harris 00 [Terri J. Harris, J.D. candidate at the Washington College of Law, 2000, "A Global Court? U.S. Objections to the International Criminal Court and Obstacles to Ratification," Human Rights Brief, <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1472&context=hrbrief/>]/Kankee

Constitutionality of the Rome Statute The Rome Statute does not deny U.S. citizens their rights under the U.S. Constitution. According to Yale Law School Professor Ruth Wedgwood's extensive study, there "is no forbidding constitutional obstacle to U.S. participation in the treaty." Wedgwood cites five reasons for this conclusion, three of which will be addressed here. First, historically the United States has signed treaties allowing U.S. participation in international tribunals that could affect the lives and property of U.S. citizens. For example, the North American Free Trade Agreement and the World Trade Organization subject U.S. businesses to judicial processes that do not mirror those found in an American courtroom, i.e., fact-finding by a panel of judges rather than by a jury. Second, the ICC does not offend U.S. constitutional notions of due process because the Rome Statute, as carefully negotiated by Scheffer and his team at the Rome Conference, comports with the procedural protections and safeguards provided to U.S. citizens under the U.S. Constitution. Wedgwood and Monroe Leigh, a member of the American Bar Association, have compiled lists citing articles of the Rome Statute that both address and guarantee due process rights. Their lists include, inter alia, the right of the suspect: to have timely notice of charges filed against him (Article 60(1)); to a presumption of innocence (Articles 66(1), (2)); to the privilege against self-incrimination (Articles 55(1)(a), (1)(b), 67(1)(g)); to the assistance of counsel (Articles 55(2)(c), 67(1)(b), (1)(d)); to a speedy trial (Article 67(1)(c)); to cross-examine adverse witnesses (Article 67(1)(e)); to innocence unless the prosecutor has proved guilt "beyond reasonable doubt" (Article 66(3)); and to be present at the trial (Article 63). Third, the crimes within the ICC's jurisdiction under which a U.S. citizen could be indicted are generally those that would ordinarily be administered through the U.S. military courtmartial system or through extradition of the U.S. suspect to the foreign nation where the criminal violation occurred. Specifically in response to H.R. 4654, on July 25, 2000, Leigh submitted a statement to the House Committee on International Relations in which he asserted the constitutionality of any potential criminal proceedings by the ICC against a U.S. citizen. Leigh's statement emphasizes that members of the U.S. armed forces are precluded the right to jury trials under the Fifth Amendment of the Constitution, which states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger." Moreover, the language of the Sixth Amendment, which concerns criminal trials, extends the guarantee of a jury trial only to the state and district where the crime was committed: "In all criminal proceedings, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed. . . ." Therefore, a person who commits a crime in a foreign country risks extradition to that foreign country and, accordingly, has no constitutional guarantee of a jury trial. In arguing that the Rome Statute does not offend U.S. constitutional notions of due process, Wedgwood cites three commutation from the Jamaican Privy Council violated their right to apply for amnesty, pardon, or commutation of their sentence under Article 4(6) of the American Convention. The Jamaican Privy Council may pardon or commute a death sentence under Articles 90 and 91 of the Constitution of Jamaica, but prisoners have no procedural guarantees. Decision: On April 13, 2000, the Commission ruled Jamaica had violated Articles 4(1), 5(1), 5(2), 8(1), and 4(6) of the Con vention by disallowing the petitioners to present mitigating evidence at an individualized sentencing hearing before imposing the death penalty. The Commission found the Jamaican Privy Council's power to grant a pardon or commute a death sentence does not serve as a form of judicial review because under Jamaican law the petitioners have no effective right to apply for this form of discretionary relief. The Commission recommended the State commute the death sentences and offer the petitioners compensation. Additionally, the Commission recommended Jamaica adopt domestic legislation requiring the death penalty be imposed only in accordance

with the American Convention and pass legislation allowing criminal defendants to apply for amnesty, pardon, or commutation of the death penalty. The “Second Report on the Situation of Human Rights in Peru”

AT: White Nationalist DA

Stephen Miller's return to the White House makes white nationalism is inevitable

Houghtaling 24 [Ellie Quinlan Houghtaling, Brooklyn-based labor reporter and Toni Stabile fellow for investigative reporting at Columbia Journalism School, 11-11-2024, "Trump Brings Back White Nationalist Stephen Miller for Second Term." Yahoo! News, www.yahoo.com/news/trump-hands-over-immense-power-171844460.html]/Kanke

A former Trump staffer and renowned nativist is about to make a comeback at the top of Donald Trump's policy machine. In the coming days, Trump is expected to announce the appointment of Stephen Miller to serve as White House deputy chief of staff for policy, reported CNN. Miller previously served as the senior adviser for policy and White House director of speechwriting under Trump's first term, and his appointment comes as little surprise: The 39-year-old was expected—since at least the beginning of the year—to reenter the West Wing as the leading expert on "America First" immigration policy. The far-right politico has made a name for himself for his vicious anti-immigrant policies, which include proposals to build mass deportation camps and deploy the military and the national guard to seal the border, promising a forthcoming reality of "large-scale raids" and "throughput facilities." He's long been seen as one of the most apparent and rigid ties between Trump and the white nationalist agenda. Miller, a mentee of Trump's former chief strategist Steve Bannon, has had a profound impact on the president-elect's language and policy on immigration, despite entering Trump world with little policy or legal expertise. He was the architect of Trump's first Muslim travel ban and has been a vocal proponent of family separation at the U.S. border, as well as limiting citizenship for legal immigrants. During his time in Trump's first term, leaked emails revealed that he promoted white nationalist articles and books, especially on the idea that non-white people are replacing white people. His rhetoric has been roundly condemned—including by his uncle, Dr. David S. Glosser, who in a scathing 2018 piece for Politico Magazine condemned his far-right relative as a hypocrite for drafting policy that would have prevented their own family from seeking refuge on America's shores in the twentieth century. "No matter what opinion is held about immigration, any government that specifically enacts law or policy on that basis must be recognized as a threat to all of us," Glosser wrote. "Laws bereft of justice are the gateway to tyranny. Today others may be the target, but tomorrow it might just as easily be you or me." Miller has also been on the front lines of other components of Trump's agenda, including attacks on LGBTQ rights and abortion access. In May, Miller (under the helm of America First Legal) joined a legal effort by Texas Attorney General Ken Paxton and several professors at the University of Texas at Austin that aimed to dismantle Title IX, arguing that the federal civil rights law—which protects against sexual or gender-based discrimination in education—violated the state's "sovereign interest." According to a legal filing, that included limiting schools' abilities to punish students who take time off to get an abortion, even if that abortion was performed out of state. Miller sided with the professors that the school should be allowed to punish students who take time off to get an abortion, even if that abortion is performed out of state, while weirdly diminishing Title IX as a pronoun-fueled bathroom battle that would "force girls in every public school in America to share restrooms, locker rooms, and private facilities with men."

AT: Consult NATO CP

Trump thumps NATO consultation – the organization will be destroyed

Pifer 24 [Steven Pifer nonresident senior fellow in the Arms Control and Non-Proliferation Initiative, Strobe Talbott Center for Security, Strategy, and Technology, and the Center on the United States and Europe at the Brookings Institution, as well as an affiliate of the Center for International Security and Cooperation (CISAC) at Stanford University, 6-25-2024, "Could NATO survive a second Trump administration?", Brookings, <https://www.brookings.edu/articles/could-nato-survive-a-second-trump-administration/>]/Kankee

Policy and players in a second Trump administration Things would almost certainly play out differently in a second term in which Trump's instinctive skepticism about NATO, affinity for Putin, and disdain for Ukraine would take charge. His campaign website says the United States should "finish the process we began under my Administration of fundamentally reevaluating NATO's purpose and NATO's mission." That is oddly timed when Moscow has launched the bloodiest war in Europe since World War II, and NATO is as important as ever for deterring and containing Russia. Plans have been developed to translate Trump's views into policy. The Heritage Foundation's Project 2025 section on Europe offers three **visions** for dealing with Russia¹, two of which would **appear to lessen the U.S. commitment to NATO**, and leaves it to the president to decide. Trump almost certainly would choose one of those two. A **briefing paper** that reportedly got attention in Trump's inner circle **argued** that **the United States should adopt a "dormant NATO" policy**. That would mean shifting the primary defense burden to European allies while America served as an offshore "balancer of last resort." **That diminution of the U.S. role in NATO appears to mesh well with Trump's thinking**. Lists are being prepared of potential **officials to implement those policies**. The lists will not **include** the likes of Kelly, McMaster, and Mattis, but people such as Richard Grenell and Elbridge Colby. Grenell, who served as Trump's ambassador to Germany, has been described as **transactional and isolationist**; in 2020, he pushed for a drawdown of U.S. troops in Germany because the Germans had not met the 2% defense spending target, a target that NATO had agreed should be met by 2024 (and which Germany hit this year). **Colby argues for a China-first policy that would leave little room for the U.S. commitment to NATO**. Moreover, today's Republican Party is no longer the party of Ronald Reagan and John McCain. While some Republican senators and members of Congress support a strong U.S. presence in NATO, **few have shown any readiness to challenge Trump, who has firmly locked down his position as GOP leader**. In fact, quite the opposite. Senate Minority Leader Mitch McConnell, who has consistently supported NATO and Ukraine, recently penned an op-ed entitled "We Cannot Repeat the Mistakes of the 1930s." However, he has endorsed Trump, whose America First views echo precisely those mistakes. In any case, McConnell will step down from his leadership position in November. **Bolton has flatly predicted: "In a second Trump term, we'd almost certainly withdraw from NATO."** The 2024 **National Defense Authorization Act** includes a **provision** requiring two-thirds Senate approval for a decision to leave NATO. However, **it is not clear that would survive a legal challenge**. Even if Trump did not formally withdraw, **he could draw down U.S. forces in Europe and, if it came to it, simply ignore Article 5**. Views of NATO allies in Europe **Allied leaders already have reason to doubt Trump's commitment to the alliance**. If Trump wins in November and Putin shares that doubt, the security risk for Europe would grow significantly. NATO leaders understandably view the prospect of Trump's return with trepidation and privately talk of "Trump-proofing" the alliance while considering ways to persuade the former president of NATO's value. That trepidation is a factor that has helped boost defense spending by European NATO members—as a way to demonstrate that Europe is taking on a greater share of the burden but also as a hedge against a Trump decision to downgrade the U.S. commitment to the alliance. Some European officials have reached out to Trump; those efforts have not had an evident effect. Were Trump to win in November and then reduce the U.S. commitment, a number of challenges would confront European NATO members. First, Ukraine. Trump recently reiterated that he would end U.S. support. That would mean a greater financial burden on Europe, but Europe alone lacks the defense industrial capacity to meet Ukraine's needs, at least in the near term. Second, Russia. NATO's European members collectively have an economy many times larger than Russia's. They would need time, however, to turn that into hard military power and would face a particular struggle making up for enablers now provided by the U.S. military, such as intelligence, surveillance, and reconnaissance assets; heavy airlift; and long-range strike capabilities such as conventionally-armed air- and sea-launched cruise missiles. Third, the nuclear dimension. Were Trump to fold the nuclear umbrella the United States extends over NATO, could the nuclear forces of Britain and France suffice to protect all European members of the alliance? The possible end of the American extended deterrent has even prompted a discussion in Berlin about a German need for nuclear arms. Fourth, NATO leadership on major questions traditionally has come from Washington. If the United States under Trump were to withdraw, as Bolton predicted, or just dramatically cut back its role, who would take up the leadership mantle? European members of the alliance must further build their militaries

and continue to take on a greater share of the defense burden for Europe, particularly as the United States has to deal with a rising China in the Indo-Pacific region. That shift is already well underway: non-U.S. members of NATO (European members plus Canada) accounted for about 27% of total NATO member defense spending in 2014; in 2024, that figure had risen to about 36%. The problem is that even that kind of increase likely would not prove enough for Trump—who has suggested that allies devote 4% of GDP to defense—and that, if reelected, he would move abruptly to scale back the U.S. role in the alliance. NATO absent a strong U.S. commitment in a second Trump administration would be a very different—and considerably weaker—organization. There is a small chance that Trump, who often seems uninterested in specific policies, might leave NATO alone. Even in that event, however, could Europe count on the mercurial and unpredictable former president when the chips were down? It would not appear to be a good bet.

AT: Syria Terror DA

Current plans are to leave – government eggheads think the deployment is useless

Lister 24 [Charles Lister, senior fellow and director of the Syria and Counterterrorism and Extremism programs at the Middle East Institute, 01-24-2024, "[America Is Planning to Withdraw From Syria—and Create a Disaster](https://foreignpolicy.com/2024/01/24/america-is-planning-to-withdraw-from-syria-and-create-a-disaster/)", Foreign Policy, <https://foreignpolicy.com/2024/01/24/america-is-planning-to-withdraw-from-syria-and-create-a-disaster/>]/Kankee

Since Hamas's brutal attack against Israel on Oct. 7 and the resulting Israeli military campaign in the Gaza Strip, tensions and hostilities across the Middle East have reached fever pitch. And with such a complex regional crisis playing out, it should not come as a surprise that the Biden administration **is reconsidering its military priorities in the region**. It should be cause for significant concern, however, that **this could involve a full withdrawal of U.S. troops from Syria**. While no definitive decision has been made to leave, **four sources within the Defense and State departments said the White House is no longer invested in sustaining a mission that it perceives as unnecessary**. **Active internal discussions are now underway to determine how and when a withdrawal may take place**. Notwithstanding the catastrophic effect that a withdrawal would have on U.S. and allied influence over the unresolved and acutely volatile crisis in Syria, it would also be a gift to the Islamic State. While significantly weakened, the group is in fact primed for a resurgence in Syria, if given the space to do so. The unprecedented international intervention launched in 2014 by the United States and more than 80 partner nations to defeat the terror group's so-called territorial state was remarkably successful, with the final pocket of territory in Syria liberated in early 2019. In Iraq, too, the Islamic State has almost vanished, degraded to such an extent that in 2023, it averaged just nine attacks a month—down from about 850 per month in 2014. But the situation in neighboring Syria is more complex. With approximately 900 troops on the ground, the United States is playing an instrumental role in containing and degrading a persistent Islamic State insurgency in northeastern Syria, working alongside its local partners, the Syrian Democratic Forces (SDF). Yet the threat remains. Early on Jan. 16, an Islamic State rocket attack was launched on an SDF-administered prison holding as many as 5,000 Islamic State prisoners, triggering a mass breakout attempt. While that operation was ultimately foiled, the U.S. deployment also plays a vital role in stabilizing an area in which 10,000 battle-hardened Islamic State militants are detained within at least 20 makeshift prisons and a further 50,000 associated women and children are held in secured camps. As the U.S. Central Command has repeatedly warned, keeping the Islamic State's "army in waiting" and its "next generation" secured is a vital U.S. national security interest. While U.S. troops and their SDF partners have managed to contain the Islamic State's recovery in Syria's northeast, the situation is far more concerning to the west—on the other side of the Euphrates River, where the Syrian regime is in control, at least on paper. In this vast expanse of desert, the Islamic State has been engaged in a slow but methodical recovery, exploiting regime indifference and its inability to challenge a fluid desert-based insurgency. In the past few years, the terrorist group has also reestablished an operational presence in regime-held Daraa in southern Syria and markedly expanded the scale, scope, and sophistication of its operations throughout the central desert, temporarily capturing populated territory, seizing and holding gas facilities, and exerting considerable pressure around the strategic town of Palmyra. In eastern and central Syria, the Islamic State's shadow influence has returned. The group has reestablished a complex extortion operation, extracting so-called taxes from everyone from doctors and shopkeepers to farmers and truck drivers. With increasing frequency, the Islamic State is issuing them bespoke extortion demands based on acquired knowledge of local business revenue streams. In some cases, Islamic State-branded receipts are issued and when required, and threats are sent to cell phones and relatives. While much of this activity was initially focused on rural Syria, it is now urban, and in many rural areas, the Islamic State is increasingly recognized as a shadow authority. These far less visible activities may not make media headlines, but they are the core ingredients for a resilient and deeply embedded terrorist insurgency. For the past several years, the Islamic State has purposely concealed its level of operation in Syria, consistently choosing not to claim responsibility for attacks that it was conducting. Triggered by Israel's war against Hamas in Gaza, however, the Islamic State has, for the first time, begun to reveal the extent of its Syria recovery for all to see. ISIS thrives on chaos and uncertainty, and there's no shortage of that in the Middle East these days. As part of the group's worldwide campaign to "kill them wherever you find them", the group conducted and claimed 35 attacks across seven of Syria's 14 provinces in the first 10 days of 2024—out of 100 attacks worldwide. While the Islamic State remains far from where it was in 2013 and 2014, the group retains concerning capabilities, plenty of confidence, and a newfound sense of momentum. War in Gaza and a spiraling regional crisis are adding fuel to its fire and creating opportunities for the terror group to exploit the situation for its own advantage. Moreover, the Islamic State's campaign of intimidation and attacks is beginning to pay dividends in central Syria, where morale within local regime militias is eroding. Throughout the Syrian Badiya, or central desert, the Islamic State has exerted consistent attention on attacking regime security forces along key roadways and outside the region's extensive network of oil and gas facilities. The scale and sophistication of those attacks increased markedly in 2023, as did their deadliness. According to the Counter Extremism Project, in 2023 alone, the Islamic State conducted at least 212 attacks in Syria's central desert region, killing at least 502 people. As covert threats and overt attacks increase, reports are emerging with increasing frequency of desertions within regime ranks. While there is little that U.S. forces can do to alter Islamic State activities within the regime-controlled regions of Syria, U.S. troops are the glue holding together the only meaningful challenge to the Islamic State within a third of Syrian territory. Were that glue to disappear, a significant resurgence in Syria would be all but guaranteed, and a destabilizing spillover into Iraq a certainty. In many respects, Iraq is key, as the U.S.-led coalition against the Islamic State is effectively headquartered on Iraqi soil. But amid unprecedented hostilities between Iranian proxies and U.S. forces in Iraq, with retaliatory U.S. strikes returning to Baghdad and Iranian-made

ballistic missiles targeting U.S. troops on Iraqi soil, pressure is rapidly rising within the Iraqi political system to force a U.S. troop withdrawal from the country. With Iraqi Prime Minister Mohammed Shia al-Sudani now publicly pushing for a U.S. withdrawal in his own country, some hope remains that the U.S. military's presence in Iraqi Kurdistan could sustain counter-Islamic State operations, including next door in Syria. This may explain why Iran's proxies have so frequently targeted U.S. forces stationed at Erbil International Airport in recent weeks. However, shifting counter-Islamic State coordination from Baghdad to Erbil would present its own complications, sharpening intra-Kurdish tensions between the regional government of Masoud Barzani and the PKK-linked SDF administration in northeast Syria, likely triggering unfavorable Turkish interference. Emboldened by a sense of victory in Iraq-proper, Iran and its proxies in this scenario would then undoubtedly sharpen their attacks on U.S. troops in Syria, seeking their withdrawal too. Ultimately, events since October have placed the U.S. deployment in northeast Syria on a fraying thread—hence recent internal consideration of a Syria withdrawal. Given the disastrous consequences of the hurried exit from Afghanistan in 2021 and the impending U.S. election later this year, it is hard to grasp why the Biden administration would be considering a withdrawal from Syria. No matter how such a withdrawal was conducted, it would trigger chaos and a swift surge in terror threats. But there can be no denying the clear sense in policy circles that it is being actively considered—and that it has been accepted as an eventual inevitability. Some within the U.S. government are currently proposing a collaborative arrangement between the SDF and Syria's regime to counter the Islamic State as an apparent path towards a U.S. withdrawal. That would not only be a phenomenal boon to the Islamic State, but simply impossible on its own terms. Part of the SDF may have periodic contact with Assad's regime, but they are far from natural allies. The regime would never allow the SDF to sustain itself, and Turkey would do everything possible to kill what remained. The last time that the Islamic State surged in Syria, in 2014, it transformed international security in profoundly negative ways. Should a U.S. withdrawal precipitate a return to Islamic State chaos, we will be relegated to mere observers, unable to return to a region that we will have placed squarely under the control of a pariah regime and its Russian and Iranian allies.

Trump also wants to leave Syria

Hussein 24 [Muhammad Hussein, 1-31-2024, "A US military withdrawal from Syria could overturn the chessboard, but not for the better", Middle East Monitor, <https://www.middleeastmonitor.com/20240131-a-us-military-withdrawal-from-syria-could-overturn-the-chessboard-but-not-for-the-better/>]/Kankee

Many have hailed this decade as one of American withdrawal from the world stage, whether for strategic reasons or due to simple ineptness by civilisational decline. As the world witnessed the United States' military withdrawal from Afghanistan in August 2021, though, it became ever more evident that such a pull-out by the US is hardly without incident. That is not necessarily due to the rush of civilians fleeing for safety or the period of uncertainty that follows the withdrawal – those are mere symptoms of the cause – but primarily due to the threat of a deteriorating security situation and the overturning of the political chessboard amid a rampant feeling of American betrayal. The spectre of a withdrawal may now be looming over Syria and Iraq, with the Foreign Policy magazine reporting last week that Defence and State Department sources revealed Washington's wariness in sustaining the deployment of its troops in Syria, and with Reuters revealing that the US is set to begin talks with Iraq on ending the presence of the American-led coalition in the country. Coming off the back of the emergence of Daesh in the region back in 2014, the US military presence in both countries has seen resistance both in the region – in the form of Iran-backed militias and government demands to leave Iraqi and Syrian territories – and domestically in the US itself, with figures across the political spectrum calling for the withdrawal of troops from those countries. Daesh, they say, has been territorially defeated, and the local forces under US backing can apparently handle the situation from here onwards, with America providing a supporting and advisory role. Although the Foreign Policy report clarified that "no definitive decision has been made to leave" and a senior US official told CNN that the White House "is not considering a withdrawal of forces from Syria", there is cause to consider that the establishment in Washington – whether under President Joe Biden's administration or another next year – are now willing to accept a military pull-out. That was not previously the case. When the push for withdrawal was probably its strongest with former President Donald Trump at the helm back in 2019, those efforts were intentionally and subtly countered by the establishment. In an interview, the following year, with James Jeffrey, the US special representative for Syria at the time, he confessed that "We were always playing shell games to not make clear to our leadership how many troops we had there" in Syria. Contrary to the roughly two hundred troops Trump initially agreed to leave there, Jeffrey admitted that the actual number of troops in north-east Syria was "a lot more", numbering at around over 900, as is still the case. The reason for lying to and misleading a sitting American president – which many criticised as treacherous and subversive by the 'deep state' – was that Trump's orders would have disrupted Washington's Middle East policy at the time. Now, for reasons yet unspecified, that policy seems to be shifting, which is evident from the American establishment's apparently favourable position towards the same withdrawal that was unthinkable five years ago. The potential withdrawal would likely not take place before the US election season at the end of this year and the beginning of 2025: It is not a pressing foreign policy need for Biden to focus on, and may, instead, be a threat to his re-election or that of any Democrat successor. If he wins, withdrawal would remain a possibility, and if Trump wins, there is little doubt he would continue with withdrawal plans that he had already previously envisioned. There is also the question of how the withdrawal will be conducted and to what capacity, with it being entirely possible that the pull-out would not be complete but would leave a few hundred troops in north-eastern Syria to guard the oil fields with their Kurdish allies. Consequences of withdrawal

Reject evidence from Yoo – the torture justifier is self-interested in avoiding ICC prosecution AND he is a legal hack

Romm 20 [Jake Romm, researcher at the University of Pennsylvania School of Law, 2020, “No Home in this World: The Case against John Yoo before the International Criminal Court,” International Criminal Law Review, [1 Introduction During the period between 2001 and 2003, John Yoo authored a series of memoranda at the Office of Legal Counsel \(olc\) that, among other things, authorised members of the cia and the U.S. military to engage in acts of torture. These memos did not stop at authorising specific torture techniques. Rather, they provided legal cover for the use of any conceivable method of torture, going so far as to say that the Executive’s use of torture cannot be subject to any legislative or judicial restraint—domestic or international. Yoo’s memos, issued as binding olc opinions, were based upon terminally faulty legal reasoning, deliberately obtuse interpretations of settled international law, the omission of adverse facts and precedents, and the inappropriate, and at times, knowingly erroneous use of inapposite case law, statutes, and scholarly work. Indeed, Yoo’s memos were necessarily faulty — he was tasked with justifying the unjustifiable. This is to say that it is not only the legal absurdity of Yoo’s memo’s that is at issue, but also the fact that Yoo abrogated his legal duty to provide well-reasoned, impartial advice to his client. Yoo was tasked by the executive with providing the maximum legal cover for manifestly illegal acts, and he complied in the only way possible — there was simply no other way to justify, excuse, or otherwise permit torture than to issue patently preposterous legal advice. Yoo’s legal conclusions — from the most tempered to the most extreme — represent a fundamental break with international and domestic law. What’s more, they represent a fundamental break with settled ethical norms and with the international community as such. It is a profound injustice that Yoo, who is both morally and legally culpable for his role in the U.S. Torture Program, should remain free. It is a further outrage that a lawyer who has done so much to debase and degrade the legal profession and the rule of law should remain not only a member of the Bar, but a law professor at a prestigious university. One might wonder why this article and so much of the literature surrounding the illegality of the Torture Memos focuses on John Yoo. Certainly, there were other olc lawyers and Executive actors aside from Yoo — like Jay Bybee, John Ashcroft, or William Haynes — who bear legal and moral responsibility for the Torture Program. But, in addition to his responsibility for the memos signed in his own name, Yoo is also primarily responsible for the content of the so called ‘Bybee Memos’, which gave explicit legal permission for the cia’s ‘enhanced interrogation techniques’ and provided additional legal cover for the program.¹ Thus Yoo, despite having perhaps the lowest profile and title of the group at the time, was the program’s primary author and shield. As such, he bears the greatest responsibility for the legal justifications of the Torture Program and should be the primary focus of any investigation of the criminal wrongdoing of government lawyers during the Bush Administration. Accordingly, numerous legal scholars have outlined the nature of Yoo’s legal culpability under both domestic and international law. While many of these articles do an excellent job of outlining the legal and moral case against Yoo, I am unaware of any that focus on proving the case against Yoo under the Rome Statute at the International Criminal Court \(icc\).² This article will seek to fill an important gap in the legal writing surrounding Yoo’s criminal culpability by establishing the prima facie case against John Yoo at the icc. As such, the article will focus exclusively on Yoo’s culpability under the Rome Statute. Furthermore, because the analysis is confined to the establishment of the prima facie case, the article will deal primarily with the affirmative case against Yoo, though certain defences available to Yoo will also be addressed. This article will focus exclusively on the icc for three reasons. First, it is the forum of last resort. U.S. domestic courts have effectively granted Yoo immunity for his role in the Torture Program³ and the rest of the world’s domestic courts have shown themselves to be unwilling to prosecute Yoo under the theory of universal jurisdiction, a few unfortunately failed attempts notwithstanding.⁴ With a new ad-hoc tribunal for Afghanistan unlikely to ever materialise, the icc remains the last currently constituted criminal tribunal that can effectively exercise jurisdiction over Yoo and prosecute and punish him for his crimes. Second, the icc has already demonstrated a willingness to investigate crimes committed by the United States in Afghanistan. While the icc pre-trial chamber recently quashed the prosecutor’s nascent investigation on political grounds, its ruling, as will be discussed, relied on an](https://unlv-primis.hosted.exlibrisgroup.com/permalink/f/6tvje6/TN_cdi_crossref_primary_10_1163_15718123_bja10019]/Kankee</p>
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improper application of the Rome Statute and is subject to appeal.⁵ Third, there is an important expressive element to an icc conviction — it affirms the seriousness of both the crime and criminal. In the icc Prosecutor’s 2017 report on the situation in Afghanistan, the prosecutor stated that ‘[t]he groups of persons likely to be the focus of future investigations include persons who devised, authorised [sic] or bore oversight responsibility for the implementation by members of the U.S. armed forces and members of the cia of the interrogation techniques that resulted in the alleged commission of crimes within the jurisdiction of the Court’.⁶ Considering that the icc’s mandate is to bring those responsible for the most egregious international crimes to justice, it is fitting that the focus of the Prosecutor’s investigation would be on those who set the Torture Program in motion. Such an investigation must include, among others, the lawyers who provided the legal sign-off and cover for the program. A conviction of John Yoo would not only reaffirm the conclusive illegality of torture, it would also reaffirm that legal support for torture, or any other fundamental violation of the legal order, is itself a serious crime. If the torturer is an enemy of all mankind, then so too is the torture’s author. ² Jurisdiction and Admissibility

No ISIS bioterror threat

Headley 20 [Tyler Headley, research assistant at New York University, 12-3-2020, "How Terrorists Could Use Biological Weapons to Kill Millions", National Interest, <https://nationalinterest.org/blog/reboot/how-terrorists-could-use-biological-weapons-kill-millions-173698>]/Kanke

Here's What You Need to Remember: Kofi Annan, former secretary general of the United Nations, once stated that "the most important under-addressed threat relating to terrorism...is that of terrorists using a biological weapon." The 2001 anthrax attacks, which began a week after 9/11, fomented fears about the possibility of bioterrorism. The difficulty today is distinguishing between threats that are inflated and threats that are credible. In 2014, a laptop belonging to a member of the Islamic State (ISIS) was shown to reporters. The device contained information on creating biological weapons including the bubonic plague. While ISIS was never definitively shown to have actively pursued the development of bioweapons, instead using chemical weapons in Syria and Iraq, other rogue non-state actors like Al Qaeda have made concerted efforts to develop, obtain and use bioweapons. Two recent phenomena are reasons to reexamine the threat of bioterrorism. First, renewed tensions with Iran, which previously conducted bioweapons research and development, could potentially recommence the development of bioagents which in turn could fall into the hands of rogue non-state actors. Second, government budget cuts mean that national programs are under increased public scrutiny. The United States reportedly spent \$14 billion dollars on biodefense in the three years following the 9/11 attacks. "A substantial amount of money has been invested in biodefense," wrote Ari Schuler, author of a notable report on biosecurity, "but the...money is no indication of success or failure." For these two reasons, this is an opportune moment to reevaluate the threats posed by bioterrorism. Bioweapons were astutely called by Hashemi Rafsanjani, speaker of Iran's parliament in 1988, "the poor man's atomic bomb." Biological weapons don't necessarily require the technical sophistication of a nuclear bomb, yet still have the potential to wreak catastrophic havoc. According to a report at the 1996 North Atlantic Assembly, Several hundred thousand deaths could be caused in a crowded urban area by four tonnes of VX or only 50 kilograms of anthrax spores and a single ounce of anthrax introduced into the air-conditioning system of a domed stadium could infect 70-80,000 spectators within one hour. These frightening statistics, however, belie the relative lack of historical precedent for biological attacks; the Monterey Database indicates that "incidents involving biological agents have been quite rare, with 66 criminal events and 55 terrorist events over the 40-year period from 1960 to 1999." One of the reasons biological attacks are infrequent is the preparation complexity required to create an actionable weapon. The Japanese cult Aum Shinrikyo, for instance, attempted to create a working bioweapon for years—and tried and failed on at least ten occasions to release biological agents in an aerosolized form—before instead reverting to sarin nerve gas, which in 1995 still killed twelve people in the Tokyo subway. Analysis by Jonathan Tucker in 1999 reported that of the dozen cases the FBI investigated per year in the 1990s involving chemical, biological, radiological or nuclear materials, 80 percent were hoaxes. Still, despite the somewhat stochastic historical distribution of bioterrorism incidents, individual cases of attempted bioterrorism make for frightening reading. There was the R.I.S.E attack of 1972, where college students influenced by ecoterrorist ideology planned aerosol attacks and the contamination of urban water supplies. The students were stopped when cultures were discovered. The Minnesota Patriots Council in 1991 targeted government officials with ricin delivered through the skin, but were stopped and arrested by the FBI through the use of informants. And Larry Wayne Harris in 1998, seeking to create a separate homeland for whites in the United States, obtained plague and anthrax and planned to disseminate them via crop duster. He was arrested after openly discussing bioterrorism in public. None of these cases, however, involved organizations as broad, ideologically predisposed towards mass terror, and complex as ISIS or Al Qaeda. There are generally three impediments to the deployment of a biological weapon by a rogue non-state actor: technical development, resource procurement and weapon deployment. First, the largest impediment to developing a bioweapon is the technical knowhow required. A report from researchers at the Sandia National Laboratory noted that "even a low-consequence event requires a considerable level of expertise to execute." From cultivating strains to potentially aerosolizing biological agents, the high-bar of knowledge serves as the most important barrier to completion. Second, non-state actors often struggle to obtain the resources and facilities necessary to create bioweapons. Similarly, procuring strains, storing cultures and scaling up production are not just difficult, but are likely to set off warning bells in various federal agencies. Third, understanding how to properly disperse the weapon requires careful preparation and planning, serving as a final impediment to non-state bioterrorists. Kofi Annan, former secretary general of the United Nations, once stated that "the most important under-addressed threat relating to terrorism...is that of terrorists using a biological weapon." The 2001 anthrax attacks, which began a week after 9/11, fomented fears about the possibility of bioterrorism. The difficulty today is distinguishing between threats that

are inflated and threats that are credible. The United States' intelligence and security agencies still actively monitor bioweapons threats, both domestic and overseas. While most reports have found that fears of bioweapons have been inflated and are often overstated, renewed tensions with Iran call for at least a reexamination of current threats. While Iran's nuclear program has received the lion's share of news and analysis, U.S. government reports from the 1990s and 2000s indicate that Iran was, at least at that time, developing offensive bioweapons. A 2005 State Department report noted that "Iran has an offensive biological weapons program in violation of the BWC [Biological Weapons Convention]." More recent reports, however, including a 2011 report from the U.S. director of national intelligence were vaguer regarding whether Iran is still actively developing bioweapons. Furthermore, there have been few, if any, indications that Iran would consider aiding rogue groups with biological weapons that could backfire on Iran. Ultimately, historical trends demonstrate that there have been highly infrequent uses of bioweapons in actual attacks. And while state actors like Iran, Syria and North Korea resuming bioweapons research and development programs, potentially under the guise of dual use research, would increase the total threat to the United States, it might be more likely that future attacks will be small-scale and homegrown. Finally, keeping the threat of bioterrorism in context is also important; the consequences of even a medium sized influenza outbreak rival those of a man-made biological attack. Even so, U.S. vigilance amongst increased tensions with states that have a history of pursuing biological weapons programs will be important to maintaining America's national security.

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See the 2024 Jan-Feb WANA military presence Kankee Brief aff evidence for more cards. Most evidence is in regards to why troops in Iraq and Syria are bad and cause war with Iran and/or terrorism.

ICC stops terrorism – ethical prosecution prevents terrorist blowback

Ward 18 [Antonia Ward, analyst in the Defence, Security and Infrastructure team at RAND Europe, 3-9-2018, "The Problem of Prosecuting International Jihadists", No Publication, <https://www.rand.org/pubs/commentary/2018/03/terrorism-on-trial-the-problem-of-prosecuting-international.html>]/Kanke

In January, Syrian Kurdish fighters arrested two prominent Islamic State combatants. Their capture raised a complex question: Where should the British nationals, who were part of an infamous ISIL terrorist cell known as "The Beatles," be tried? In an interconnected world, with an increasing number of fragile states, the International Criminal Court (ICC) may be the most ideal institution to try these accused terrorists. The court would ensure that the legal status of terrorists, the nationalities of their victims, and the location of the crimes are taken into account — all while upholding the core values of Western democracies. The jihadists, Alexander Kotev and El Shafee Elsheikh, are accused of murdering 27 hostages. Understandably, the victims' families want to bring these terrorists to justice as quickly as possible. However, deciding where the pair should be prosecuted is complicated by a number of factors — including that they allegedly committed crimes in the unstable states of Iraq and Syria; their victims' nationalities, who originated from the U.S., UK, and France; and their own British backgrounds. Various officials have suggested a variety of possible paths to prosecuting these two terrorists. Since the well-publicized execution of American hostages, including journalists James Foley and Steven Sotloff, influential figures in the US government have advocated for prosecuting ISIL jihadists in the United States. These authorities include Attorney General Jeff Sessions and Thomas Bosert, President Trump's Chief Counterterrorism Adviser. Sessions and Bosert have also advocated for the continued use of Guantanamo Bay to incarcerate ISIL terrorist suspects. In 2017, The Trump Administration detailed their plans in a document that advocated sending ISIL detainees to Guantanamo. President Trump has repeatedly said that he prefers to send terrorist suspects, including US citizens, to Guantanamo Bay. Trump stated, regarding terrorism prosecutions, "We need quick justice, much quicker and stronger than we have right now." The UK, however, opposes transferring terrorist suspects to Guantanamo Bay. Between 2005 and 2015, the UK repatriated nine British citizens sent to the US prison. London is wary of the negative global reputation of the facility, which has been dogged by allegations of detainee abuse that still persist to the present day. There is widespread belief that holding terrorist suspects without trial at Guantanamo, and the allegations of ill-treatment of detainees in the prison, have helped fuel the Islamic State's hostility towards the West. Some observers say that imprisoning ISIL suspects in Guantanamo, however heinous their crimes, will only inspire more individuals to join the terrorist group. This phenomenon is illustrated by cases including that of Jamal al-Harith, a British national who was imprisoned in Guantanamo Bay and subsequently joined ISIL, detonating a suicide car bomb in Mosul in 2017. There are numerous examples of ISIL using Guantanamo for propaganda purposes. In March 2015, the group's now-defunct magazine featured an obituary for member Abdur-Rauf Khadim al-Khurasani, stating that he was imprisoned for six and a half years in Guantanamo Bay in "some of the most horrifying conditions." The UK government will undoubtedly request a say in where the jihadist pair are prosecuted, given their British nationalities. Yet a potential complication is that London has stripped the two men of their UK citizenship. They are part of a group of 150 suspected jihadists who have had their British citizenship revoked due to their membership in terrorist organizations. Therefore, both of these men are essentially stateless; London is not legally responsible for them. This point is particularly important, as it removes any effective obligation or justification to try the two men in a UK court. Most, if not all, of the crimes allegedly committed by the two jihadists took place in Iraq and Syria. This raises the question of whether either of these two states should handle the prosecution. It is clearly not feasible to hold a trial in Syria, given that the country remains ravaged by a brutal civil war. In contrast, Iraq has tried many international jihadists. Some human rights activists, however, have criticized Iraq's approach to prosecuting accused ISIL members. A report by Human Rights Watch, entitled "Flawed Justice: Accountability for ISIS crimes in Iraq," argues that there is no national strategy for prosecuting suspected jihadists. Many Iraqi authorities have prosecuted people just for joining ISIL, rather than for specific crimes. There are also concerns about the screening process for individuals leaving ISIL-controlled areas, with many suspects detained arbitrarily for days. In an attempt to address these challenges, some members of the UK government have suggested the men be tried at the ICC in The Hague. UK Defence Minister Tobias Ellwood has argued this court would uphold the rule of the law — a process that was not followed by prosecutors of the 9/11 terrorist suspects. The court is an intergovernmental institution; its commitment to transparency solves many of the complications involved in prosecuting international jihadists. The ICC would allow for an open trial, and prevent the

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unlawful detention of the jihadis. The court gives prosecutors what may be the **fairest** chance to secure a conviction, without compromising legal or ethical **norms**.

Anti-ICC US stances are a greenlight for terrorists – non-cooperation leads to terrorist impunity

Ochs 19 [Sara L. Ochs, fellow at Elon University School of Law, where she teaches International Criminal Law and Legal Method & Communication with a J.D. from Loyola University New Orleans College of Law and a B.B.A. from Loyola University Maryland, 2019, “THE UNITED STATES, THE INTERNATIONAL CRIMINAL COURT, AND THE SITUATION IN AFGHANISTAN,” Notre Dame Law Review Reflection, http://ndlawreview.org/wp-content/uploads/2020/01/Ochs_FINAL.pdf]/Kanke

Further, while the Trump administration has labeled the PTC’s decision a “major international victory,”^{5 2} the United States’s apparent disdain for the ICC significantly compromises the nation’s status as a proponent of global justice. The Trump administration’s conduct in rebuking the authority and the legitimacy of the only permanent court established to prosecute crimes committed at an international level undermines U.S. policy in bringing perpetrators of worldwide atrocities to justice.^{5 3} By calling for the death of the ICC, the Trump administration has concretized the United States’s reputation as an international bully and has sought to eradicate an institution that oftentimes provides the sole means for bringing brutal dictators and atrocity perpetrators to justice. The Trump administration’s actions also undermine U.S. foreign policy initiatives. **By taking a very public, very loud offensive to the ICC’s Afghanistan decision, the United States has welcomed impunity for atrocities committed by the Taliban and affiliated groups deemed as terrorist organizations** by the U.S. Department of State.^{5 4} The United States’s constant pressure on the ICC resulted in the PTC’s decision to block Prosecutor Bensouda’s requested investigation in its entirety, meaning that the OTP lacks judicial authorization to investigate any of the three categories of crimes listed in Prosecutor Bensouda’s request, including those committed by the Taliban. **This is especially concerning, not only because of the gravity of the Taliban’s atrocity crimes, but also because—unlike the alleged crimes committed by Afghan forces and the U.S. military—the OTP had obtained meaningful cooperation from both international and domestic organizations in Afghanistan and had compiled significant evidence connecting the Taliban to these alleged crimes.**^{5 5} **The Trump administration’s rash and selfish attack on the ICC has effectively prevented one of the world’s most feared and despised terrorist organizations from facing repercussion for some of its most heinous crimes.** More broadly, the Trump administration’s **hostilities against the ICC undermine U.S. foreign policy initiatives advocating for the international prosecution of atrocities perpetrated abroad.** For instance, the Trump administration has maintained a policy of bringing to justice those responsible for the persecution of Rohingya Muslims in Myanmar,^{5 6} which the U.N. has labeled a “textbook example of ethnic cleansing.”^{5 7} While the Trump administration has noted “serious concerns” regarding the capability of Myanmar’s domestic judicial system to adequately prosecute those crimes, it has also failed to provide a valid option for a judicial mechanism that would be capable of rendering appropriate justice.^{5 8} The United States’s **refusal to acknowledge the potential of the ICC, which** has recognized jurisdiction over certain aspects of the Rohingya situation and currently **appears to be the only criminal law mechanism capable of achieving justice for the Rohingya,**^{5 9} not only portrays the current administration as illogical and uncooperative, but more importantly **disadvantages the victims of these crimes.** If the current administration is—as it claims—**striving to achieve justice for the Rohingya and similarly situated victims of internationally recognized crimes, its failure to cooperate and support the ICC essentially renders this goal unattainable.** Finally, **the Trump administration’s attack on the ICC and the subsequent PTC decision is most detrimental to the victims of the heinous crimes committed in Afghanistan.** A 2017 report issued by the Office of the Prosecutor on the investigation into Afghanistan included tentative estimations that the Taliban and its affiliated groups were responsible for 17,000 civilian deaths, 7000 of which were the result of deliberate and targeted civilian attacks, including attacks on schools, shrines, mosques, and humanitarian organizations’ offices.^{6 0} **The ICC’s decision to close the investigation at the bullying hands of the Trump administration rewards the perpetrators of these crimes with temporary, and possibly complete, impunity.** Again, **not only does this impunity contribute to issues of instability within the Afghani government and society, but it further undermines U.S. policy to bring to justice those Taliban leaders responsible for these mass atrocities, many of whom also targeted U.S. military personnel.** CONCLUSION

AT: America First DA

No escalation and a ceasefire is inevitable under Trump, or Syria thumps – this is the rest of the neg Miller card

Miller 24 [Andrew Miller, senior fellow focused on the Middle East in the National Security and International Policy department at American Progress, 11-30-2024, "From Biden to Trump: Off-Ramp or Accelerator to Middle East Conflict?", Center for American Progress, <https://www.americanprogress.org/article/from-biden-to-trump-off-ramp-or-accelerator-to-middle-east-conflict/>]/Kanke

It is no coincidence that Israel only consented to the ceasefire once the Israel Defense Forces (IDF) reached Lebanon's Litani River, the original goal of the ground operation. Having thinned out Hezbollah forces and short-range munitions in the south of Lebanon, the deployment of the Lebanese Armed Forces alongside a new oversight committee led by the United States and France offers the best chance for displaced Israelis to return to their communities near the border in the short term, relieving a major source of pressure on Israeli Prime Minister Benjamin Netanyahu's government. For Hezbollah's part, the suspension of Israel's withering attacks on Hezbollah leadership and infrastructure, coupled with the IDF's withdrawal from southern Lebanon, is the most for which it could have hoped. Reaching an agreement required close coordination between the outgoing Biden administration and the incoming Trump team, which will be true for any additional progress during the pre-Inauguration Day period. Israel otherwise may have strong incentives to wait out the Biden administration in the hope of better terms under Trump, and so President Biden's ability to sustain international influence for the rest of his term in great part depends on the Trump world sending clear signals of support for Biden's positions. The ceasefire calls for the withdrawal of the IDF and Hezbollah from the area south of the Litani and the deployment of the Lebanese Armed Forces to fill the vacuum before January 26 but does not specify the precise timetable and sequencing of the disengagement process. Now, notwithstanding the alignment of interests in support of a ceasefire, the United States will need to carefully manage the implementation of this necessarily ambiguous agreement to avoid a return to conflict. While waiting until the deadline could prove a recipe for disaster, it is unclear whether Israel or Hezbollah can be persuaded to begin their withdrawals without an action-forcing event. With Trump one phone call away, Israel may be tempted to play administrations off each other to defer implementation of its commitments to the very end of the period. And, of course, the collapse of Bashar al-Assad's regime in neighboring Syria could have unforeseen consequences for both parties' compliance with the agreement. Ultimately, the ceasefire will probably hold if Israelis begin returning to northern Israel, but that may not begin for several weeks.

Ceasefire in Gaza? Turning to Gaza, U.S. national security adviser Jake Sullivan had made clear that President Biden hopes to negotiate a ceasefire and hostage release deal in the waning days of his presidency. Both U.S. and Israeli officials believe that the ceasefire in Lebanon will further isolate Hamas, putting pressure on the terrorist organization to concede to Israeli demands regarding hostage releases and the right to resume military operations after a future time-bound ceasefire agreement would expire. They interpret Hamas' willingness to resume negotiations in Cairo based on an Israeli proposal for a 42- to 60-day ceasefire as an encouraging sign. At this point in the electoral cycle, President Biden's ability to influence Prime Minister Netanyahu is limited. If the question over the past year has been whether the Biden administration is prepared to apply leverage toward Israel, it is now more a matter of whether it has any leverage at all, with President Trump's second term fast approaching. Netanyahu has, for all intents, abandoned any pretense that he views a ceasefire agreement as the potential basis for a longer-term calm, and developments on the ground indicate that the IDF is planning to retain a persistent presence in Gaza for the foreseeable future. Thus, the Biden administration's ability to reach a ceasefire in its remaining time in office will ultimately depend on how much Hamas is willing to capitulate on its prior red lines—including an assurance the ceasefire is expected to last beyond the initial, time-bound pause in hostilities. Should a ceasefire fail to materialize before the transition, President Trump may find himself in a stronger position than President Biden to succeed. Like Biden, President Trump will not hesitate to turn the screws on Hamas, recently threatening the terrorist group that there will be "all hell to pay" if the hostages are not released before he takes office. Unlike President Biden, however, Trump probably understands that Netanyahu cannot defeat him in the American political arena. The level of support Trump enjoys from his base effectively insulates him from the political blowback that most American politicians elicit when they apply pressure on Israel. This can translate into more leverage over Netanyahu, which could prove the difference in finalizing a ceasefire.

The question is whether Trump is prepared to use his influence with Israel more aggressively than did Biden. Of course, even if Trump persuades Israel to change course, his administration could continue to encounter recalcitrance from Hamas, for whom this war is of existential importance. But the greatest source of uncertainty once Trump assumes power is how he ultimately defines a ceasefire. Will he adopt the existing framework: a pause in hostilities in Gaza leading to a permanent ceasefire, the eventual withdrawal of all Israeli forces, agreement that Hamas has no role to play in governance, the return of the remaining hostages, and a surge in humanitarian aid to Palestinians in the stricken territory? Or is Trump just looking for something that he can present as an end to the war but in practice would simply reduce the intensity of hostilities? The latter approach may betray the hostages, allow for Israeli reoccupation in Gaza, perpetuate Palestinian starvation, and leave no credible alternative to Hamas in Gaza. Escalation risks As long as the war in Gaza continues, both President Biden and President Trump will have to attend carefully to the risks of further escalation in the Middle East. Fortunately, both presidents will benefit from several factors that reduce the prospects for a full-scale regional war. For one, the military capabilities of Iran and Hezbollah have proved weaker than expected, and Israel has been successful in degrading their forces, penetrating intelligence networks, and defending Israeli territory. Israeli missile defense systems, including the Arrow 3 system that intercepts incoming missiles in the exoatmosphere, have performed spectacularly alongside U.S. assets. Due to these limitations, both Iran and Hezbollah have demonstrated greater risk aversion than originally anticipated, seemingly calibrating their attacks to avoid inflicting maximum damage. Likewise, but to a lesser extent, Israeli capabilities are limited in important areas. Israel does not have an expeditionary military capacity, which would prevent it from deploying forces in large numbers to Iran, Iraq, and Yemen. This diminishes the value proposition of escalation from an Israeli perspective, as there is only so much Israel can achieve on its own. Israel also lacks the wherewithal to eliminate the entirety of the Iranian nuclear program through the air without direct U.S. assistance. On the other hand, the risk of further regional escalation remains much too high for comfort, and the United States does not control the escalation ladder, leaving it in the hands of others who may not share the same interest in de-escalation. For Israel, with the ability to defeat incoming attacks, its risk tolerance appears to have grown. Some of Israel's most ambitious attacks, including killing the leaders of Hamas and Hezbollah, may not have happened if Israel thought the response would have been more severe. With old assumptions regarding Iran's willingness to use force disproven, it is possible that Israel and the United States could overcorrect, concluding that Iran and Hezbollah are incapable of more forceful retaliation or at least reluctant to respond in such a manner. Overestimating the risk tolerance of the Iranian threat network over the past year may lead to underestimating it now. These calculations will take place against a return to a Trump administration's maximum pressure campaign that will raise the heat in the Middle East, potentially incentivizing an off-ramp or creating a new powder keg. At the very least, Iran can be expected to continue supporting terrorism and cyberattacks even if it refrains from conventional operations. Finally, at this early stage, it is hard to speculate on the net effect of the Assad regime's demise on escalatory dynamics within the region. Yet uncertainty is seldom conducive to lowering tensions. Israel's decision to deploy troops into Syrian territory to guard the approach to the Golan Heights could become more of a source of tension than deterrence. Iran can be expected to test whether it can cooperate with the new Syrian leadership to continue supplying Hezbollah. And the extremist background of many Syrian rebels raises questions about their intentions toward Israel. Conclusion Opportunities for de-escalation will coexist with threats of further escalation. The achievement of ceasefires in Gaza and Lebanon is essential to de-escalating violence in the region. However, this would be just the beginning of a long road to achieving stability in the Middle East. And continued progress on this path will require sustained U.S. diplomatic leadership in close coordination with regional and global partners. Such an undertaking would be a tall order for any administration, and by any measure, we should not expect just "any administration" over the next four years.

No Israel-Iran war - both are tempered, fear MAD, and lack escalatory capabilities

Pollack 24 [Kenneth M. Pollack, Senior Fellow at the American Enterprise Institute and former member of the National Security Council, 10-16-2024, "Is a Full-Scale Middle East War Already Here?", Foreign Affairs, <https://www.foreignaffairs.com/israel/full-scale-middle-east-war-already-here-iran/>]/Kankee

Of course, that war is already underway. Iran has launched two direct attacks on Israel, while Israel has carried out one strike in response and is almost certainly preparing a second. A half dozen Iranian allies and proxies have attacked Israel, including in terrorist assaults; Israel has assassinated a passel of key Iranian leaders; and both sides have carried out cyber strikes. So the real question is not what a war between Iran and Israel would look like but what an expanded conflict between them might entail. The answer, in essence, is this: more of what is happening right now, just with increased intensity. That is because both sides face significant material and strategic obstacles that make an imagined all-out war between them unlikely. Iran trails Israel in almost all offensive and defensive capabilities, so it simply cannot inflict devastating damage. Israel, meanwhile, has a tremendous capacity for targeted strikes, but it does not have the variety of resources that a war of conquest or devastation against Iran would require. Both states are physically too far apart and lack the capacity to launch invasions by ground or sea. These obstacles mean that unconstrained warfare is doubtful, and even to the extent that there is an escalating exchange of blows, Armageddon is unlikely. THE TYRANNY OF DISTANCE The most important factor constraining a war between Iran and Israel is distance. The two countries do not share a border. At their closest points, they are 750 miles apart. Central Israel is almost 1,000 miles away from Tehran. Moreover, between them lie Turkey, Syria, Iraq, Jordan, Saudi Arabia, and Kuwait. Some of those countries are more aligned with Israel, some are more aligned with Iran, and some are hostile to both. The two potential antagonists can count on help from some—in terms of allowing their forces to pass and impeding those of the enemy—but cannot assume much more. Jordan's King Abdullah II, for instance, is a key, if tacit, ally of Israel, but he rules over a majority Palestinian population that mostly hates the Jewish state, limiting how much he can support Israel. His country helped Israel shoot down the Iranian drones and cruise missiles that crossed its territory during Iran's first missile attack on Israel on April 13. But Amman was careful to insist that it was merely defending its airspace and would do so against all foreign intruders. Likewise, Syria is heavily dependent on Iran. But Syrian President Bashar al-Assad was taught by his father never to fight Israel, a lesson the Assads learned after repeated defeats in 1967, 1973, and 1982. As a result, although Iran can move forces through and base them in Syria, Damascus has so far prevented Tehran from mounting major attacks directly against Israel from Syrian territory for fear that Israel would expand its attacks there. These realities make any kind of land invasion impossible in either direction. To invade Iran, Israeli ground forces would have to drive through Iraq and Jordan or Iraq and Syria, which would be logistically challenging and strategically foolish. Iran is 80 times as large as Israel, and even if Israel could find a way to get half of its dozen or so ground divisions there, they would be swallowed up by the Islamic Republic's vast geographical expanse and would have little ability to accomplish anything meaningful, nor would Israel ever want to send so much of its citizen army so far away. The Israelis have been able to destroy key enemy facilities with small special forces teams inserted by air, and they very well might stage one or more such operations against important Iranian targets. But the Israeli military could not occupy Iranian territory in this way without a route to resupply and reinforce a first wave of air-dropped units. The Israeli Defense Forces, of course, also boasts a capable navy, and Iran has a lengthy coastline. The IDF might mount a battalion-sized or even brigade-sized raid against an important Iranian coastal facility using one or more jury-rigged naval transports of some kind. But Israel lacks the amphibious assault and carrier-based air capabilities needed to mount a larger invasion from the sea. Unless Israel could base fighter squadrons in Bahrain or the United Arab Emirates, which is highly unlikely, maintaining a force ashore for more than a few hours in the face of Iranian missiles and airstrikes would be exceptionally difficult. Even if these forces could somehow seize and hold a beachhead, sustaining it would require getting Israeli transport vessels through both the Houthi-menaced Bab el Mandeb Strait and the Iranian-threatened Strait of Hormuz. Consequently, such a small raiding force could realistically destroy only one or a few high-value Iranian facilities near the sea before it had to withdraw out of range of Iranian air and sea forces. Iran's navy would face even more formidable obstacles trying to mount an amphibious invasion of Israel against the air, sea, and ground forces of the Jewish state, not to mention the logistical nightmare of trying to move and supply forces there by circumnavigating all of Africa. A ground offensive against Israel would be only slightly more appealing. In

theory, Iran has the logistical advantage of free passage through Iraq and Syria. But its ground forces are the weakest and most backward element of its armed forces, and they would not stand a chance against an IDF mobilized to defend its heavily fortified positions on the Golan Heights. Iran knows this: that is why the government has not deployed large Iranian ground forces to the Damascus area. Instead, Iran has reportedly massed as many as 40,000 Afghan, Iraqi, Pakistani, and Syrian militiamen in southwest Syria who could be used to launch a massive assault without jeopardizing the lives of Iranian citizens or, Tehran hopes, triggering an Israeli response against Iran. Yet that kind of attack would almost certainly result in a catastrophic defeat, with vast numbers of these lightly armed and poorly trained forces slaughtered by Israeli ground and air forces. That Tehran has not already attempted such an assault suggests the Iranians realize its futility. Israel's invasion of Lebanon has greatly degraded Hezbollah—Iran's ultimate deterrent against an Israeli attack on Iran. If Tehran thought these militias could save its close partner, it almost certainly would already have thrown them at the Israelis. THIN AIR These limits on ground operations mean that the conventional aspects of a wider war between Iran and Israel would fall mostly to their air forces, which are also limited in what they can do. Israel possesses ballistic missiles that could range all of Iran and has cruise missiles and drones that can do so from ships and submarines, and probably from Israel itself. No one knows how many of these Israel has, but it is not a huge number—probably in the high hundreds or low thousands for each. All have relatively small warheads, nothing like the payload that manned aircraft can deliver. That makes them very useful for destroying relatively small, high-value Iranian targets—military equipment and buildings, but not vast bases, let alone cities. Although Iranian air defenses would complicate the operations of Israel's manned aircraft, they would act as little more than an annoyance. The real problem for Israel would be the distance. Israel's F-15s can certainly make those flights, but its cutting-edge F-35s and F-16s, which represent the bulk of its combat air force, have ranges of only about 600 miles. Israel's long-range, standoff munitions can boost that figure by several hundred more, but it would still be a significant undertaking for those aircraft to hit targets in central Iran without aerial refueling. Israel has a small number of long-range refueling aircraft, and although its air force has skilled pilots who routinely fly them in ways that no other country would dare, the planes are big and very vulnerable. It would be difficult and dangerous for Israel to employ them routinely in hostile airspace. Although none of Israel's American-made fighter aircraft were designed to refuel one another in flight (a technique known as "buddy refueling"), the Israelis may have modified them to do so. That, however, would introduce other inefficiencies; half of Israel's fighters would do nothing but refuel the other half. So unless Jordan or Saudi Arabia opens its airspace to the Israeli air force (as they apparently did on April 13 to combat the Iranian missile and drone attack on Israel), the Israelis would have to pick and choose when to employ manned aircraft to strike Iran. Iran has two air forces, one belonging to the regular armed forces and the other to the Islamic Revolutionary Guard Corps. But neither can hold a candle to the Israeli air force. Iran has no dedicated refueling aircraft and only a few dozen old French-made fighters that could buddy refuel. Its aircraft are overwhelmingly American models dating from the 1960s and 1970s and French and Soviet planes from the 1970s and 1980s. However many of them could even make the flight to Israel would not stand a chance against Israeli air defenses. That would put the onus of an Iranian air campaign back on its missile and drone force. Like Israel, the Islamic Republic probably has hundreds (or even a number in the low thousands) of these left with the range to hit Israel. In its strikes on April 13 and October 1, however, Iran launched a combined total of 500 of them and did virtually no damage. There are reports that Russian technicians are trying to help the Iranians improve both the survivability and the lethality of these missiles, but the six months between those two Iranian attacks did not show any significant improvement. It is humiliating for Iran to keep striking and failing in this way. Worse, it invites far more painful Israeli retaliation. What all of this should make clear is that Israel can inflict a considerable amount of pain on Iran through relatively small, highly precise air, drone, and missile strikes, whereas Iran will have trouble causing Israel much pain at all. And neither country is in a position to mount a massive, sustained air campaign against the other. That is why even an expanded war between them won't look anything like the German Luftwaffe's Blitz or the British-American Combined Bomber Offensive against Germany in World War II—or even anything that would look like more recent U.S. air campaigns against Serbia and Iraq, or the kind of air campaign Israel is now waging against Hezbollah. UNCONVENTIONAL WARFARE Both sides would likely try to complement (or substitute for) their conventional military operations with further cyber strikes and covert actions. As to the latter, Israel's advantage appears to be even greater than it would be in an air war. For decades, the Mossad, Israel's intelligence agency, has demonstrated an extraordinary ability to assassinate VIPs and sabotage critical facilities inside Iran. It is unclear how long it took Israel to set up such operations, how easily it can improvise new ones, or whether it has others already prepared. By contrast, Iran has come off as impotent in this arena as well. Although it has reportedly tried to kill senior Israeli officials, it has so far failed. Its best effort seems to have been a small terrorist attack on the night of October 1, which was carried out at the same time as its second missile and drone attack and which killed a half dozen people in Tel Aviv. Iranian personnel may have been involved in a number of small-scale terrorist attacks in Israel during the past year, but they all pale in comparison with Israel's astonishing covert successes. In the cyber realm, Iran appears to be in a somewhat stronger position but still seems outmatched by the Israelis. Iran has spent almost two decades developing its cyberwar capabilities, and they've gotten good enough to wreak havoc on undefended targets. The Iranians have even shown some ability to hit harder targets. But in cyber exchanges, the Israelis have

consistently prevailed. For instance, during the summer of 2023, Iranian cyberattacks shut off the power at several Israeli hospitals and health clinics. But the Israelis responded by launching cyber-assaults of their own, shutting down gas stations across Iran. Tehran stopped its attacks. Of course, the whole point of cyber-operations is that neither side knows what the other can do—because if they knew, they would eliminate their vulnerabilities. It is possible that Iran is holding some truly devastating cyberweapons in reserve. It is equally possible that Israel is, too—and so far, the evidence suggests that the Israelis are both more likely to hurt Iran and better prepared to limit the damage from Iranian attacks.

THE STRATEGIC ENVIRONMENT Both Iran and Israel face strategic conditions that further limit the potential scope of a conflict between them. Not only does Iran understand that it is fighting at a pronounced disadvantage against Israel in conventional and even unconventional warfare but the Iranians believe that Israel possesses an array of weapons of mass destruction. Although the Iranian regime is often accused of irrational behavior, the reality is that it has shown considerable prudence and would undoubtedly seek to avoid taking any action that could provoke a massive Israeli response. Similar questions would probably also affect Israeli calculations. The IDF has the capacity to destroy various facilities critical to Iran's nuclear program. But it has never done so for a crucial but typically overlooked reason: Israel and the United States fear that a large-scale Israeli strike on Iranian nuclear sites would prompt Tehran to withdraw from the Nuclear Nonproliferation Treaty and declare that it had to build a nuclear arsenal as the only way to deter another Israeli attack. Tehran would then begin constructing more facilities deep underground to achieve that goal—like the facilities it already has at the Fordow plant near the city of Qom, which is immune to any of the aerial munitions Israel is known to possess. Thus, attacking the Iranian nuclear program might set it back for a few years, only to guarantee that Iran acquires a nuclear arsenal very soon thereafter. That would be a severe net negative for Israel. Similarly, neither side is likely to want to interfere with Iranian oil exports. Iran's regime remains almost completely dependent on oil revenues and would try to steer clear of any actions that might affect them. Israel knows that attacking Iranian oil exports could raise global oil prices, potentially infuriating the United States and many other countries. Given how much Israel still depends on American support, it seems unlikely that the Jewish state would touch that third rail, although it might opt to hit Iranian refineries, oil storage, and other facilities associated with Iranian domestic consumption.

WHAT MIGHT MAKE IT WORSE? For all these reasons, an expanded war between Iran and Israel is likely to consist of a sporadic series of assaults carried out by aircraft, missiles, drones, and cyberweapons, plus some covert operations and terrorist attacks. In other words, more—possibly much more—of the same. Iran would probably continue to limit its missile and drone attacks to Israeli military facilities for fear that hitting Israeli cities could push Israel to escalate to the kind of attacks that Iran could not match. And even if the Iranian regime decided simply to hurt Israel as much as it could regardless of the consequences for itself, the Islamic Republic is just not strong enough to do much damage. It could launch its entire inventory of several thousand missiles at Israeli cities and perhaps kill several hundred Israelis. And in that case, if the IDF decided to retaliate against Iranian cities with hundreds of missiles and airstrikes, it could probably kill thousands of Iranians—but that's it. The Iranians would then be a spent force, and although the Israeli air force could sustain small airstrikes against Iran for weeks, unless Israel did something like deliberately bomb an Iranian mass participant event—say, a soccer match—it is unlikely there would be a huge increase in Iranian casualties. Neither country would be devastated by this kind of exchange; indeed, it is exceptionally difficult to imagine scenarios that would even bring them close to it. It is far more likely that Israeli strikes would focus on Iranian military targets but could include civilian infrastructure—power plants, refineries, government buildings—and elements of the Iranian leadership, such as Islamic Revolutionary Guard Corps and military commanders. Even then, the Israelis would be unlikely to target Iran's most senior leaders, such as President Masoud Pezeshkian or Supreme Leader Ali Khamenei. Israeli officials recognize that either man could be replaced by a more aggressive, less prudent figure willing to incur a tremendous price in order to inflict harm on Israel or, worse still, willing to commit Iran to building nuclear weapons regardless of the costs. It's possible to conjure black swan events—such as an Iranian-backed terrorist attack on Israel that kills hundreds or thousands of Israeli citizens—that could cause one side or the other to try to do more damage to the other in return. But the far more likely prospect is that even a wider conflict would remain constrained by the limitations of distance, diplomacy, and strategy that have shaped the war that is already underway.

AT: Deterrence/Hegemony

Moral high ground is key to warfighting

Richard 14 [Lt. Col. Theodore Richard, 5-8-2014, ""Laws of War" essential for a free country to prevail in a modern world", Vance Air Force Base,
<https://www.vance.af.mil/News/Commentaries/Display/Article/636896/laws-of-war-essential-for-a-free-country-to-prevail-in-a-modern-world/>]/Kankee

The Air Force flies, fights and wins in air, space, and cyberspace while complying with the laws of armed conflict. These rules are also popularly known as the "laws of war" and "international humanitarian law." Broadly speaking, the laws of war govern when a nation may use armed force and establish the rules for using that force. These laws stake the boundary of acceptable behavior during armed conflicts. They include prohibitions against torture and unnecessary suffering, as well as the protection and distinction of civilians and noncombatants. The laws of war have helped establish the military as a profession since the earliest days in this nation's history. Soldiers, Sailors, Airmen, Marines and Coastguardsmen are distinguishable from militias, pirates and outlaws because they act under the authority of a sovereign nation and adhere to a strict code of ethical and moral conduct. The laws of war are a fundamental part of the military's professional code. I teach the law of armed conflict. The question I receive most regularly is: "Why does the United States follow the laws of armed conflict when those we fight do not?" This is a legitimate question. Traditions of unrestricted warfare stretch to antiquity. A Caledonian leader described the ferocity and relentlessness of Roman warfare: "To ravage, to slaughter, to usurp under false titles, they call empire; and where they make a desert, they call it a peace." This concept continues into the current era. Russia's reported strategy in the second Chechen war was to silence the media and critics, then encircle, pulverize, and cleanse stretches of territory. This appears to be the strategy used by the Syrian president to combat the uprising in his country where journalists have been targeted; chemical weapons have been employed; and civilians have been slaughtered indiscriminately. Cynics try to argue that the United States is equally capable of setting aside the laws of war by pointing to darker moments in American history. Examples include the Indian Wars, Sherman's Civil War march through Georgia and the Carolinas, and World War II aerial attacks on Germany and Japan, culminating with the nuclear bombing of Hiroshima and Nagasaki. These American examples fail to account for the evolution of the law of war. At the time of each example, the prevailing understanding was that the America was acting in compliance with the laws of war as they existed at the time. America is founded on the rule of law. The grievances against King George III set forth in the Declaration of Independence were in large part based on the monarch's disregard for law in general and the laws of war in particular. While the rules for warfare evolved radically over time, they were forged anew based on the experiences of the Second World War. The laws of war are now firmly established by the 1949 Geneva Conventions and international agreements. Under the United States Constitution, these treaties are as binding to military members as any Federal statute. In case there is doubt, DoDD 2311.01 requires that the law of war must be followed in all military operations, not just armed conflict. Thus, the initial answer to why we follow the law of armed conflict is a paternalistic answer: The United States follows the laws of war because they are laws that govern us. And for military members, violating these laws may have criminal penalties. Following a rule because it exists is not a satisfying answer to those seeking to understand its underlying rationale and justification. Evoking the ideal of reducing unnecessary suffering in war is equally unsatisfying when opponents use such suffering as a tactic; it creates frustration through a perceived double standard. Adherence to the laws of war gives America the moral high ground during a conflict, which is strategically essential to an open democracy in the information age. While General Sherman dismissed appeals for restraint on war to "God and humanity" as hypocritical as well as idle and nonsensical, the fact remains that popular history has judged him harshly. Today, such judgments are rendered at the speed of the 24 hour news cycle and the pundits who populate it. Thus, when rogue soldiers tortured Iraqi prisoners at Abu Grab prison, public support for the war effort fell dramatically. Likewise, public support for the Syrian opposition was undermined by reports that rebel troops summarily executed regime soldiers. Through tight media controls, autocratic governments do not worry about losing internal popular support when they violate the laws of war. By targeting and silencing the media in conflict areas, in conjunction with obfuscation, these governments also reduce the widespread outrage of the international audience. Open and free democracies, however, do not have the tolerance for such behavior. In short, the American military must follow the laws of war first because they are laws, but also because these laws are based on humanitarian and moral principles that are strategically essential for a free country to prevail in the modern era.

ICC reins in US lawlessness that perpetuates endless realist wars – the aff's capacity building ends human rights violations without violence

Saul 22 [Neil A. Saul, graduate of the School of International Service at American University with a MA in international relations, 1-14-2022, "The ICC's Potential to Check US Warmongering", Inkstick, <https://inkstickmedia.com/the-iccs-potential-to-check-us-warmongering/>]/Kankee

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. 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 tools 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. Some may fear that a rogue prosecutor might indict US officials for political purposes. A remote logical possibility should not be an obstacle to embracing lawfulness. After all, rogue prosecutors can go off the rails domestically too, but that is a weak argument against having a criminal justice system. More significantly, it has never happened. While the ICC prosecutor remains independent and can initiate an investigation on their own with the approval of the Pre-Trial Chamber, the ICC's previous prosecutors have never done so. Indeed, prosecutors only

investigated situations referred to by member states themselves or by the UN Security Council or within states already signed on to the treaty that were “unable or unwilling” to conduct their own investigations. The Trump administration raised populist fears about the ICC and even imposed sanctions on ICC officials, but the complementarity principle was clearly applied in Afghanistan: The prosecutor initiated an investigation but in March 2020, deferred by request of the Afghan government to investigate any alleged crimes — by all parties — on its own. In other words, the prosecutor has cooperated. Since the US withdrawal, the ICC’s new prosecutor, Karim A. A. Khan QC, has received incredulous pushback for his decision to focus on crimes committed by the Taliban and the Islamic State-Khorasan (ISK), rather than US forces. While this scrutiny bears merit, his justification is due to the reality that the ICC has limited resources and the crimes committed by the ISK “constitute a global threat to international peace and security.” The Taliban and ISK continue to commit gross atrocity crimes and it is therefore more prudent to shift resources to bring these criminals to justice. The final, and probably most common criticism against the ICC is that it does not have the ability to enforce its decisions. Like all international bodies, the ICC is constrained by resources and relies on member-state cooperation. However, a lengthy list of arrests and convictions isn’t necessarily a measure of success either. Human rights scholars Geoff Dancy and Kathryn Sikkink have found evidence that state parties who sign on to the Rome Statute are much more likely to adopt atrocity laws into their own domestic penal codes with the technical assistance of the ICC, resulting in more domestic prosecutions. Therefore, individual states that are able and willing to conduct their own trials and hold their own officials accountable is a better indicator of an effective institution than trials and convictions by the ICC. What’s more, the ICC only prosecutes those top-level officials most responsible for gross atrocity crimes, not low-level offenders who carry out orders. Therefore, it isn’t US soldiers who would be at risk of prosecution, but US administration officials and policymakers. And those who make decisions and wield power, in fact, are the very persons who most need to be constrained by law. Furthermore, it would raise the stakes and change the calculations made by the executive when initiating military conflicts. COMMITTING TO ACCOUNTABILITY Those who advocate cooperation with the ICC share the same goals proclaimed by those seeking to constrain US military actions. For instance, the unfettered use of drone strikes through unilateral executive action, the repeal of both AUMFs, unilateral military intervention and state building, and the use of torture in Guantánamo. Lee Feinstein and Tod Lindberg, scholars on each side of the political spectrum, point out in their book “Means to an End” that cooperation doesn’t entail or require the use of military action. It encompasses intelligence sharing, logistical and security assistance for investigators, judicial assistance and capacity-building for foreign domestic court systems, and more robust domestic laws against gross atrocity crimes, all of which are tools that serve to reinforce US commitment toward accountability and to deter the perpetration of such crimes in the future. That, at least, should be lauded by advocates for military restraint. It is a central tenet of the rule of law that if state officials engage in atrocious crimes and gross human rights abuses, they should be prosecuted and held accountable. Impunity to commit these crimes is incompatible with basic principles of constitutional government and is offensive to every principle of the American founding. To take seriously commitments to restrain the executive and to 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.

AT: States CP

State involvement in foreign affairs is illegal, causes mass international confusion, and results in less informed decisions

Abebe 13 [Daniel Abebe, Assistant Professor of Law, The University of Chicago Law School, 2013 “One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs,” Supreme Court Review,

[b. one voice and centralization The Supreme Court’s emphasis on centralized decision making in foreign affairs is perhaps best exemplified in its foreign affairs federalism jurisprudence. The Constitution specifically limits the participation of states in foreign affairs²² and, in the event of conflict between a federal statute and state law, the Supremacy Clause ensures that the state law is preempted. But the Supreme Court has also developed several preemption doctrines to ensure the primacy of the national government over the states on a range of foreign affairs questions, including field preemption,²³ obstacle preemption,²⁴ dormant foreign affairs preemption,²⁵ and executive preemption.²⁶ In each of these areas, the Supreme Court’s emphasis on speaking with one voice has resulted in the centralization of foreign affairs decision-making authority in the national government over the states. What is the logic of this centralization? Much of it rests on general understandings of the merits of centralization in institutional design. The common functionalist account justifying centralization of decision making in the national government focuses on collective action problems and the provision of public goods. National governments are best placed to coordinate public policy, determine national interests, and engage in the necessary tradeoffs to promote national public welfare. Perhaps most central to the responsibilities of the national government is the provision of national security, the maintenance of a domestic market for trade, and the generation of economic wealth. For example, in the security context, the national government can act as a single, integrated institutional actor to determine the national interest; develop US foreign policy; coordinate the military, diplomatic, and intelligence resources of the nation; swiftly pursue national objectives; and prosecute wars. If the several states were tasked with such responsibilities, it does not take much to imagine the difficulties in coordinating among a large number of heterogeneous subnational governments, each with its own interests and desire to pass on the cost of national defense, when possible, to its cosovereigns. The same logic applies to the development and maintenance of a common economic market and the promotion of policies to encourage economic prosperity. The national government can aggregate information and coordinate policy to ensure that the US can benefit from international trade, encourage the production of goods for which it has a competitive advantage, protect the national market from foreign anticompetitive behavior, and redistribute wealth, if necessary, to ameliorate the unequal distribution of wealth across particular regions, states, or demographic groups. The states, by contrast, will tend to be focused narrowly on their own economic prosperity, and will produce economic policies that allow them to reap the benefits and externalize the costs. We can imagine Alaska, Texas, and Louisiana, for example, adopting policies with respect to resource extraction that might impose environmental costs on the US as a whole, just as we can imagine Massachusetts, California, and New York adopting regulatory policies that might limit the ability of the US as a whole to benefit from its resource endowment. In these contexts—national security, trade, and economic prosperity—the benefits of centralization over vast decentralization among dozens of subnational entities are clear. Beyond this traditional account, there are less obvious but similarly important justifications for centralization in foreign affairs. One is the clarity of the ensuing foreign policy. Even if there is substantive disagreement over policy, clarity ensures at least in theory that there is a clear communication of the US national interest to friend and foe alike. Another is the designation of a clear decision-making authority in foreign affairs. Among other things, it reduces the likelihood of constitutional impasses over key issues, provides an accountable governmental entity for the domestic voting public, and encourages specialization over time. Finally, to the extent the national government is working with other countries on an issue of global concern, centralization designates the US representative for international policy coordination. But if the logic of centralization in foreign affairs in the form of speaking with one voice obtains in the context of the national government vis-a-vis the states, it is not as clear that the same logic holds with respect to Congress. In fact, the logic is not as persuasive for at](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1445&context=public_law_and_legal_theory#:~:text=The%20Supreme%20Court%20applies%20several,government's%20prerogatives%20in%20foreign%20affairs.]/Kankee</p>
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least two important reasons. First, the competency gap in foreign affairs between the national government and the states far exceeds the gap between the President and Congress, and even the gap between the political branches and the courts. The states are very poorly placed to coordinate policy and make foreign affairs determinations. The centralization of decision making and speaking in one voice are, accordingly, much more important when the institutional expertise of the national government is weighed against that of the state. But the President and Congress both have significant institutional resources to coordinate foreign policy and act decisively in foreign affairs, and are specifically empowered by the Constitution to do so. Unlike the states, Congress has institutional structures like the Senate Foreign Relations Committee, the House Armed Services Committee, and dozens of subcommittees dedicated to foreign affairs and international politics, with each generating valuable information and developing Congress's foreign policy expertise. Thus, the necessity of centralization and a unified voice between Congress and the President is not as strong, and that perhaps weakens the common justifications for the one-voice factor in the political question doctrine. The same analysis applies to the gap between the political branches and the courts. While in the aggregate the political branches are probably better placed to act in foreign affairs than the courts, the courts certainly adjudicate many sensitive matters that touch and concern foreign affairs, while the states are, for the most part, uninvolved in such issues. From adjudicating delicate issues regarding the War on Terror²⁷ to determining the constitutionality of international human rights litigation under the Alien Tort Statute,²⁸ the Supreme Court is not only involved in foreign affairs but also has developed some expertise in dealing with politically sensitive issues. On institutional competency grounds, the importance of centralization for purposes of limiting foreign affairs federalism outweighs the salience of centralization in foreign affairs decision making among the different branches of the national government.

One voice is key to national security – decisiveness, speed, clarity, responsibilities, and expertise

Abebe 13 [Daniel Abebe, Assistant Professor of Law, The University of Chicago Law School, 2013 “One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs,” Supreme Court Review, [First, the logic of speaking with one voice, whether resting on concerns about embarrassment for the US or drawn from the merits of centralization in another context, is not as powerful as the political question doctrine suggests. Despite this weak edifice, the first-mover bias almost always privileges the President’s foreign affairs decision making whether or not it is consistent with the Constitution. Though it doesn’t mean that the President will always prevail—there are other political question factors that the courts consider—the first-mover bias may very well overprivilege the President’s actions because it unrealistically assumes that a more vigorous and active Congress would be willing to challenge him. Since we don’t know how courts weigh the different factors in applying the political question doctrine, the first-mover bias combined with the one-voice factor might be doing much more work than it should. Second, the first-mover bias doesn’t vary; speaking with one voice is always privileged. But speaking with one voice might be especially important under some conditions, and much less important under others. Consider a crude distinction between high-stakes and low-stakes foreign affairs issues. For example, when the US is at war, or trying to determine whether a mutual-defense treaty requires it to come to the aid of an ally, or even deciding whether to exercise its veto on the United Nations Security Council, we might think that speaking with one voice is especially important. The resolution of foreign affairs questions relating to war, the defense of treaty partners, and other potential national security concerns requires the kind of quick, clear, and decisive action generally associated with the political branches—specifically the President—rather than the courts. We might characterize these as exactly the high-stakes foreign affairs issues for which speaking in a unified voice, on balance, makes sense; the benefits of centralizing decision making in the more competent political branches will likely generate better outcomes than a more ponderous decision-making process by the courts. But just as we can imagine the type of high-stakes issue for which the one-voice presumption is appropriate, we can also imagine low-stakes issues for which centralizing decision making might be less urgent. Take the seemingly important question of the US position on which government is the legitimate representative of a country. Some might view this as a complicated foreign affairs issue for which speaking with a unified voice through the President is absolutely necessary. However, not all foreign affairs questions of this kind require the quick, decisive action that centralization in the President provides. For example, it is hard to see why the delicate question of whether the US should recognize the recently ousted President Nasheed or the current incumbent President Waheed as the legitimate representative of the government of the Republic of the Maldives necessarily requires the exclusion of Congress or the courts. We can imagine that there are geographically concentrated interest groups with both foreign affairs expertise and strong policy preferences about the appropriate US policy outcome, giving Congress a legitimate interest in creating policy. In fact, careful deliberation by the political branches together, buttressed by judicial review, might be beneficial in determining the appropriate policy outcome. In other words, acoustic dissonance, in some cases and under certain conditions, may have value. So when will acoustic dissonance—or speaking with multiple voices—be beneficial and when will it create costs? Acoustic dissonance in foreign affairs will, at times, reduce the ability of the US to react clearly and decisively. As described above, when the US is dealing with a core foreign affairs issue that implicates national security or a sensitive foreign policy objective, the benefits of centralizing decision making are clearer. The one-voice factor in the political question doctrine makes most sense when the US is dealing with vital foreign policy concerns for which acting with speed and dispatch is necessary. For high-stakes or exigent foreign affairs issues, a presumption in favor of one voice seems appropriate. However, when the US is dealing with a foreign affairs issue for which the speed and dispatch associated with centralized decision making is not as crucial, the one-voice presumption might be less important. Again, the discussion above of high-stakes and low-stakes foreign issues illustrates exactly this concern. In low-stakes cases, we might find that acoustic dissonance improves decision making by encouraging Congress to engage the President in foreign affairs. Open, careful deliberation about foreign affairs questions leads to greater transparency and democratic legitimacy. Since greater congressional involvement in foreign affairs in low-stakes questions will likely lead to more opportunities for judicial review, acoustic dissonance prevents the atrophy of oversight that the one-voice factor creates. The courts’ willingness to adopt a one-voice presumption in low-stakes cases could reduce the judiciary’s future capacity to engage in a meaningful review of the President in foreign affairs, concretize the first-mover bias in favor of the President, and disincentivize the President, over time, to employ his own intrabranch review mechanisms. This phenomenon](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1445&context=public_law_and_legal_theory#:~:text=The%20Supreme%20Court%20applies%20several,government's%20prerogatives%20in%20foreign%20affairs.]/Kankee</p>
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is exacerbated by a dynamic effect, whereby the President's expertise and decision-making preeminence become self-affirming over time, and congressional enfeeblement becomes increasingly pathological. In low-stakes foreign affairs cases, the presumption in favor of one voice is weaker and acoustic dissonance may be appropriate. c. acoustic dissonance and international politics All of this might make sense in theory. But when courts consider whether or not to apply the political question doctrine and weigh the various factors, they will struggle to distinguish the high-stakes cases that might warrant a one-voice presumption from the low-stakes cases where acoustic dissonance might be useful. While courts have experience adjudicating foreign affairs questions, it is not clear that they have the necessary foreign policy expertise to make fine-grained distinctions between seemingly high-stakes and low-stakes foreign affairs questions. Nonetheless, courts routinely make those determinations when they apply the political question doctrine. For example, in order to determine whether there is a possibility of embarrassment to the US by failing to speak with one voice, the courts must make some threshold inquiry about the importance of the foreign affairs issue, the likelihood of embarrassment, and the consequences of that embarrassment on US foreign policy objectives. Yet we don't know how the courts make this inquiry or assessment in deciding whether the application of the political question doctrine is merited. Thus the courts—or, perhaps more accurately, individual judges—engage in an ad hoc analysis without the benefit of a framework to guide their reasoning. While a more categorical approach to the political question doctrine would carry the benefits commonly associated with rules—clarity, ease of administration, and low decision costs—it is probably too rigid to deal with the great variety of foreign affairs issues commonly before the courts. The late-twentieth-century rise of international human rights litigation under the Alien Tort Statute,³² for example, implicates sensitive foreign affairs issues that make a rule-like approach to the political questions doctrine a poor fit with the complex transnational litigation seen in US courts today. The increasing intermingling of foreign and domestic issues and the collapse of any meaningful definitional distinction between the two only weakens the value of the categorical approach. But if courts lack the institutional competency to assess complicated foreign affairs questions, and the nature of modern litigation so routinely implicates foreign affairs that it makes a categorical issue-by-issue approach unworkable, how should courts determine when speaking with one voice (or acoustic dissonance) is appropriate? Courts can gain traction on this question by assessing the background conditions of international politics to understand when a presumption in favor of speaking with one voice is warranted, and when such a presumption is unnecessary. As I have argued in prior scholarship,³³ the courts can adopt a parsimonious framework, based on the international relations concept of polarity, to assess background international political conditions and the role of the US in the world. Based on this assessment, the courts would not decide whether a particular foreign affairs question required the application of the political question doctrine; rather, the assessment would assist the courts in weighing the benefits of speaking with one voice. International theorists often describe the structure of international politics in terms of polarity.³⁴ Polarity is a heuristic that permits a simple, if somewhat crude, measure of the material power of the most influential states in international politics. By looking at a rough measurement of a state's economic wealth and military strength, scholars and judges can identify the most powerful countries in the world and focus attention on them. Such identification is particularly important in the foreign affairs context because, on average, the most powerful countries are best placed to influence international politics. Polarity refers to the number of great powers (powerful states in the world). A multipolar system reflects a world in which there are three or more great powers. Similarly, a bipolar system is a world with two great powers, and a unipolar system is one with only one great power or hegemon in international politics. Each of these systems presents different challenges or background conditions, and these conditions are relevant for understanding the importance of speaking with one voice. To make the illustration simple, let's imagine that it is the year 2030 and the US is one of three great powers in a multipolar world, along with Germany and China. Each of these great powers will have different and often competing economic goals, security interests, and national objectives, drawn from their respective cultures, histories, and resource endowments. Each will develop policies designed to achieve their goals and will look to build relationships with other states to advance their interests. In a world with finite resources, these great powers will compete, conflict, and perhaps even clash as they pursue their foreign policy objectives. The multipolar world presents a complex and challenging international political environment for the US. Since it is competing with China and Germany as a relative equal, the US incurs great costs in trying to achieve its objectives. In a multipolar world, the returns to speaking with one voice and centralizing foreign affairs decision making will likely be high. The US is not a global superpower and lacks the material power and political influence to ignore China and Germany as it pursues its policies. In fact, the US has to be careful to calibrate its foreign policy goals and the means to achieve them to minimize conflict with China and Germany, just as China and Germany exercise care vis-à-vis the US. Here, the President's foreign affairs expertise, institutional knowledge, and capacity to marshal resources and act quickly are especially beneficial given the particularly challenging international political environment that the US must navigate. To put it differently, the benefits of acoustic dissonance that emerge from careful, open, and deliberate consideration of policy are unlikely to be realized in a more complicated world requiring high levels of expertise and decisive action. Under this condition, a presumption in favor of speaking with one voice—through the one-voice factor in the political question doctrine—is appropriate. Such a presumption links the centralization of foreign affairs decision making through speaking with one voice with the international political environment in which it is most useful. In contrast, consider a unipolar world with the US as the hegemon or the unipolar power in international politics. Here, the US stands alone; by definition, there are no other great powers that can approximate the material power and political influence of the US. Of course, there are other powerful states in the world, but none of them is a peer of the US, the sole superpower. In the unipolar world, the President still has valuable foreign affairs expertise useful for the pursuit of the national interest, but the

necessity of acting with speed, secrecy, and dispatch is not as urgent. Since the US is dominant, it has greater latitude to develop foreign policy, define more broadly the national interest, and pursue national objectives because the potential for serious conflict with peer states is reduced. Stated slightly differently, the error costs tend to be lower. This does not mean that the US is free to do what it wants in international politics—it simply suggests that relative to a multipolar world, the unipolar world reduces some of the concerns that speaking with one voice or centralization address.

AT: Head of State PIC

There's no exemptions to international criminal law – the CP leaves potential war criminals undeterred, causing world wars, mass instability, and genocide as leaders hold peace hostage for their freedom. The CP also justifies Hitler getting off scot-free and letting the Holocaust go unpunished, which is an independent voting issue

Eboe-Osuji 24 [Chile Eboe-Osuji, International Jurist at the Lincoln Alexander School of Law, a Special Advisor to the President's Office at Toronto Metropolitan University, and a Member of the Media Freedom Coalition's High Level Panel of Legal Experts on Media Freedom with a master of laws degree from McGill University and doctor of laws degree from the University of Amsterdam, 5-23-2024, "No Immunity for Heads of State for International Crimes", Lawfare, <https://www.lawfaremedia.org/article/no-immunity-for-heads-of-state-for-international-crimes/>]/Kankee

*ILC: International Law Commission

But that diplomatic amenity shouldn't drape dignity upon the suggestion—that is often made and repeated in the Reuters report—that the ability of heads of state or government to attend international conferences augurs better for true tranquillity and security in the world than holding sovereign chiefs of the brutal ilk accountable for their own complicity in aggression, genocide, crimes against humanity and war crimes. History will readily show that diplomatic engagements with peers never stopped malevolent heads of state or government from conduct that amounted to international crimes. Indeed, it is often the case that some of these heads of states engaged in diplomatic communications with their peers precisely to seek moral or material support (including weapons) and alliances that would enable them along their chosen paths of horror. The more intuitive proposition is that recently registered by President Biden in October 2023 when he observed that “history has taught us that when terrorists don't pay a price for their terror, when dictators don't pay a price for their aggression, they cause more chaos and death and more destruction. They keep going, and the cost and the threats ... to the world keep rising.” Surely, the price of accountability is the least that those who violate international criminal law may be made to pay. French Premier Georges Clemenceau drove home a version of that point in 1919 as part of his motivations in leading an international law reform initiative the stated aim of which was a legal regime for the prosecution of heads of state and government for international crimes. Rejecting the idea of trading accountability for phantasmal peace, Clemenceau observed: “It would be too easy for the criminals if peace annulled all responsibilities.” Referring to the ravages of World War I, he continued, “Believe me; amongst the peoples who have suffered for these five years, nothing would sow so many real seeds of hatred as an amnesty granted to all the criminals.” Twenty-six years later, toward the end of World War II, the position of the U.S. government on accountability was made clear in the Yalta memorandum, ahead of the London Conference that set up the Nuremberg process. In the Yalta memorandum, the U.S. government insisted that Hitler and the Axis leaders must face prosecution for reasons including this: “Punishment of war criminals should be motivated primarily by its deterrent effect, by the impetus which it gives to improved standards of international conduct and, if the theory of punishment is broad enough, by the implicit condemnation of ruthlessness and unlawful force as instruments of attaining national ends.” Such a prosecution, the memorandum concluded, would afford “an opportunity to mark up an important step in the obtaining of future world security.” The claim is thus entirely unsupported by evidence, intuition, or common sense, that the freedom of errant leaders to attend red-carpet meetings around the world is better for international peace and security than the imperative of accountability. * * * It's important to note that Brazil once presented itself as a stalwart opponent of immunity before the ICC—even in cases concerning states not party to the Rome Statute. One notable such occasion was at the end of March 2005, when the United Nations Security Council adopted Resolution 1593 referring the situation in Darfur, Sudan, to the ICC. Although strongly supportive of the referral, Brazil abstained from voting for it. Why? Because the referral resolution contained an immunity clause for “nationals, current or former officials or personnel” from a state not party to the Rome Statute, unless that state expressly waived such immunity. The U.S. had insisted upon that immunity clause as a price for withholding its veto. Brazil saw that instance of immunity as “inconsistent [with] international law” and could not bring itself to vote for a resolution that allowed such immunity. Brazil's 2005 argument that immunity is inconsistent with international law was and remains demonstrably correct, while its plan to absolve friendly heads of state from accountability in 2024 is mistaken in law. The extent of this mistaken position goes well beyond the terms

of Article 51 of the First Geneva Convention of 1949 (and the equivalent provisions in the other three Geneva Conventions of 1949), which provide that “[n]o High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.” The preceding article in the First Geneva Convention—that is, Article 50 and the equivalent provision in each of the other three conventions—outlines the regime of war crimes known as “grave breaches” to the Geneva Conventions. Brazil and Russia are parties to those conventions. The seeming self-contradiction presented by Brazil’s new position (as the Reuters report suggests) casts a troubling shadow on Brazil’s urge for reform of the UN Security Council. An urge that received renewed impetus by Brazil’s condemnation of both the manner of Israel’s war in Gaza (for which Brazil supports South Africa’s case at the International Court of Justice accusing Israel of committing genocide) and the failure of the Security Council to vote in time for a ceasefire. The Security Council’s notorious dysfunction will compound the challenge of reform—if what that reform portends is merely an expansion of the cherished club of states able to exempt themselves and their friends and allies from accountability for apparent international crimes. It will be better to leave the Security Council as it is, unreformed. The Extent of Immunity for Heads of State: Immunity in National Courts Only Against the backdrop of Brazil’s planned plea of immunity, it may not be necessary to dwell on the irony evident in the first part of the dual-themed Rio G20 Summit: “Building a Just World and a Sustainable Planet” (emphasis added). It is enough to grant that there is nothing strange or new about the proposition that heads of state enjoy a certain privilege of immunity in international law—if what is contemplated is immunity before a foreign national court. What is new, according to the Reuters report, is the claim of such immunity before an international court. The legal truth is this: International law has never recognized immunity for heads of state before international courts. Although often confused, there is a significant difference between the two legal scenarios. That difference was marked early on in 1919 at the Paris Peace Conference—a groundbreaking occasion for the question of immunity in international law. On that occasion, the conference’s Commission on Responsibility of the Authors of the War and on Enforcement of Penalties rejected immunity for heads of state, observing as follows about the privilege of immunity: “[T]his privilege, where it is recognized, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a Sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different” (emphasis added). That heads of state enjoy immunity in the judicial processes of national courts is an idea whose bulwark dates back to 1812, when Chief Justice John Marshall articulated that principle on behalf of the U.S. Supreme Court in the Schooner Exchange case that controlled the understanding of international law on the question of immunity for a very long time. Of course, 1812 was well over 200 years ago, a very different era in the evolution of both national and international law. As of 1812, the international order was organized much differently. The current multilateral order was made for the very first time in 1920 with the formation of the League of Nations. That new arrangement, as announced by Woodrow Wilson, was instructively punctuated by the notable rapture of two leading French jurists, Dean Ferdinand Larnaude of Paris University law faculty and his colleague Professor Albert Geouffre de LaPradelle, who enthused at the end of 1918 that “un droit international nouveau est né” (“a new international law is born!”). In 1812, the international order had not accepted any set of norms that spelled out in an international legal instrument conduct that amounted to war crimes. That happened in 1899 by virtue of the regulations annexed to the second Hague Convention adopted that year. In 1812, the international order had not accepted aggressive war as illegal let alone criminal. Aggressive wars were the sovereign entitlement of states able to fight them. At the time, states that could bring their martial might to bear were free to acquire new territories by use of force. It was only in 1928, through the Kellogg-Briand Pact, that the international community made aggressive war “an illegal thing,” as Henry L. Stimson correctly observed in 1932. That development put to an end for the first time the right of states to acquire or expand territories by use of force. It was only after World War II that the international order witnessed criminal prosecution of aggression as an international crime. That prosecution occurred before the international tribunals in Nuremberg and Tokyo. The defendants were leaders of the Third Reich and the Japanese Imperial War Cabinet, respectively, resulting in guilty verdicts attended by capital punishment or long prison terms. In 1812, “crimes against humanity,” “genocide,” and “human rights” were not part of the standard lexicon of international law. Those developments started only after World War II, respectively with the London Conference of 1945 that adopted the Charter of the International Military Tribunal for Nuremberg, and the UN General Assembly adopting both a Convention on the Prevention and Punishment of the Crime of Genocide (1948) and the Universal Declaration of Human Rights (1949). It also goes without saying that the law has undergone profound changes even at the national level in the past 200 years. For instance, in 1812 most countries denied women the right to vote. The first country to end the practice was New Zealand in 1893. Before 1929, Canadian women were not recognized as “persons” qualified to be appointed to sit in the Canadian Senate. In 1812, slavery had not been abolished in the United States and Brazil—that abolition only occurred, respectively, in 1865 and 1888. As of 1812, the laws of the United States did not guarantee citizenship for Black Americans. The Supreme Court thus thought it entirely lawful to hold in 1857 in *Dred Scott v. Sandford* that Black people (enslaved or free) could not be citizens of the United States. The reversal of that jurisprudence occurred only after the end of the American Civil War in 1865—long after 1812—when Congress adopted the 14th Amendment guaranteeing citizenship to everyone born in the U.S. As of 1812, many national laws—notably in the U.K. and the U.S.—did not recognize that a man could rape his wife. The point of the foregoing impressions is that very much has changed in international—and national—law since 1812. An understanding of international law enunciated in 1812 recognizing immunity for heads of state before national courts does not support in our own age immunity for heads of state indicted before international courts on charges of aggressive wars, genocide, war crimes, and crimes against humanity. The Origins of Immunity in National Courts In 1812, it was understood that heads of state should enjoy immunity in each other’s national criminal courts. At that time, most heads of state were kings or queens, emperors or empresses. Each was accepted to be above the law of his or her own realm and, therefore, could not be proceeded against in any court of law within the realm. The operative theories of accountability (legal and philosophical) revolved around the idea that the monarch could do no wrong—a notion popularly rendered in the Latin maxim “rex non potest peccare”—and “princeps legibus solutus” (“the prince is not bound by the law”). The king, according to those impeccable theories, was God’s vicar on earth and as such was answerable only to God and no other earthly authority or power. At the time, the courts of the realm were generally understood as operating under their king’s authority. The superior court in England, for instance, was called the “King’s (or Queen’s) Bench.” King Solomon’s legend, it may be recalled, came from his feats of sagacity as a judge. It was thus easy to see how subjecting a head of

state to prosecution before the criminal courts of another country would wreak havoc on the idea of sovereign equality of nations. The idea that all sovereigns were deemed equal would be easily destabilized in any arrangement in which Queen Christina of Sweden was prosecuted in France for the murder of Marquis Rinaldo Monaldeschi, her Italian equerry, in her apartments in the Palace of Fontainebleau in 1657. Rejection of Immunity After the World War II Order of International Law It has become anachronistic in our own times to view anyone—including heads of states—as above the law. The general sentiments run rather along the *nemo est supra leges* (no one is above the law) line rendered by Justice Robert H. Jackson (who served as both the U.S. representative at the London Conference of 1945 and the U.S. chief prosecutor at Nuremberg). As he put it in his report to President Truman in June 1945, with regard to the United States, “We do not accept the paradox that legal responsibility should be the least where power is the greatest. We stand on the principle of responsible government declared some three centuries ago to King James by Lord Chief Justice Coke, who proclaimed that even a King is still ‘under God and the law.’” On that basis, Jackson and his co-conferes—from France, the U.K., and the U.S.S.R., all of whom are members of today’s G20 states—agreed to preclude the plea of immunity from the Charter of the International Military Tribunal (IMT) at Nuremberg annexed to the London Agreement they adopted in August 1945. The preclusion of immunity was stated in Article 7 of the IMT Charter as follows: “The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.” A similar preclusion was made in Article 4(a) of the Control Council Law No 10 of 1945, according to which the Allied nations organized criminal prosecutions in their various zones of occupation in Europe after World War II. An equivalent provision was also made in Article 6 of the Charter of the International Military Tribunal for the Far East (popularly known as the Tokyo Tribunal), which tried the top leadership of Japan’s wartime government (from which only the emperor was exempt for political and not legal reasons). It is important to stress here that just as Russia is not a party to the Rome Statute of the ICC, Germany was not a party to the London Agreement of 1945. Yet Germany’s top leaders during World War II were tried by the IMT at Nuremberg. Notable among the defendants was Grand Admiral Karl Dönitz, who became Germany’s head of state on May 1, 1945, upon Hitler’s death by suicide. Similarly, Japan was not a party to the instrument establishing the Tokyo Tribunal that tried Japan’s cabinet members—including Hideki Tōjō, who was Japan’s prime minister during most of World War II, and his successor for the remainder of the war, Koiso Kuniaki. Since the trials before the Nuremberg and Tokyo international tribunals involved prosecution of the top leadership of Nazi Germany and Imperial Japan, Jackson’s observations quoted above would encounter no significant legal obstacle. This is because his repudiation of the idea of government without legal accountability in the modern era was only a commentary directed at the order of national governance as it had evolved until 1945—contrasting with the era of French King Louis XIV’s much traveled “L’État c’est moi” riposte in 1655. Jackson’s observations would not, in any event, collide against any norm of international law in relation to international tribunals of the ilk then being set up in Nuremberg and Tokyo. This is because there had quite simply been no precedent in which immunity was upheld before any such international tribunal. It was thus unsurprising that in its judgment at the end of the trial of Nazi leaders on Sept. 30, 1946, and Oct. 1, 1946, the IMT Nuremberg took care to explain that international law recognized no immunity before international tribunals in cases involving international crimes. As the tribunal famously stated: “The principle of international law which, under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings[.]” Driving home that point of law, the tribunal further observed that he “who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state, if the state, in authorizing action, moves outside its competence under international law.” Evolution of the Current International Law What then is the current state of international law on the question of immunity for heads of state indicted before international criminal courts? That answer begins with the UN General Assembly Resolution 95(I) of Dec. 11, 1946. By that resolution, the General Assembly did two remarkable things that defined international law after World War II. First, the General Assembly affirmed the principles of international law recognized by the charter of the Nuremberg tribunal and by the judges of the tribunal in their judgment. As noted earlier, those principles necessarily included the rejection of immunity for heads of state. As already noted, that rejection was expressed as a norm in both Article 7 of the tribunal’s charter and by the judges of the tribunal in the pronouncements quoted above. The second thing that the General Assembly did with Resolution 95(I) was to direct the UN’s expert international law body—later represented by what became the International Law Commission (ILC)—to formulate those principles of international law that had been recognized by the charter and the judgment of the Nuremberg tribunal. At the conclusion of that task in 1950, the ILC adopted a set of principles of international law, known as the Nuremberg Principles. It is a very short document that formulated those principles in only seven provisions. Primary among those principles of international law is that persons who commit international crimes are individually responsible for them and are liable to punishment for such crimes (Principle I). For that purpose, conduct recognized as international crimes are crimes against peace (including wars of aggression), war crimes, and crimes against humanity (Principle IV). Beyond the actual perpetration of the crime, complicity in the commission of an international crime is also punishable in international law (Principle VII). As regards immunity, Principle III of the Nuremberg Principles pointedly captured what Article 7 of the Nuremberg Charter and judges of the tribunal said about immunity—including for heads of state. In that connection, Principle III says this: “The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.” At no time has international law ever accepted immunity for heads of state charged with crimes before international criminal courts—such as the Nuremberg and Tokyo tribunals— notwithstanding that the states of the defendants were not parties to the founding treaty of the relevant tribunal. That is evident in the care taken to reflect Nuremberg Principle III in every international instrument used to establish any international criminal tribunal from 1945 until the present day. Similarly, the ILC has reflected that principle in all the iterations of an international criminal code that it has drafted as part of its work after

World War II. It was for that reason that Sir Arthur Watts, an eminent British jurist, observed in 1994: “It can no longer be doubted that as a matter of general customary international law a head of state will personally be liable to be called to account if there is sufficient evidence that he authorized or perpetrated such serious international crimes.” The Deliberate Initiation of International Law Reform The rejection of immunity in international law is a defining measure of justice. It stands against the proposition that had they lived, Adolf Hitler and Pol Pot would be entitled to immunity from accountability for the genocides alleged against them—merely because they were heads of state. Here, it must be noted, it was a conscious effort in international law reform to preclude immunity for heads of state charged with international crimes before international criminal tribunals. The explicit purpose of that law reform was precisely to facilitate accountability for sovereign sociopaths for the horrors they inflict on humanity. Although that law reform crystallized only after World War II in 1945, the initial steps were taken earlier in 1919 at the end of World War I. The champions of that initial law reform were U.K. Prime Minister David Lloyd George and French Premier Georges Clemenceau. They were deliberate in their decision to set the course of international law in that direction—in their insistence that Emperor William II of Germany must be prosecuted before an international tribunal for international crimes attributed to Germany during the war. In a cabinet meeting on Nov. 20, 1918, the question arose about the lack of an earlier precedent in international law for such a trial. In response, Lloyd George said, “With regard to the question of international law, well, we are making international law, and all we can claim is that international law should be based on justice.” At the Paris Peace Conference in 1919, Lloyd George’s solicitor-general, Sir Ernest Pollock, drove a hard negotiation as a leading member of the Commission on Responsibility of the Authors of the War and on Enforcement of Penalties. The result was a report that explicitly rejected head of state immunity in the following terms: “[I]n the hierarchy of persons in authority there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the case of Heads of States.” Subsequently, during a spirited discussion between Wilson, Lloyd George, Clemenceau, and Italy’s Vittorio Orlando, a former law professor, Orlando raised concerns about the absence of precedent in international law for a trial such as was being contemplated for the former German emperor before an international court. With evident irritation, Clemenceau brought him back in line with the reminder that it is human beings that create “precedents” and that the contemplated trial of the emperor would set the needed precedent for future prosecution of heads of state for international crimes before international criminal courts. [See Paul Mantoux, *The Deliberations of the Council of Four (March 24—June 28, 1919): Notes of the Official Interpreter [Translated and Edited by Arthur S Link, with the Assistance of Manfred F. Boemeke]* (1992) at p 193] In the end, the four leaders agreed that the former German kaiser must be prosecuted before an international criminal tribunal. Wilson was personally involved in the formulation of the text that became the famous Article 227 of the Versailles Treaty. The provision announced that the Allied and Associated Powers had publicly arraigned the former German emperor “for a supreme offence against international morality and the sanctity of treaties” to be tried by a special international tribunal that would impose appropriate punishment. The Dutch thwarted the project of prosecuting the emperor by refusing to surrender him from his asylum in the Netherlands. It took another 26 years for the Nuremberg process to solidify the norm that no one—including heads of state—may enjoy immunity when charged with an international crime before an international court. Reverse Reform of International Law After more than 50 years, Americans saw their Supreme Court reverse *Roe v. Wade*, allowing states to enact laws that outlawed abortion. A similar regression can occur in international law on the matter of immunity—regardless of the current position of international law. But those who urge for retrogression must do so knowing that the logic of their argument would also shield Hitler from prosecution for the Holocaust. It would be inadequate to base such a reversal on propositions, as the Reuters piece reports, that “immunity of heads of state is essential to promote peaceful relations between states by allowing them to participate in diplomatic conferences and missions in foreign countries” or on similar eccentric reasoning. During a UN Security Council meeting that went late into the night of March 31, 2005, Brazil’s Permanent Representative Ronaldo Mota Sardenberg, in his capacity as the president of the Security Council, argued that the “the maintenance of international peace and the fight against impunity cannot be viewed as conflicting objectives.” He was eminently correct. There should be more to the promotion of “peaceful relations between states” than merely allowing heads of state to travel the globe, receiving the red-carpet treatment as they go, notwithstanding that they have been accused of inhumane crimes against the same international law they claim as affording them a basis to travel as they see fit. It may be recalled here that in rejecting head of state immunity in 1919, the Paris Peace Conference’s Commission on Responsibility of the Authors of the War and on Enforcement of Penalties observed, as noted earlier, that the privilege of immunity, “where it is recognized, is one of practical expedience in municipal law, and it is not fundamental” (emphasis added). It is obvious that the more fundamental consideration in “peaceful relations between states” is that heads of state are deterred from engaging in wars of aggression, genocide, and crimes against humanity, and that they refrain from war crimes in the wars they fight in ways that make return to peace more difficult. Before the Nuremberg proceedings that began in 1945, there was no precedent for an international criminal tribunal that actually worked. It was an era of immunity for

heads of state before each other's national courts. But what prevailed during that era were constant wars between nations—a veritable era of instability in "peaceful relations between states"—culminating in two world wars that entailed aggression, genocides, war crimes, and crimes against humanity. It may not be necessary to draw a direct link to the Nuremberg process as having an effect—the "Nuremberg Effect"—that helped to foster relative improvements in international peace and security. It is enough to say that the principles of international law resulting from the Nuremberg process included the rejection of immunity for even heads of state accused of international crimes. The Nuremberg effect would no doubt have left the impression in the minds of heads of state that World War II marked the end of the era of impunity for international crimes that threatened or disturbed international peace and security. It couldn't make sense to a child to suggest that accountability for the very same conduct is itself something that threatens peaceful relations between states.

AT: State Sovereignty

ICC jurisdiction helps state sovereignty – it helps avoid authoritarian takeovers

Amvane 23 [Gabriel Amvane, Vice-President at the Academic Council on the United Nations System, “International Criminal Justice: Threat or Strength to State Sovereignty?,” Australian International Law Journal, https://www.researchgate.net/publication/368145065_INTERNATIONAL_CRIMINAL_JUSTICE_THREAT_OR_STRENGTH_TO_STATE_SOVEREIGNTY/link/63dc4095c465a873a27d1447/download?_tp=eyJjb250ZXh0ljp7lmZpcnN0UGFnZSI6lnB1YmxpY2F0aW9uIiwicGFnZSI6lnB1YmxpY2F0aW9uIn19]/Kanke

Usha Ramanathan clarifies that ‘[t]he situation of conflict that persists in Kashmir, the North-East, and, for a while, in Punjab explains the reasons for the state’s anxiety that this manner of violence could be referred to the ICC’.¹¹⁵ Garima Tiwari, an Indian lawyer, goes in the same direction explaining that torture, hostage taking, and rape have been prominent abuses in the Kashmir conflict.¹¹⁶ Using the argument of State sovereignty in such cases raises an important question: who is the sovereign? Indian leaders who want to exempt themselves from justice, or the people that international criminal justice could protect in prosecuting officials (civilian and military) involved in these crimes? In other cases, authoritarian leaders commit international crimes against their own people and claim that the ICC cannot prosecute them, for the sake of sovereignty. The case of Burundi is illustrative, as this was the first State to withdraw from the ICC statute. Article 96 of the Burundian constitution of 18 March 2005¹¹⁷ imposed a two-term limit on presidential candidates. However, in 2015, President Pierre Nkurunziza announced he would run for a third term. This announcement was followed by protests among the population. In response, the State severely repressed the people. The repression was so grave that, for the first time, the African Union decided to have recourse to article 4h of its Constitutive Act, and to deploy 5,000 military personnel and police to protect civilians in Burundi.¹¹⁸ However, in the end, the African Union did not deploy its troops. It was in this context that the ICC Prosecutor decided to open a proprio motu investigation over Burundi on 25 October 2017. After investigations, the ICC Chamber found a reasonable basis to believe that State agents and groups implementing State policies launched a widespread and systematic attack against the Burundian civilian population.¹¹⁹ According to the ICC investigation, crimes against humanity committed in Burundi included: murder and attempted murder, imprisonment or severe deprivation of liberty, torture, rape, enforced disappearance, and persecution.¹²⁰ The ICC’s report on Burundi shows that ‘the crimes were allegedly committed on a large scale, with an estimated 593 killings, 651 cases of torture, 3,477 arbitrary arrests or detentions, and 36 enforced disappearances, and widespread rape and sexual violence ... 413,490 people had sought refuge in neighbouring countries between April 2015 and 31 May 2017’.¹²¹ However, as he felt threatened by the international criminal justice system, President Pierre Nkurunziza chose to sign into law the withdrawal of Burundi from the ICC statute,¹²² using State sovereignty in an attempt to escape justice, while committing crimes against members of the Burundian population. The sovereignty of the Burundian State was thus taken hostage by a leader. The Burundian constitution clearly states, ‘the national sovereignty belongs to the people ...’.¹²³ In prosecuting an autocratic leader who is committing crimes against his own people, the ICC would have protected the national sovereignty of Burundi. As mentioned above, the International Military Tribunal at Nuremberg concluded that ‘crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced’.¹²⁴ It added, ‘the authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings’.¹²⁵ Cases such as Burundi illustrate that international criminal justice has the potential to reinforce State sovereignty and defend it from leaders who seek to take sovereignty hostage. Such leaders invoke State sovereignty to better protect themselves, and by doing so, oppress the real sovereign, namely the people. V CONCLUDING OBSERVATIONS Jean Jacques Rousseau observed in Chapter VII of his Social Contract that any offence against one of the members of the Sovereign is an offence against the Sovereign as a whole.¹²⁶ If a domestic judicial system does not fulfil its duties, the ICC provides a mechanism to protect the sovereign people against their government. International criminal justice can provide a bulwark for oppressed people who are denied justice in their home State. The principle of complementarity that characterises the ICC also fits this object; for, unlike previous international criminal tribunals, ICC jurisdiction operates only when domestic courts do not fulfil their judicial duties. Instead of being perceived as a mere opponent of State sovereignty, international criminal justice can protect State sovereignty from leaders who seek to take it hostage.

AT: Politics Disads

No link – the US is more open to ICC post-Ukraine

Wheeler 24 [Caleb Wheeler, Senior Lecturer in Law at Cardiff University, 2024, “Strange bedfellows: The relationship between the International Criminal Court and the United States,” Wake Forest Journal of Law and Policy, <https://orca.cardiff.ac.uk/id/eprint/159100/>]/Kankee

5. President Biden and a Possible New Dawn in the United States’ Relationship with the ICC Until recently, there has been little in the history of the relationship between the United States and the ICC to suggest that the United States maintains much interest in becoming a member of the Court. However, the likelihood of the United States seeking membership in the Court has increased in the months following the Russian invasion of Ukraine in 2022. Within a month of the invasion, President Joe Biden identified Russian President Vladimir Putin as a ‘war criminal’, a claim he reiterated several weeks later.¹³⁷ Biden also publicly indicated that there was a need to gather evidence to be used during a ‘war crimes’ trial.¹³⁸ Biden followed that statement with a declaration that Putin was committing a genocide in Ukraine, and that it would be up to international lawyers to decide whether Putin’s actions legally qualified as genocide.¹³⁹ Despite this, Biden has stopped short of explicitly endorsing greater cooperation between the United States and the ICC despite using the language of the Court when calling for Putin’s prosecution as a war criminal. Further, officials in his administration have sent mixed messages about the extent to which the United States wishes to engage with the Court in efforts to conduct trials from crimes committed in the Ukrainian context. One of Biden’s deputy national security advisers, Jon Finer, called holding trial at the ICC “a challenging option”, citing jurisdictional and membership issues as roadblocks.¹⁴⁰ Conversely, Beth van Schaack, the United States’ Ambassador-at-Large for Global Criminal Justice, has stated that the administration is prepared to assist the Ukrainian government should it wish to pursue accountability efforts at the ICC.¹⁴¹ The United States has also joined with the European Union and the United Kingdom to create the Atrocity Crimes Advisory Group (‘ACAG’), a mechanism designed to coordinate their support for accountability efforts.¹⁴² While the stated aim of the ACAG is to support the accountability efforts being pursued by the Ukrainian Office of the Prosecutor General, the group is working in conjunction with a variety of other groups, including the ICC, to gather evidence.¹⁴³ The statement made when the ACAG was formed, also expressly indicates that the United States and its partners support a range of accountability efforts, including those being conducted by the ICC.¹⁴⁴ This suggests that while there is some ongoing hesitancy on the part of the administration to directly collaborate with the Court, it is willing to support the Court’s efforts through, and in conjunction with, other partners. Perhaps more significantly, the war in Ukraine has broken down some of the preexisting Congressional opposition to the ICC. On March 15, 2022, the United States Senate unanimously passed a resolution calling on the member states of the ICC to petition the Court to investigate war crimes and crimes against humanity being committed by and at the direction of Vladimir Putin.¹⁴⁵ The resolution was sponsored by Senator Lindsey Graham, a self-described ‘conservative problem-solver’.¹⁴⁶ In the weeks following the vote, Graham proclaimed that Putin had ‘rehabilitate[d] the ICC in the eyes of the Republican party and the American people.’¹⁴⁷ This is an important development as American conservatives have traditionally rejected the ICC as an impermissible intrusion on American sovereignty. Former Republican Senator Jesse Helms, one of the early architects of conservative opposition to the Court, once commented during a sub-committee hearing of the Senate Committee on Foreign Relations that the ICC represents a threat to the national interests of the United States and that the country should actively oppose the ICC ever coming into being.¹⁴⁸ During the same meeting, another conservative, Senator Rod Grams, referred to the Court as ‘a monster’ that needed to be slain.¹⁴⁹ These views reflect the thinking of many American conservatives about the ICC, and the criticisms levelled against the Court during the Bush and Trump Administrations were largely an espousal of that long-standing position. For a self-described conservative to sponsor a resolution supporting the ICC, as Senator Graham did, indicates the severity with which the situation in Ukraine is being viewed in Washington and a willingness amongst conservatives to engage with an entity that they had traditionally shunned. The House of Representatives has also shown an interest in supporting investigations into war crimes committed in Ukraine. Several weeks after the Senate Resolution was passed, the House passed its own bill with bilateral support, directing the President to report on efforts the United States was making to collect, analyze and preserve evidence of Russian crimes committed in Ukraine for use in any future domestic, foreign or international proceedings.¹⁵⁰ While the Bill does not refer directly to the International Criminal Court, one of the bills’ cosponsors,

Representative Ilhan Omar stated in a Press Release that the Bill would help support proceedings at the ICC.¹⁵¹ Representative Omar is a long-standing supporter of the ICC, having introduced a resolution in 2020 encouraging the United States to ratify the Rome Statute.¹⁵² She followed that up by introducing additional legislation in April 2022, once again calling on the United States to join the ICC and to repeal the ASPA.¹⁵³ Clearly, the current mood in the United States is in favor of greater cooperation with the ICC. For the time-being, the Court is being viewed as a tool that can be used to punish Russian officials, including President Putin, for their perceived misdeeds in Ukraine. While there is no consensus as to what form that cooperation might take, it has been suggested in some quarters that the United States should join the ICC so that the US might play a greater role in the accountability efforts being made in the context of Ukraine. The problem with this suggestion is that it does not propose how to address the United States' long-standing objections to Article 12(2) of the Rome Statute.

Stock market reactions cap bad Trump actions

Lubin 24 [Rhian Lubin, senior US reporter at the Independent, 11-19-2024, "How the stock market could be last guardrails to corral Trump's wildest whims," Yahoo Finance, <https://finance.yahoo.com/news/stock-market-could-last-guardrails-182827059.html?guccounter=1>]/Kankee

Donald Trump has so far chosen only the most loyal supporters to join his cabinet, signaling that he intends to surround himself with officials who will carry out his agenda without question. But there is one force that could keep some of his plans at bay — the stock market. "I don't see Congress or the courts limiting the president's authority. Ultimately, the only entity that has real power over the president's thinking about his agenda is the stock market," Isaac Boltansky, director of policy research at BTIG, told CNN. During his first administration, Trump obsessed over the stock market and regularly posted on Twitter — now Elon Musk's X — updates about how it was faring. The approach is not one that Trump's predecessors adopted in office. "Stock Market hit another all-time high yesterday -- despite the Russian hoax story," Trump tweeted in July 2017. "Stock Market hits new Record High. Confidence and enthusiasm abound. More great numbers coming out," he posted later that year. "President-elect Trump is the most pro-stock market president we have had in our history," Jeremy Siegel, a finance professor at the Wharton School of the University of Pennsylvania, told CNBC. "He measured his success in his first term by how well the stock market did." So a downturn in the market, might get Trump to think twice about policies if he uses its performance as a barometer for his political success. After Trump was reelected earlier this month, global stock markets enjoyed a boost while the US dollar surged. Trump was "euphoric" over the news, sources reportedly told CNN's Kayla Tausche. But some of his policy ideas and moves could trigger "a market meltdown" and potentially give Trump second thoughts, according to experts. On the campaign trail, Trump proposed adding a tariff of 10 to 20 percent on all imports — and a 60 to 100 percent tariff on imports from China specifically. And Trump has suggested he could intervene with the Federal Reserve if he pushes out chair James Powell. "I was threatening to terminate him, there was a question as to whether or not you could," Trump said at the Economic Club of Chicago last month. Powell said he would not resign if Trump asked him to, nor would he have the authority to push him out. "Donald Trump cares about independent validators. And the biggest independent validator of his success is the market. It's a daily voting mechanism," Ed Mills, Washington policy analyst at Raymond James told the network. "It serves as a potential binding restraint to aggressive policies." But not all experts are convinced. Jeffrey Sonnenfeld, founder and president of the Yale Chief Executive Leadership Institute, told CNN that Trump is unlikely to listen to the concerns of investors.

AT: ICC Antiblack/Racist

The ICC isn't racist – African participation, domestic politics, and dislike of the current prosecutor, not the institution

Kersten 22 [Mark Kersten, Assistant Professor in the Criminology and Criminal Justice Department at the University of the Fraser Valley, 2-22-2012, "Is the ICC Racist?", Justice in Conflict, <https://justiceinconflict.org/2012/02/22/is-the-icc-racist/>]/Kankee

It is important to note that levying the charge of racism against the Court does not simply bring into question whether the ICC is biased or selective, two critiques often raised with the Court by its critics and often admitted by its more honest proponents. No, the bludgeon of calling the Court racist takes the matter one step further by suggesting that the ICC targets African contexts because they are African. 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 strategically. 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 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.

Critique's of ICC racism are false

Cannon et al. 17 [Brendon J. Cannon, Assistant Professor of International Security at Khalifa University with a Ph.D. in Political Science from the University of Utah, Dominic R. Pkalya, conflict researcher with a Masters of Arts (MA) degree in Media, Conflict and Peace Studies from University for Peace, and Bosire Maragia, Technology and National Security Law Attorney at the DoD with a PhD from the University of Delaware, 10-30-2017, "The International Criminal Court and Africa: Contextualizing the Anti-ICC Narrative", SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3061703]/Kanke

3.2 Responding to Critics of the ICC Double Standards: It is empirically accurate that virtually all of the cases before the ICC involve Africans. Some scholars have even noted that "It will not be an overstatement to argue that thus far the ICC has acted predominantly as a transnational criminal court for Africa."⁴⁹ As of June 2015, the ICC was investigating situations in eight countries, and had issued three verdicts.⁵⁰ By November 2016, the Court had ten ongoing examinations, five of which involved African states.⁵¹ There were ten situations under investigation, nine involving African countries (Georgia being the exception).⁵² There were 13 cases at different stages of trial and five closed cases – all involving Africans.⁵³ This has indeed developed into a public relations nightmare for a Court that ostensibly set out to deliver justice to victims of war crimes, genocide and crimes against humanity, globally. Given the above figures, is the ICC applying a double standard and unilaterally instigating investigations against Africans? At first glance, there are legitimate concerns insofar as the ICC has dared not investigate atrocities alleged to be committed by major powers and although the ICC Prosecutor has argued that her office has investigations in Afghanistan, in Colombia, in Palestine and in Ukraine.⁵⁴ Second, the involvement of the UNSC members who have refused to ratify the Rome Statute in referrals and other matters pertaining to the Court's operations should be disconcerting to anyone familiar with international politics and treaties. The ICC is an anomaly to the extent that the Rome Statute purports to allowing non-member states to enforce treaty obligations against State Parties as well as non-consenting parties. The near impossibility of the UNSC referring a Council member to the ICC underscores that problem and may reinforce Africans' perception of bias.⁵⁵ That said, African states' eagerness so far to refer cases to the ICC, which might signal either unwillingness or inability to handle such cases, waters down that argument. Except for Sudan's Al-Bashir indictment and the investigation in Libya that came at the urging of the UNSC, and the Kenya case which the ICC brought on its own, all other investigations including situations in Uganda, Congo and Mali⁵⁶ have come at the urging, or encouragement, of African countries. This, coupled with participation of majority of African countries information of the Court and at least 60% ratifying the Rome Statute, regardless of motivation or unconscionable demands from some Western countries, suggests that African signatories, too, have been partially responsible for the harm they claim the ICC is inflicting on them at the behest of Western imperial powers. Rather than being victims of the ICC, African States Parties have themselves failed to implement effective measures to prosecute the atrocity crimes within their national courts. First, they have failed to create credible judiciaries that could adjudicate gross violations of human rights and diminish the relevance of an external court like the ICC. Second, they have lacked strategic vision and foresight and signed treaties or international agreements sometimes against their national interests. In other words they have lacked sophistication in conceptualizing and articulating sovereignty in ways that help them advance their national interests in an international order that is already stacked against them.⁵⁷ African countries' criticism of the ICC for not focusing on human rights violations in other regions also reflects such lack of vision and strategic thinking.⁵⁸ Such sentiment does not shed further light on how the continent can advance accountability for egregious violations of human rights where many local judiciaries are either weak or have limited expertise. It is therefore disingenuous for African elites and the AU to blame the ICC for prosecuting African defendants for serious violations of international human rights that they are either unable or unwilling to handle within their countries.⁵⁹ Unless there is evidence demonstrating that the ICC is prosecuting innocent people, or violating African defendants' due process rights, it is irrelevant that most of them happen to be of African origin. In essence, many of Africa's grievances against the ICC seem more political than legal⁶⁰ and sometimes at odds with the preferences of their own people.⁶¹

Insensitivity to Local Social-Political Context: This is probably the most compelling criticism of the Court and one that it would find difficulties addressing. Efforts to hold individuals responsible for atrocities often come after a war or conflict has subsided and with the cooperation of a local authority exercising a modicum of control. That one – often losing – side of conflict bears the brunt of post-war trial is real and one that has, for years, dogged international tribunals. For example, the International Criminal Tribunal for Rwanda (ICTR) has yet to prosecute President Paul Kagame's Rwandan Patriotic Front (RPF) for atrocities committed during the 1994 genocide in Rwanda, in part because of a public opposition from Kagame himself. The reality is that the ICC cannot do much without some local authority guaranteeing a modicum of security and safety of

its investigators and, crucially, supporting ICC investigators and prosecutors. Yet, the reliance of such arrangements often tilts the balance of justice for one faction against others in ways that can undermine reconciliation.⁶² The ICC ideally is less likely to indict individuals associated with a political establishment for which it depends on for security and cooperation. The Court, however, could revisit the issue once ruling elites and/or parties leave office and should therefore be careful as to how and to whom it grants immunity. A Stooze of Western Imperialism: The “ICC is biased against Africa” narrative is rooted in the Court’s record of focusing its investigations on relatively weaker and poorer countries such as those in sub-Saharan Africa that have ratified the Rome Statute. Critics point out that citizens of the United States, China and other more powerful states remain beyond reach of the Court’s long arm. There is some validity to these criticisms that underscores the lopsidedness of the current international order.⁶³ Yet equally blameworthy is sub-Saharan African countries’ penchant for joining international organizations, agreements or treaties without much thinking that such obligations may limit their sovereignty. While sub-Saharan African countries have legitimate reasons for feeling unfairly targeted by the ICC, their situation probably would not be any different even if the ICC had looked at other countries outside the region. Branding the ICC a stooge of Western imperialism – even though, like other international institutions, it is susceptible to political influence – does not move the needle in terms of changing the underpinnings of the current global order. African countries’ voluntary participation in establishment of the court, and legally binding themselves through ratification of the Rome Statute, reflects a gap in the way sub-Saharan African states and Western countries view the system and define national interest. The United States, Russia⁶⁴ and other states have abstained from the Court out of national interest, consistent with international law doctrine *pacta sunt servanda* – states are bound only by treaties they enter and ratify. The behaviour of these states is also in tune with realists’ view of world politics – that powerful states affirm international law when it suits them and ignore it when it does not.⁶⁵ The major disagreement many elites in African countries have with the ICC seems to be more about the Court’s radical piercing of the African state’s sovereignty rather than the Court’s inability to address violations of international humanitarian laws committed by major powers or performed outside of Africa. Invoking the Rome Statute has unrivalled draconian consequences as its application strikes at the very seat of power and renders indicted African ruling elite fugitives outside of their own borders.⁶⁶ There is no evidence that any country was forced to join negotiations or to ratify the Rome Statute, although a rich body of literature indicates there is unevenness in the way treaties are negotiated.⁶⁷ The United States, for instance, played a significant but oppositional role in negotiations leading to the formation of the Court.⁶⁸ For example, the United States – not a member of the ICC – successfully dissuaded some of these countries from ratifying the Rome Statute.⁶⁹ That African states, as a bloc, led the pack of states that have ratified the Rome Statute is an indictment on the continent itself. The decision-making authority of the ICC rests almost entirely on the willingness of states to resolve disputes on their soil amicably and with satisfactory justice (thereby making the ICC a court of last resort) and/or on their readiness to submit their disputes to the ICC for arbitration. The ICC’s mandate contains no powers to enforce its own arrest warrants – as the case of Sudan’s Al-Bashir attests. Some states such as South Africa have refused to arrest and extradite Al-Bashir to The Hague underscoring just how much the ICC is reliant on members enforcing its warrants. It is therefore disingenuous and hypocritical for African states to play the imperialism card when, in fact, most of the cases involving African defendants (Uganda, DRC, CAR and Mali) have been referred to the Court by African governments.⁷⁰ Even in the Kenya case – the only case where the ICC initiated investigations *proprio motu* – the Court gave the government opportunities to set up its own mechanism before it actually took over the cases. 3.3 Missing the Big Picture The vitriol directed at the ICC misses two fundamental aspects of the Court that comport with the prevailing conditions in post-conflict societies in Africa. First, is the potential for the Court to contribute towards conflict resolution and peacebuilding while providing a measure of accountability to tame impunity especially in countries where the courts are either weak or no longer exist because of war, instability and other factors. Second, insofar as joining the ICC is voluntary and an exercise of sovereignty, states are similarly at liberty to set up and use their own courts. With due respect to those who have complained about the ICC targeting only Africans, the empirical reality is that Africa has seen an inordinate number of conflicts in which violations of international humanitarian law have occurred.⁷¹ For instance, a mapping of major armed conflicts in the world by Uppsala Conflict Data programme established that between 2001 and 2015, Africa accounted for the most conflicts in the world (with an all-time high of 35 violent, armed conflict incidents from 2000 to 2001), with the Middle East gaining ground in 2014 largely due to the crises in Syria and Iraq.⁷² The same mapping established that Europe and the Americas recorded fewer incidents of armed violent conflicts. Many of the conflicts in Africa have resulted from the collapse in the 1990s of several African states under the weight of unpopular neoliberal policies that were touted by the IMF and The World Bank under the label Structural Adjustment Programs (SAPs). These policies led to the ouster of Africa’s “Big Men” such as Mobutu Sese Seko of Zaire (now DRC), as SAPs forced governments to scale back or scrap some essential services heightening competition for scarce resources. It is therefore not surprising that the list of the ICC’s most wanted criminals would include mostly Africans.⁷³ In fact, the ICC quipped in a Tweet in March 2016 that “had the ICC been established in the 1970s, it would have probably started its operations in Latin America – or in Europe had it been established in the 90s.”⁷⁴ As it is, the establishment of the ICC coincided with a particularly conflict-laden decade in the African chapter. Many African states have weak⁷⁵ or corruptible

judiciaries and institutions that in many cases lack competence to handle complex litigation and bring perpetrators of atrocities to justice. The fact is that commonly recognized principles that define the independence of the judiciary are regularly undermined in Africa.⁷⁶ These take various forms including politicization of judicial appointees, executive overreach, failure of constitutions to explicitly define the independence of the judiciary, as well as how to draw a balance between “judicial restraint”⁷⁷ and pleasing elites under whose pleasure they serve. These structural handicaps should underscore the usefulness and indeed necessity of the Court not only for sub-Saharan Africa but also for other countries that have similarly weak judiciaries or are emerging from conflict. Moreover, Africa’s attempt to constitute the African Court of Justice and Human Rights as an alternative to the ICC, has yet to pan out.⁷⁸ This leads to the second, aforementioned point that African states have the option to make the ICC truly a court of last resort. Leaders should exercise their state’s sovereignty and create local mechanisms to hold their nationals accountable for gross violations of human rights. African leaders are yet to match their rhetoric with action. For example, Mali president Boubacar Keita noted that it is “up to Africans, not Europeans or Americans to judge their leaders.”⁷⁹ Zimbabwe’s president Robert Mugabe also has called on African states to establish their own “African ICC,” to prosecute Western leaders who commit crimes on the continent.⁸⁰ Yet Mugabe and his Zimbabwe African National Union – Patriotic Front (ZANU-PF) party have stripped the local judiciary of any independence that could hold locals accountable for human rights violations. As such many African judiciaries rarely act with alacrity, are less than impartial, and often are beholden to interests that serve powerful minority interests.⁸¹ Unless African countries enact reforms to guarantee their independence as Mauritius did⁸² and, with less success, South Africa,⁸³ Africa probably would continue to depend on the ICC as a court of first instance rather than a court of last resort (as intended) to address egregious violations of international humanitarian law.

3.4 Contextualizing Criticisms of the ICC in Africa

ICC is a fair institution with majority black involvement – high African caseload is due to self-referral, lack of good domestic courts, and Africa being conflict prone

Austin and Thieme 16 [W. Chadwick Austin, Professor of Law at the United States Air Force Academy and is a colonel in the U.S. Air Force Judge Advocate General's Corps Reserve, and Michael Thieme, Assistant Professor at the United States Air Force Academy and serves in the U.S. Air Force Judge Advocate General's Corps, 2016, "Is the International Criminal Court Anti-African?," Peace Review, <https://sci-hub.se/https://www.tandfonline.com/doi/pdf/10.1080/10402659.2016.1201952>]/Kankee

In only two situations has the court exercised its power to pursue charges against individuals on its own initiative. The most recent was in Cote D'Ivoire in 2011, where the office of the prosecutor investigated three individuals. It is likely, however, that had the court not acted on its own initiative, the government of Cote D'Ivoire would have requested the courts involvement after ratifying the Rome Treaty on July 13, 2013. The only example of the court acting in its own power against a State-Party against the wishes of that State-Party is the situation in Kenya, where the court in 2010 pursued charges against three men. It is not at all surprising that the Kenyan government does not support this prosecution as the president of Kenya is one of those men. Some in the African Union claim that the ICC has become a tool of Western powers used to "recolonize" Africa. Critics of the court accuse it of becoming a "Western" court that only targets U.S. adversaries, while ignoring U.S. allies. In looking at the make-up of the Assembly of States-Parties, however, the way in which the court selects judges, prosecutors, and other positions of influence, and the way that the court receives its funding, it appears that Western powers lack that kind of power. The Assembly of States-Parties, those countries that have embraced the jurisdiction of the ICC, is made up of 122 countries. Africa actually represents the largest continental block of States-Parties with 34 African nations participating, compared to only 25 nations typically categorized as "Western" nations. Each State-Party is equally represented in the assembly, and it is hard to fathom how the court would be subjugated to the will of Western powers. Further, the structure of the court diffuses power. Each branch has checks and balances to ensure independence. It is also inaccurate to say that the court has solely focused on Africa. The ICC is considering several other situations around the globe to determine if those situations warrant formal investigations by the court. Such non-African examinations include Afghanistan, Colombia, Georgia, Honduras, Korea, Iraq, and the Ukraine. This requires a time-consuming four-step process beyond the scope of this essay, but the process demonstrates a series of checks and balances, and is described in the court's annual reports on preliminary investigations. When the court was established and began its work in 2002, it had to begin somewhere; situations on the ground, and the lack of judicial infrastructure at the time, made Africa an ideal place to start. It's difficult to find a precise measure of judicial capacity for any one country let alone an entire continent; however, the Fund for Peace annually publishes a Fragile States Index (FSI). The Fund For Peace utilizes a proprietary Conflict Assessment System Toll (CAST), which analyzes millions of documents, and separates the relevant data into twenty primary social, economic, and political indicators. In 2014, this analysis produced a numerical ranking ranging from 18.7 (very sustainable) to 112 (very high alert). While these rankings do not offer a definitive answer to the judicial capacity of African nations, they do provide insights that offer reasonable inferences into whether the country's relative stability is encouraging to an impartial and effective judiciary. According to the 2014 FSI report, the top five nations characterized as "very high alert" are all African. Some familiar countries to the ICC rank very high. South Sudan (#1), Central African Republic (#3), Democratic Republic of Congo (#4), Sudan (#5), and Kenya (#18) are all on the alert or very high alert classification. As an example, looking at Darfur in 2009 when the ICC Prosecutor referred the situation in Darfur to the UNSC, Sudan was ranked #3 in overall most fragile states. On a 10.0 scale, with 10 being the worst, Sudan rated a 9.8 in the State Legitimacy, the Human Rights, and Rule of Law indicators. Viewing the ICC as a last resort when a state is unwilling or unable to prosecute serious crimes within the ICC's jurisdiction, the situation in Darfur and its accompanying ongoing atrocities made ICC involvement reasonable. The court represented a real opportunity for accountability for those who had for so long acted with impunity, justice for those that had for so long suffered without hope, and a deterrent safeguard against future abuses. The situation was so dire, it motivated African nations to directly request the court's involvement, pledging support to the court in arresting individuals and providing access to investigators to gather evidence that could be used at trial. No other non-African country has made such a request. Even with this admirable level of cooperation the young court moved slowly and cautiously like any infant taking its first steps. The DRC requested the ICC's involvement in investigating potential crimes in April of 2004; however, it was not until almost two years later that Thomas Lubanga, the first person tried by the court, was arrested and put into ICC custody, and another three years before his trial began, a

trial that lasted another three years until he was convicted in March 2012. Compare this with the ICC's current preliminary examination into Afghanistan. The court publicly announced a preliminary examination into Afghanistan in 2007 after receiving numerous communications regarding possible human rights violations and war crimes, including murder of civilians, torture, attacks on protected objects, and recruitment of child soldiers. It is not that the ICC is disinterested, but under the concept of complementarity, the court is barred from further action if the sovereign country is equipped and willing to hold criminals accountable internally. The court has determined that Afghanistan is capable of prosecuting war crimes, and is watching to determine if they have the will to do so. In fact, complementarity appears to be the main factor why Africans are facing prosecution by the international court, while others similarly situated around the world are not . . . yet. If it is true that the ICC has properly identified individuals who are legitimately suspected of the committing heinous crimes against humanity, then why has there been such a vocal and vehement backlash against the ICC by many African Union leaders? The answer to that question is very likely the fact that the ICC did not focus only on crimes committed by leaders of rebel organizations for whom the African State-Parties were all too willing to aid the court in prosecuting. Instead the ICC also began investigating heads of African states, such as Kenya's president. In opposition to the court, President Kenyatta has frustrated the investigation internally by refusing to provide access to requested evidence, and allegedly engaged in witness intimidation causing three vital witnesses to either refuse to testify or recant prior statements. In September 2013, Kenya's parliament took initial steps to withdraw from ICC jurisdiction, and in October 2013 Kenyatta spearheaded the Extraordinary Summit of the African Union, which produced a request from the AU to the UN to defer the trials of Kenyatta and his deputy for at least one year. At the AU summit, Kenya and its allies, Sudan (whose President, Omar Ahmad Al Bashir, is also under indictment by the ICC) and Uganda, lobbied for support from other African nations to pressure the ICC to decline to prosecute sitting heads of state. The mantra was that the ICC was an anti-African, pro-West, re-colonization tool bent on the oppression and subservience of the African people. The result of the internal feet-dragging and external demagoguery was a postponement of Kenyatta's trial indefinitely. This is a significant defeat for the ICC and a personal victory for Kenyatta. It is not, however, a victory for the AU or for the African people. Not only has it set a precedent for national leader impunity, which will only encourage leaders facing prosecution to retain power at all costs, but it may already have had a negative impact on the court's credibility in other situations. Despite the machinations of some in the African Union, the evidence does not support the claim that the ICC is racist or anti-African. The court has a rigid framework for the type of cases it has jurisdiction over, and a regimented process for evaluating which cases it will investigate and pursue. There are multiple layers of accountability and protection to prevent the office of the prosecutor from abusing its power, or from acting as the judicial arm of any power bent on the oppression of the African continent. The reality is that the court has, usually at the request of the African nation's own government, done exactly what it was tasked to do. That is, it has investigated individuals accused of committing terrible crimes against helpless civilians and has attempted to hold those individuals accountable in a way that the judicial system of the nation was incapable of or unwilling to do. The court has not always done so perfectly. As a youthful organization it has at times fallen in its attempts to walk. Moreover, the results from the court in the dozen years of its existence have not been spectacular. The fact remains, however, that Africa has been the primary focus of the ICC, not because of race, but because Africa, at least during the early years of the court, was the area of the world most in need of intervention and judicial accountability, and the area of the world least able to prevent atrocities being committed with impunity because of the inadequacy of many African nations' judicial systems. If leaders, such as Kenyatta, are successful in undermining the legitimacy of the ICC, it will have grave ramifications both for the people of Africa and the rest of the world. Not only will the court be seen by people as incapable of holding offenders responsible for war crimes, but the court will also be incapable of deterring crimes committed by those in the greatest positions of authority, and perhaps those in the greatest position to inflict mass injustices against members of groups that oppose the government. Additionally, there will be an incentive to retain power at all costs to prevent exposure to potential criminal sanctions in the future.

ICC isn't antiblack – they're overrepresented in membership and lack other means of redress

Lou 16 [Theresa Lou, Research Associate in International Institutions and Global Governance at the Council on Foreign Relations, 11-4-2016, "ICC on Ice?", Foreign Affairs, <https://www.foreignaffairs.com/articles/burundi/2016-11-04/icc-ice>]/Kanke

Still, although Bashir was not arrested during his international trips, he at least was not a guest of honor. His trip to Nigeria to attend an AU organized health summit was accompanied by a domestic court case that tried to compel the Nigerian government to hand Bashir to the ICC. The Sudanese president departed Abuja less than 24 hours after he arrived, in the middle of a two-day summit. Although Sudanese officials denied that Bashir's departure was related to the trial, his hasty leave nonetheless reinforces the notion that he is under "country arrest." Similar legal efforts to detain Bashir occurred during his trip to South Africa. Despite being ordered to remain in the country while the South African court deliberated whether he could be arrested, Bashir left the AU summit early. Pretoria suffered domestic and international backlash for flouting its legal obligations. Instead of ignoring the ICC and the blowback it received, Pretoria threatened to withdraw from the court. The government's intense reaction revealed the relevance of the court. Second, critics have claimed that the ICC is biased against Africans. Nine of the ten current ICC investigations are in African countries. All 32 individuals indicted by the court thus far are African. On state television, the Gambian information minister called the ICC an "International Caucasian Court" that persecutes and humiliates Africans in particular. At first blush, the court does seem to focus disproportionately on Africa. But this widely circulated criticism overlooks the fact that half of the current investigations were referred to the ICC by African member states themselves. Furthermore, whereas African countries ratified the Rome Statute en masse, many countries from regions such as Asia and the Middle East did not. As such, the court does not have jurisdiction in a lot of the places where horrendous crimes are occurring. This phenomenon leads to perhaps the most damning criticism—the ICC's spotty membership.

Although 124 countries have ratified the Rome Statute, major players such as China, Russia, and the United States have not. As permanent members of the UN Security Council, they can refer situations to the ICC, but they are themselves shielded from the court's eye. Such uneven representation in membership, coupled with the perceived selection bias against African states, exacerbates the perception that the ICC is a tool of Western imperialism—and this is a problem that is unlikely to soon be remedied. COURT OF LAST RESORT Its flaws notwithstanding, the ICC has made great progress in the past 14 years and remains relevant to the pursuit of international justice. As three African states plan their withdrawal, even more support the court and its mission. Nonetheless, the ICC must continue to work to reestablish its legitimacy and credibility with member states. It can do so by actively expanding the regions in which it opens investigations. ICC Chief Justice Fatou Bensouda's investigations in Georgia, as well as the preliminary inquiries in Afghanistan, Colombia, Palestine, and Ukraine, are all welcome steps. The ICC is intended to be a court of last resort, trying individuals only when states are unwilling or unable to do so. Strengthening regional and domestic court systems is therefore a critical step in combatting impunity. The trial of former Chadian President Hissène Habré before the Extraordinary African Chambers, the tribunal established in Senegal to prosecute crimes committed in Chad during Habré's rule, is a notable success story. Not only did it successfully convict Habré through a fair and transparent judicial process, but it also established the precedent of one African country trying the former head of state of another African country. It was celebrated as an example of the AU's cherished notion of "African solutions to African problems," and as a potential alternative to the ICC for similar cases in the future. But this actually gets to the heart of why the ICC is irreplaceable. The court's policy is to focus on those who bear the greatest responsibility for the atrocities committed. As such, most of the individuals on the ICC's wanted list are military commanders, political leaders, or even sitting heads of state. Because the African Union agreed in 2013 that sitting heads of states should not be prosecuted, it is unlikely that any African regional court will take up the task of trying individuals such as Bashir or Kenyan President Uhuru Kenyatta. Criminals such as Habré—former government officials who have committed atrocities during their tenure—must be brought to justice. So, too, must current heads of states who commit crimes while still in power. Abandoning the ICC when there are no existing alternatives for trying sitting high-level officials risks creating a situation in which atrocities continue with impunity. As an international institution, the ICC operates under specific sets of guidelines and limitations. It should be assessed based on what it has been able to accomplish, given these constraints, instead of measuring it against what the ICC could do in a perfect world. The court's many flaws must be addressed, of course, but abandoning it is not the correct approach. African countries should work within the court to push for reform. Civil society and member states should continue to work toward expanding the ICC's membership. Despite its many ills, the ICC continues to provide justice in places where there is none. Turning our backs on it now would be tantamount to turning our backs on the victims themselves.

AT: Hegemony

No impact to US troops – prosecutions are negligible

Krcmaric 23 [Daniel Krcmaric, Associate Professor of Political Science at Northwestern University, 02-2023, "Does the International Criminal Court Target the American Military?", Pro Quest, [Conclusions I find no evidence to corroborate allegations that the ICC launches biased investigations that target American soldiers around the world. Specifically, the ICC is no more or less likely to investigate situations where the US military is present. These null results are precisely estimated, substantively negligible and robust to multiple measures of US military presence. However, my results do not necessarily imply that the ICC is free from all political biases. Future work could explore possible bias after investigations are opened. The ICC has thus far never issued an arrest warrant for an American, a point that casts further doubt on claims of anti-American bias. 13 Scholars should also continue questioning potential ICC bias vis-à-vis other actors. Whereas I focused on the US–ICC relationship, others assert that the ICC may be biased toward the global south, especially Africa. 14 Thus, there remains much work to do on how the ICC selects situations to investigate and individuals to prosecute. In terms of broader implications, policymakers, activists, and academics all agree on one thing: the ICC cannot live up to its lofty goal of ending impunity without American support. Because the ICC relies on states to provide enforcement, the antagonistic relationship between the world’s superpower and the ICC limits the Court’s ability to get wanted criminals in the dock. As one judge put it, “This court needs some American muscle” \(Simons 2013\). Some even worry that without American backing, the ICC may “follow its spiritual cousins, the League of Nations and the Kellogg–Briand Pact, to the grave” \(Goldsmith 2003, 104\). My paper addresses this debate by questioning the basis for America’s wariness of the ICC. The critique—now two decades old—that the ICC would inject anti-American biases into its investigations has not come to pass. 15 That said, US policy toward the ICC will not shift easily. Some hardliners oppose the Court simply because it could target Americans. Given their insistence that the ICC should never be able to exercise jurisdiction over US personnel, documenting the absence of ICC bias to date will not sway this group. But for many others, the ICC’s track record matters. Even the Bush administration—infamous for its hostile initial approach to the Court—later softened its stance because, as one official admitted, the ICC “had not actually done anything threatening to us” \(Bosco 2014, 112\). Looking ahead, there is reason for cautious optimism about US–ICC relations. During ICC negotiations in Rome, American diplomat David Scheffer \(2012, 192\) noted that the US position always “turned on the fear of the prosecution of American soldiers \[without\] considering the larger picture of ending atrocity crimes.” But ICC advocates in the US can now point to the Court’s track record, including the evidence documented here. Moreover, US public opinion about the ICC continues to improve, especially when American engagement with the Court is framed as a human rights issue \(Zvobgo 2019\). In the post-Trump years, the US has an opportunity to reassess its relationship with the ICC by balancing the small risk to American soldiers deployed abroad with other priorities such as ending impunity.](https://www.proquest.com/docview/2773033798?accountid=3611&parentSessionId=waklSkX8dRYORB%2FsY1O7Gz1jzRiMjddhwItaBx0xFIY%3D&pq-origsite=primo&sourcetype=Scholarly%20Journals]/Kankee</p>
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No impact to US troops - complementarity principle

Shiwakoty and Kronen 22 [Sumesh Shiwakoty, policy analyst and commentator with a Master's degree in Human Rights Law at the Department of Legal Studies at Central European University, and Jordan Kronen, Schwarzman Scholars alumnus at Tsinghua University in China and Fulbright ETA grantee in Malaysia, 4-20-2022, "Why Biden Must Support the International Criminal Court", National Interest, <https://nationalinterest.org/feature/why-biden-must-support-international-criminal-court-201922>]/Kanke

The ICC is already facing a crisis of trust and has alienated many of its initial supporters who have criticized the court for prosecuting only African cases. Many critics have nicknamed the ICC the "African Criminal Court" for disproportionately investigating and prosecuting cases from the African continent. Further fueling this narrative is the fact that the ICC has dropped any investigations concerning the United States' actions in Afghanistan, reinforcing the claims of critics that the ICC is nothing more than the continuation of the West's domination over the rest of the world. The United States can do better in supporting the ICC regime. The Biden administration should recognize the court and work with Congress to ratify the Rome Statute. Many conservative hardliners would argue that ratification of the Rome Statute would transfer U.S. judicial power to some "globalist" institution abroad. These concerns, however, are unfounded. When President Bill Clinton signed the Rome Statute in 2000, the consensus among legal experts was that because of the statute's "complementarity principle," it was extremely unlikely that American nationals would ever be tried at the ICC. The complementarity principle, which the United States fiercely advocated for throughout the nearly five-year negotiation of the Rome Statute, provides that the ICC will be a "court of last resort," acting only when national jurisdictions are unwilling and unable to prosecute ICC crimes. Since the United States already has a robust domestic legal system and most of the Rome Statute offenses are already criminalized by U.S. laws, legal scholars agree that the United States should not fear signing the Rome Statute. While Democrats still control Congress, President Joe Biden should take bold action to support the ICC by amending the U.S. Federal Criminal Code and the Uniform Code of Military Justice to conform with the Rome Statute and ensure U.S. laws criminalize actions that are crimes under it. As per many legal experts, doing so will create sufficient space within U.S. law to prosecute any potential Rome Statute crimes. This will also internationalize U.S. criminal law in par with internationally-accepted standards. Internationalizing the criminal justice system of its member states was also one of the founding aspirations of the Rome Statute. Biden should also work with U.S. allies to encourage their own ratification of the Rome Statute.

AT: ICC Amendment CP

Amendment process takes decades

Coracini 23 [Astrid Reisinger Coracini, researcher at the University of Vienna Section of International Law and International Relations, 4-28-2023, "One Regime to Rule Them All. Harmonizing the Conditions for the Exercise of Jurisdiction Over Crimes Within the Jurisdiction of the International Criminal Court", SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4444065]/Kankee

It is mostly the factor time, which makes it unrealistic to assume that amending the Rome Statute could be a genuine alternative to establishing an ad hoc jurisdiction in the situation in Ukraine. 19 The crime of aggression falls within the jurisdiction of the ICC since the adoption of the Rome Statute in 1998 (Art 5 (1) (d) ICCSt). It was included on the basis of a compromise. Although it was listed and recognized as one of 'the most serious crimes of concern to the international community as a whole' (Art 5 (1) ICCSt), the Court was unable to exercise its jurisdiction over the crime of aggression until States adopted a provision 'defining the crime and setting out the conditions under which the Court shall exercise jurisdiction' over it (Art 5 (2) of the 1998 ICCSt20). **After twelve years of negotiations, a provision was eventually approved** at Kampala, Uganda **in 2010**, at the first Review Conference of the Rome Statute. 21 Yet, the Court's exercise of jurisdiction over the crime of aggression was further delayed **'subject to a decision to be taken after** 1 January **2017'** (Arts 15bis (3), 15ter (3) ICCSt). After continued intense negotiations, the Assembly of States Parties to the Rome Statute decided in December 2017, 'to activate the Court's jurisdiction over the crime of aggression as of 17 July 2018'.22 **This two-decade timeline offers a glimpse into the legal and political complexities** involved in these negotiations.23 Opening this compound of compromises in order to amend the conditions of the Court's exercise of jurisdiction over the crime of aggression will prove to be no less challenging. Even if a swift agreement on amending the conditions of the Court's exercise of jurisdiction over the crime of aggression were possible, **it is doubtful that any amendment would enter into force immediately upon adoption. It would arguably be subject to ratification by States, which again might involve a lengthy process. It is** therefore **unlikely that the Rome Statute could be successfully amended within a few months** or within one session of the Assembly of States Parties. Having an accountability mechanism for the crime of aggression in place, in order to collect and secure evidence as well as to prepare an indictment, on the other hand, is a matter of increasing urgency. 24 This chapter explores options to unify the Court's jurisdiction over all crimes within its jurisdiction. Section 2 lays the scene and discusses the current jurisdictional regimes of the Rome Statute. The default jurisdictional regime for genocide, crimes against humanity, and war crimes, the jurisdictional regime for the crime of aggression, and the jurisdictional regime for amended crimes. Sections 3 and 4 discuss options to amend and thus align the Statute's jurisdictional regimes and propose concrete language for such amendments. Eventually, section 5 will examine procedural aspects of amending the Rome Statute, before concluding with a look ahead in section 6. 2. The three jurisdictional regimes of the Rome Statute

And amended crimes are harder to prosecute

Coracini 23 [Astrid Reisinger Coracini, researcher at the University of Vienna Section of International Law and International Relations, 4-28-2023, "One Regime to Rule Them All. Harmonizing the Conditions for the Exercise of Jurisdiction Over Crimes Within the Jurisdiction of the International Criminal Court", SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4444065]/Kanke

2.3. Jurisdiction over amended crimes Frequently overlooked, the Rome Statute formulates conditions for the exercise of jurisdiction for crimes introduced or altered by an amendment, which arguably reverse the preconditions defined in Art 12 (2) ICCSt.³⁵ Art 121 (5) ICCSt last sentence foresees that 'In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by an amendment when committed by that States Party's nationals or on its territory.' If understood as an exception, the Court's exercise of jurisdiction would be blocked, even if the crime in question were committed on the territory or by a national of another State party that has accepted the amendment covering the crime. Consequently, in a situation where one or more States parties (to the Rome Statute) are involved, the preconditions for the exercise of jurisdiction over an amended crime would require the cumulative acceptance of an amendment by both, the State party on the territory of which the conduct took place as well the State party of the nationality of the accused. The application of the provision not only to new categories of crimes but also to crimes within existing categories has odd effects. This is illustrated by the following hypothetical. Nationals of a State party commit a specific war crime on the territory of another State party. The crime in question is defined as a war crime in the context of an international armed conflict since the adoption of the Rome Statute, but it was introduced as a war crime in the context of a non-international armed conflict by an amendment. The territorial State party has accepted the amendment covering the crime; the State party of the nationality of the accused has not. The exercise of jurisdiction over the same individual committing the same crime would depend on the classification of the armed conflict. If the accused acted as a State organ, the armed conflict will most likely be international in nature and the ICC could exercise its jurisdiction in accordance with Art 12 (2) ICCSt. If the accused acted in a private capacity, not attributable to the State of nationality, the ICC would be barred from exercising its jurisdiction in accordance with Art 121 (5) ICCSt. The situation is not only absurd, it also undermines the foreseeability of criminal accountability and thus the legitimacy of the Court. It is important to note that the exception formulated in Art 121 (5) last sentence ICCSt is limited to States parties to the Rome Statute.³⁶ It is not uncommon that international treaties create favourable conditions for parties. In this sense, the provision was described as an incentive for States to join the Rome Statute.³⁷ However, establishing an environment of impunity as a favourable position for States parties to a treaty with the object and purpose to fight impunity remains peculiar, to say the least. As the language of Art 121 (5) ICCSt is clearly directed at States parties, the exercise of jurisdiction over a crime covered by an amendment committed on the territory or by a national of a non-State party remains under the scope of Art 12 (2) ICCSt. Unfortunately, the Assembly of States Parties diluted this unequivocal limitation to States parties. The Resolutions introducing amendments to the Rome Statute include identical paragraphs noting the language of Art 121 (5) ICCSt 'and confirming its [the Review Conference's] understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted the amendment applies also in respect of States that are not parties to the Statute.'³⁸ This practice, initiated as a result of the discussions over non-State party exceptions from the Court's exercise of jurisdiction over the crime of aggression in Kampala, and since then reiterated as agreed language, is counterproductive. The understanding is contrary to the language of the Statute. Placed in the Resolution introducing amendments, which is not subject to ratification and is not circulated by the depositary, the paragraph remains without legal significance. In order not to further convey the impression of potentially undermining the integrity of the Statute, States would be well-advised to stop this practice. 3. Substantive options to amend the jurisdictional regime of the crime of aggression

Negative (ICC)

AT: China

China's security council veto thumps ICC investigations

Rizvi 20 [Alina Rizvi, associate Editor at Jurist, 7-10-2020, "Uighur Crisis Highlights Flawed Structure of UN Security Council", Jurist, <https://www.jurist.org/commentary/2020/07/alina-rizvi-uns-c-reform-ughurs/>]/Kanke

One crucial aspect of international law is failing the Uighurs and it is the structure of the United Nations Security Council (UNSC). The persecution of the Uighurs is just one example of a State-committed human rights abuse that led to little prevention or relief for victims because of the structure of the UNSC. The UNSC is an essential part of international law, but it needs reform. History of the Uighurs and China's Human Rights Abuses Since around 2017, China's government has detained at least 1 million Uighurs in internment camps in the northwest province of Xinjiang. According to satellite images, there are at least 85 camps in the province. Uighurs are an ethnic and religious minority in China native to Xinjiang, which used to be known as East Turkestan. Uighurs are Muslims, members of the Turkic people, and speak the Turkic language. China annexed East Turkestan and renamed it Xinjiang ("New Territory") in 1884 following the end of a war. Xinjiang is home to other affected ethnic Muslim minorities such as the Kazaks, Kyrgyz, Tatars, Uzbeks, and Tajiks. China's government, ruled by the Communist Party of China (CCP), claims the camps are "re-education camps" to deliver "a curriculum that includes standard spoken and written Chinese, understanding of the law, vocational skills, and deradicalization." The CCP claims that the camps are an effort to battle terrorism and enhance national security and point to attacks committed by Uighur militants in 2013 and 2014. Reports indicate that Chinese authorities forcibly removed Uighurs from their homes and put them in arbitrary detention without criminal charges in internment camps. There are reports of torture, sexual harassment, and forced labor at the camps, in an effort to coerce Uighurs to denounce their culture and religion. In addition, Chinese authorities are imposing forced birth control on Uighur women, such as inserting IUDs, forced abortions, and sterilizations, which is a genocidal attempt to suppress the population. It is also reported that the CCP used software hidden in apps as well as websites to stalk and gather data on the Uighur population as early as 2013. China's Violations of International Human Rights Law According to this mounting evidence, China is violating international human rights law. China has ratified several human rights treaties including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). China's ratification of these treaties means it is legally bound to their general purpose as well as their provisions, excluding any reservations. Moreover, China's abuses against the Uighurs are rising to the level of genocide and crimes against humanity, both of which violate jus cogens. Jus cogens are peremptory norms under international law and no State can derogate from these norms. China is violating its obligations under international law with little avenues of accountability. **Limited Legal Remedies Are Available** Decisions of the International Criminal Court (ICC), as well as UNSC resolutions, are legally binding under international law. The ICC prosecutes 4 crimes: genocide, crimes against humanity, war crimes, and crimes of aggression. In order for the ICC to bring charges of genocide, war crimes, and crimes against humanity against a State or a State national, that State must consent to the jurisdiction of the ICC. However, the ICC may exercise jurisdiction over these crimes if the crimes were referred to the ICC prosecutor by the UNSC pursuant to a resolution adopted under Chapter VII of the UN Charter. There are two main avenues under international law that would hold China accountable for its crimes against the Uighurs but both avenues are blocked because of the structure of the UNSC. **China has not consented to the jurisdiction of the ICC**, but Chinese authorities can still be put on trial if the UNSC adopts a resolution and refers the resolution to the ICC prosecutor. A UNSC resolution should be adopted that halts the operation of the camps and that resolution should also be referred to the ICC prosecutor to prosecute the Chinese authorities involved. These pathways of legal accountability would be open if China was not a permanent member of the UNSC. Recently, two Uighur groups have filed a complaint against Chinese officials at the ICC and urged the prosecutor to investigate genocide and crimes against humanity. The groups argue that since China pursued unlawful arrests in or deportation from Cambodia and Tajikistan, that the court has jurisdiction. Cambodia and Tajikistan are members of the ICC. In an interview with JURIST, Rodney Dixon, the lead lawyer on the case, believes jurisdiction "shouldn't be a barrier at all." In 2018, the ICC ruled it had jurisdiction on Myanmar's criminal activity against the Rohingya because part of that activity occurred in Bangladesh, an ICC member state. Dixon mentioned that the 2018 ruling is in the "early stages of the ICC developing and setting the precedent, but this (Uighur case) would reinforce it." The ICC has, so far, acknowledged receipt of the complaint. Flawed Structure of the UNSC and Its Implications Chapter V of the UN Charter created the UNSC. The UNSC has 15 members: 5 permanent members ("P5") and 10 non-permanent members. The P5 includes China, France, the US, the UK, and Russia. The 10 non-permanent members are elected for a term of 2 years by the UN General Assembly. To pass a UNSC resolution, at least 9 members must vote in the affirmative including all permanent members. **If even 1 permanent member vetoes a resolution, the resolution does not pass**. Moreover, Taiwan, not China was one of the original members of the P5 from 1946 to 1971. In 1971, China raised the argument that it should represent the government of China at the UNSC, not Taiwan. The UN subsequently expelled Taiwan from the UNSC and replaced it with China. Taiwan is currently not a member of the UN because the UN does not recognize it as a sovereign state. Permanent members' veto power has become a mechanism to feed political and economic

interests, rather than protect human rights. In addition, it is questionable whether the rotation of the 10 non-permanent members provides a proper global representation. The reason why the UNSC, compared to other organs of the UN, is important is because its resolutions are binding (for example, UN General Assembly resolutions are not binding). China has stopped all talks of drafting a resolution on the Uighurs, saying it is an "internal matter." Even if a resolution was drafted, China would veto it. Therefore, getting international justice for the Uighurs poses a challenge. To be clear, China is not the only P5 member that protects its own interests. In the past, this is why the US has vetoed resolutions on the Israel-Palestine conflict and why Russia has vetoed resolutions on the Syrian war. The list can go on. While it is impossible to expect political and economic interests to be absent among inter-governmental relations, these interests should not play this big a role at an institution that was founded to promote human rights. Reform of the UNSC Is Essential The UNSC needs to be reformed and should not exist to serve the interests of the P5. It should serve the interests of the most vulnerable it intended to protect, such as the Uighurs. To reform the structure of the UNSC, the UN Charter needs to be amended. Article 108 provides the general rule to amend the charter; an amendment is adopted by a vote of 2/3 of the members of the General Assembly and has to include the vote of all permanent members of the UNSC. Thus, amending the UN Charter to re-structure the UNSC is difficult. However, recently, UN delegates have argued that the UNSC "must expand, adapt to current realities or risk losing legitimacy." Inter-governmental negotiations on reforming the council have begun; the issues include enlarging the size of the council to include more representation, abolition or extension of veto power, and expansion of both permanent and non-permanent members. The most necessary reforms include abolishing the veto power and adding more permanent members to allow for greater representation. It is unclear how long these negotiations will go on, but it could be years. In the meantime, the only international legal remedy available to the Uighurs is a hopeful yet uncertain pathway to the ICC. While the US has imposed sanctions on China and the overall international community has expressed concern, it will not be enough to stop the irreparable harm to the Uighurs. It is imperative that the UNSC is reformed and the negotiations to do so aren't unnecessarily prolonged. It is also imperative that P5 members are willing to negotiate. Reform is vital not only to protect the Uighurs but to protect other vulnerable populations, and to fulfill the UN's mission to protect international peace and security.

The ICC won't investigate China – they lack jurisdiction

Hernández 20 [Javier C. Hernández, China correspondent for The Times and graduate from Harvard, 12-15-2020, "I.C.C. Won't Investigate China's Detention of Muslims," NYT, <https://www.nytimes.com/2020/12/15/world/asia/icc-china-uighur-muslim.html>]/Kankee

The International Criminal Court has decided not to pursue an investigation into China's mass detention of Muslims, a setback for activists eager to hold Beijing accountable for persecution of ethnic and religious minorities. Prosecutors in The Hague said on Monday that they would not, for the moment, investigate allegations that China had committed genocide and crimes against humanity regarding the Uighurs, a predominantly Muslim ethnic group, because the alleged crimes took place in China, which is not a party to the court. The abuses described "have been committed solely by nationals of China within the territory of China," said a report by the court's chief prosecutor, Fatou Bensouda of Gambia. For months, Uighurs in exile had urged the court to investigate China's repressive policies against Muslim minorities, the first attempt by activists to use the force of international law to hold Chinese officials accountable for the crackdown. They accused the Chinese government of carrying out a campaign of torture, forced sterilization and mass surveillance against Muslims, among other abuses. China has faced growing international condemnation for its harsh treatment of Muslims, including the construction of vast indoctrination camps in the western region of Xinjiang. President-elect Joseph R. Biden Jr.'s campaign described China's actions in Xinjiang as genocide, a position also taken by other Western leaders. China has denied that the camps are abusive, describing them instead as job training centers aimed at countering religious extremism and terrorism, despite a preponderance of contradictory evidence. Many Uighurs said on Tuesday that they were disappointed in the court's decision not to investigate. They vowed to continue to lobby global leaders to punish China for the abuses. "The I.C.C. was formed for one and only one reason: to confront the most horrific international crimes," said Fatimah Abdulghafur, a Uighur poet and activist who lives in Australia. "The atrocities of the Chinese regime toward Uighurs are countless." The complaint against China was filed by two Uighur exile groups, the East Turkistan Government in Exile and the East Turkistan National Awakening Movement. In addition to abuses against Muslims inside China's borders, the Uighur groups had also lobbied the court to investigate Beijing for pursuing the repatriation of thousands of Uighurs through unlawful arrests in or deportation from other countries, including Cambodia and Tajikistan. In its report on Monday, the prosecutor's office said there was "no basis to proceed at this time" because there did not appear to be enough evidence to show that Chinese officials had committed crimes over which the court had jurisdiction. "Not all conduct which involves the forcible removal of persons from a location necessarily constitutes the crime of forcible transfer or deportation," the report said. Lawyers representing the Uighur groups said they were still hopeful that the court would open an investigation after considering new evidence. "We have explained we've been hampered by Covid restrictions," said Rodney Dixon, who is the lead lawyer in the case. "The prosecutor needs further and concrete evidence from Cambodia and Tajikistan to establish jurisdiction, and we will be providing that early in the year." Lawyers following the court said that the prosecutor, whose mandate is coming to an end, had been under time pressure to present her final report to the annual assembly of court members now meeting in The Hague. A new prosecutor will be elected in the coming weeks. Rights activists said they would continue to fight to hold China accountable for its actions in Xinjiang. Sophie Richardson, China director for Human Rights Watch, said the decision was not a judgment on whether abuses were taking place. "The facts remain: The Chinese government is committing grave violations on a massive scale in Xinjiang, and those responsible should be held to account," she said.

China doesn't care about international humanitarian law

Williams 20 [Robert D. Williams, senior research scholar, lecturer, and the executive director of the Paul Tsai China Center at Yale Law School, nonresident senior fellow at the Brookings Institution and a contributing editor at Lawfare, October 2020, “International Law With Chinese Characteristics: Beijing And The “rules-based” Global Order,” Brookings, https://www.brookings.edu/wp-content/uploads/2020/10/FP_20201012_international_law_china_williams.pdf]/Kanke

Human rights China's approach to multilateral human rights regimes follows a similar pattern: **Beijing rhetorically endorses many human rights norms while advocating self-serving interpretations** of their meaning and future development.⁹² China has **joined** a number of major human rights conventions including **the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment** and **the International Covenant on Economic, Social, and Cultural Rights**. The PRC has also **signed** but not ratified **the ICCPR**.⁹³ Where China has adopted legislation to implement these human rights protections in its domestic legal system, those **rules “frequently prove difficult to enforce and are sometimes even illusory in practice.”**⁹⁴ More broadly, **law and legal institutions have little power to protect human rights in areas that are “politically sensitive”** for the Chinese party-state.⁹⁵ Against this backdrop, **China's government has perpetrated massive human rights abuses** even as its legal and policy reforms have smoothed the path for hundreds of millions of Chinese citizens to rise out of poverty and stimulated improvements in the transparency, responsiveness, and professionalism of Chinese governance across a range of issues.⁹⁶ Among the most egregious of China's human rights violations is the ongoing campaign against Uyghurs and Turkic Muslims in its Xinjiang Uygur Autonomous Region — reportedly ranging from arbitrary detention of hundreds of thousands of Chinese citizens in indoctrination camps⁹⁷ to population-reduction measures such as forced sterilization, forced abortion, and coercive family planning policies.⁹⁸ Such practices meet the definition of genocide under the U.N. Convention on the Prevention and Punishment of the Crime of Genocide, which China has ratified.⁹⁹ Beijing has denied the reports of forced birth control as “baseless” and, amid growing international criticism, released a white paper in September 2020 seeking to defend the Xinjiang internment camps as “vocational training centers.”¹⁰⁰ **Because China has not accepted the compulsory jurisdiction of international judicial mechanisms for individual complaints over human rights abuses, international legal oversight is limited** to “periodic reviews” by treaty bodies and other means of public pressure — **work which can be made difficult by Beijing's lack of transparency and retaliation against critics.**¹⁰¹ Other human rights violations in China **span** a wide range: **repression of Tibetans and other indigenous peoples; curbs on free expression, association, and religion; crackdowns on dissidents, human rights lawyers, and other reform advocates; strict limits on labor rights; and an intrusive surveillance state** with few if any reliable legal constraints.¹⁰² Analysts are now exploring the extent to which certain of these practices are being exported — intentionally or otherwise — to countries that receive Chinese investment through the Belt and Road global infrastructure initiative.¹⁰³ Of course, **Beijing does not admit to being a serial human rights violator**. Instead, as Jerome Cohen has explained, in their public statements Chinese officials emphasize “the sovereign independence of each country; the differing economic circumstances, values, traditions, and priorities of different countries; and the relativity of various human rights, as though the PRC had not adhered to any binding multilateral arrangements calling for compliance with prescribed universal standards.”¹⁰⁴ In the realm of civil and political rights, this does not necessarily require rewriting international human rights law, but instead promoting interpretations that render those norms hollow.¹⁰⁵ At the U.N. Security Council, General Assembly, Human Rights Council, and elsewhere, **Chinese diplomats have found various ways to insulate China against criticism for its human rights record** and to promote its “statist, development-as-top-priority view” of human rights — in some cases through **“distorting procedures, undercutting institutional strength, and diluting conventional human rights norms.”**¹⁰⁶ Variations on **this** theme **may include pressuring other countries to submit positive reviews of China's human rights record at the U.N.**¹⁰⁷ **and running political training programs for African officials to “share lessons” from China's domestic governance in an effort to bolster the legitimacy of Beijing's human rights perspective.**¹⁰⁸ At the Human Rights Council, China has advocated for a hierarchy of human rights values that gives priority to an amorphous “right to development.”¹⁰⁹ **It has also emphasized that there is “no universal road for the development of human rights in the world.”**¹¹⁰ These developments are fueling growing concerns that under **Beijing's vision** of international human rights governance, “sovereignty, non-interference, ‘dialogue and cooperation,’ ‘mutual respect,’ and multilateralism **would be** prioritized as

fundamental, non-negotiable principles, and the promotion and protection of **human rights** of individuals **rendered an**
afterthought”¹¹¹ Climate change

China abuses law and will exploit the ICC for its own advantage

Foley 24 [Jordan Foley, Department Head for Operational Law at the Navy's Office of the Judge Advocate General National Security Law Division, 5-28-2024, "Multi-Domain Legal Warfare: China's Coordinated Attack on International Rule of Law", Lieber Institute West Point, <https://lieber.westpoint.edu/multi-domain-legal-warfare-chinas-coordinated-attack-international-rule-law/>]/Kanke

Law has emerged as an integral element of gray zone competition. State and non-State actors alike increasingly view law as a means to shape operational spaces, forge perceptions of legitimacy, constrain potential adversaries, and refashion the international system, whether in lieu of, in preparation for, or in conjunction with the use of military force. This is perhaps most pronounced in the Indo-Pacific where the People's Republic of China (PRC) remains the United States' pacing challenge and continues to engage in controversial lawfare. The PRC is the only country with both the intent to reshape the international order and, increasingly, the economic, diplomatic, military, and technological power to do it. To carry out its intent, the PRC exploits and misrepresents international law for its own benefit and at the expense of other nations. This post examines China's worrying lawfare in the domains of cyber, maritime, air, and outer space. Chinese Lawfare In October 2023, the U.S. Department of Defense (DoD) released its annual report on "Military and Security Developments Involving the People's Republic of China" which "serves as an authoritative assessment on military and security developments involving the PRC." That year's report spotlighted the PRC's misuse of international and domestic law under the People's Liberation Army's (PLA) three warfares concept. This includes "legal warfare" as a component of broader political influence operations. Among many examples of legal warfare, the report cites to the PRC's propagation of legally baseless maritime claims, conflation of its "One China principle" with foreign "One China" policies, and a "double standard" in the "interpretation and enforcement of international law" in relation to foreign military activities in the exclusive economic zone. To anticipate and counter China's political influence, we must understand and appreciate China's use (and misuse) of law in strategic competition. The PRC masterfully leverages its competitors' compliance with international law in several ways. Sometimes the PRC engages in the legitimate use of legal processes to achieve a strategic end. For example, China has ratified numerous legally binding international agreements. Like other countries, it has a strong incentive to commit itself in this way and create a favorable legal framework for trade and investment. But there are examples of blatant appropriation and exploitation on the fringes of law. In October 2020, China and Cambodia officially signed The Free Trade Agreement, which allows for greater and more open trade relations between the two countries despite the Cambodian government's poor human rights and antidemocratic record. Cambodia has a significant trade deficit with China, importing over \$3.9 billion compared to its exports of \$830 million. In 2021, China accounted for 443% of Cambodia's foreign debt. As part of repayment, the Cambodian government gave over 4.6 million hectares in concessions to 107 Chinese-owned firms between 1994 and 2012. There is now speculation that China will establish a naval base in Cambodia. If established, the military presence will be on the northern portion of Cambodia's Ream Naval Base on the Gulf of Thailand, and China's second overseas outpost. Finally, there is the PRC's blatant departure from the law. On July 12, 2016, the arbitral tribunal adjudicating the Philippines' case against China in the South China Sea ruled overwhelmingly in favor of the Philippines. The tribunal determined that major elements of China's excessive maritime claims, including its nine-dash line, were unlawful. China reacted negatively to the ruling, calling it "null and void." As these three examples highlight, when convenient and in its interest, China adopts and abides by international law. But it also exploits the law as an instrument of coercion to gain strategic advantage over others, upends international law, and destabilizes regions. Excessive maritime claims, violations of sovereignty by high-altitude balloons, and illegal, unreported, and unregulated fishing, for example, represent threats and challenges to the rule of law. China also employs its double standards and its opportunistic approach to international law to achieve strategic effects in anticipated domains of warfare. The fixed nature of physical domains—two surface domains with unique challenges on land and sea, two vertical domains defined by atmospheric versus orbital effects, and cyberspace—can all be impacted by legal warfare. These whole-of-government efforts by the PRC are intended to provide the perception of legality and legitimacy behind their coercive and unlawful actions. China is acutely aware of domain interplay in legal warfare; maritime claims affect air space, outer space impacts ground communications, and even terrestrial borders shape cyberspace. Cyber Domain

BRI already failed

Bennon and Fukuyama 23 [Michael Bennon, Research Scholar and Manager of the Global Infrastructure Policy Research Initiative at the Center on Democracy, Development, and the Rule of Law at the Freeman Spogli Institute for International Studies at Stanford University, and Francis Fukuyama, Olivier Nomellini Senior Fellow at the Freeman Spogli Institute for International Studies and Director of the Ford Dorsey Master's in International Policy at Stanford University, September/October 2023, "China's Road to Ruin", Foreign Affairs, <https://www.foreignaffairs.com/china/belt-road-initiative-xi-imf/Kankeef>]

This year marks the tenth anniversary of Chinese President Xi Jinping's Belt and Road Initiative, the largest and most ambitious infrastructure development project in human history. China has lent more than \$1 trillion to more than 100 countries through the scheme, dwarfing Western spending in the developing world and stoking anxieties about the spread of Beijing's power and influence. Many analysts have characterized Chinese lending through the BRI as "debt trap diplomacy" designed to give China leverage over other countries and even seize their infrastructure and resources. After Sri Lanka fell behind on payments for its troubled Hambantota port project in 2017, China obtained a 99-year lease on the property as part of a deal to renegotiate the debt. The agreement sparked concerns in Washington and other Western capitals that Beijing's real aim was to acquire access to strategic facilities throughout the Indian Ocean, the Persian Gulf, and the Americas.

But over the last few years, a different picture of the BRI has emerged. Many **Chinese-financed infrastructure projects have failed to earn the returns** that analysts expected. And because the **governments** that negotiated these projects often agreed to backstop the loans, they **have found themselves burdened with huge debt overhangs—unable to secure financing for future projects or even to service the debt they have already accrued.** This is true not just of Sri Lanka but also of **Argentina, Kenya, Malaysia, Montenegro, Pakistan, Tanzania, and many others.** The problem for the West was less that China would acquire ports and other strategic properties in developing countries and more that these countries would become dangerously indebted—forced to turn to the International Monetary Fund (IMF) and other Western-backed international financial institutions for help repaying their Chinese loans. In many parts of the developing world, **China has come to be seen as a rapacious and unbending creditor, not so different from the Western** multinational corporations and lenders that sought to collect on bad debts in decades past. Far from breaking new ground as a predatory lender, in other words, **China seems to be following a path well worn by Western investors.** In so doing, however, **Beijing risks alienating the very countries it set out to woo with the BRI and squandering its economic influence in the developing world.** It also risks exacerbating an already painful debt crisis in emerging markets that could lead to a "lost decade" of the kind many Latin American countries experienced in the 1980s. To avoid that dire outcome—and to avoid spending Western taxpayer dollars to service bad Chinese debts—the United States and other countries should push for broad-based reforms that would make it more difficult to take advantage of the IMF and other international financial institutions, imposing tougher criteria on countries seeking bailouts and demanding more transparency in lending from all their members, including China. **HARD BARGAINS, SOFT MARKETS**

China lacks capital and support for more BRI loans

Lu 23 [Christina Lu, energy and environment reporter at Foreign Policy, 02-13-2023, "China's Belt and Road to Nowhere", Foreign Policy, <https://foreignpolicy.com/2023/02/13/china-belt-and-road-initiative-infrastructure-development-geopolitics/>]/Kankee

Nearly a decade after its inception, momentum behind China's sweeping Belt and Road Initiative (BRI) appears to be slowing as lending slumps and projects stall—forcing Chinese President Xi Jinping to again rethink a floundering initiative that he once hailed as his “project of the century.” After doling out hundreds of billions of dollars, experts say China's lending for BRI projects has plummeted, largely a casualty of the COVID-19 pandemic and the country's own economic slowdown. Support has also waned as partner countries drown in debt and fractures emerge—literally—in projects, fueling uncertainty about the future of the sprawling initiative. In 2022, 60 percent of China's overseas lending went to borrowers in financial distress, compared to just 5 percent in 2010, said Bradley Parks, the executive director of the AidData research group at the College of William and Mary. “At its peak, it was really looked at as the centerpiece of China's economic engagement with the rest of the world,” said Scott Kennedy, an expert in Chinese business and economics at the Center for Strategic and International Studies. Now, he said, it is a “shadow of its former self.” Xi launched the BRI in 2013 as an ambitious infrastructure development campaign that would span more than 140 countries and export China's industrial overcapacity, boosting China's diplomatic clout and enhancing its global influence. Given its sheer scale and scope, many referred to it as China's version of the Marshall Plan—only bigger and bolder. But Beijing's vision has also been murky, intensifying scrutiny and controversy over the initiative and the contracts involved. “No one really knows for sure what Beijing is trying to get out of it,” said Michael Kugelman, the deputy director of the Asia program at the Wilson Center and the writer of Foreign Policy's South Asia Brief. “That sort of has lent this mystique to it that has led to a significant amount of suspicion, particularly from those governments that worry about China's rise.” Instead of a sleek geopolitical campaign, researchers describe the BRI as a decentralized jumble of deals and projects that all loosely fall under the same banner of infrastructure development. Hong Zhang, who researches Chinese public policy at the Harvard Kennedy School, said that the BRI should be seen as a slogan, not a single program. “A lot of things were happening in the name of Belt and Road,” she said, adding: “Beijing has little control over things going on on the ground.” China's lending had already slipped before COVID-19 hit, a trend that was accelerated by the pandemic's fallout and then China's own economic slowdown. For many countries, taking on Chinese loans also quickly became unsustainable—particularly after Russia's invasion of Ukraine drove up prices in the global marketplace—stoking backlash against Beijing's lending habits. One of the most glaring examples is Sri Lanka, which defaulted on a mountain of debt last year as it grappled with a spiraling economic crisis. But cracks emerged far earlier: After struggling to cough up enough money to Beijing in 2017, it signed over the rights to a strategic port, fueling alarm of the dangers of China's lending practices. In Pakistan, which owes nearly one-third of its foreign debt to China, protests have erupted around a major port project. And in recent weeks, debt-laden Zambia has been tensely wrangling a restructuring plan with China, its biggest bilateral creditor. The BRI has “fallen on hard times,” Kugelman said. “I think that many, many countries have realized that they simply don't have the luxury of an economic structure that can withstand the type of loans that have been coming in from China for so long.” Some of that can be attributed to the haphazard way in which the BRI was executed. To advance the initiative, many Chinese firms were so focused on administering projects that issues of economic feasibility and risk were not prioritized, said Yun Sun, the director of the China program at the Stimson Center. “The Chinese did not think through the economic viability of a lot of these loan projects because their priority was [to] glorify BRI, to implement projects to ensure that BRI materializes and is happening all over the world,” she said. As Sri Lanka buckled under its debt, China officially gave it a two-year debt moratorium in early February—and it's just one of dozens of countries that have now been offered at least a partial reprieve. In 2020, China delayed debt repayments for 77 nations. But that has also left Chinese lenders swimming in risk, Parks said, leaving Beijing in a precarious economic position. “They're in a kind of firefighting mode,” Parks said. “They are frankly ill-equipped for the challenge that they're up against right now because they don't have a long history of being an overseas lender in times of crisis.” Still, for many countries with few other options, Beijing has a lot to offer. Bangladesh, for instance, has been on a Chinese-funded infrastructure investment spree that has been quite popular, Kugelman said. In Latin America in particular, China has made new inroads and ramped up investments, according to the Wall Street Journal. In an effort to contest China's expanding influence through the BRI, many Western nations have been scrambling to offer up their own alternative development initiatives—

with little success. By 2027, the United States and G-7 aim to funnel some \$600 billion into their Partnership for Global Infrastructure and Investment—a revamp of the Build Back Better World campaign that they unveiled in 2021. Despite being launched more than a year ago, the European Union’s 300-billion-euro answer to BRI, called the Global Gateway, has failed to make much of a splash on the global stage. “To be quite candid, I don’t think any country, whether the U.S. or any other nation, can hold a candle to what China has been able to do with its infrastructure investments,” Kugelman said. “It has such a deep footprint in so many parts of the world.” Beijing now appears to be recalibrating its approach, softening its rhetoric around the BRI’s capabilities, focusing on smaller projects, and shifting course to offering debt-ridden countries emergency loans. In 2021, Xi also announced a Global Development Initiative (GDI), a small and vaguely defined program that emphasizes China’s position as one of the world’s developing countries, while focusing on education, clean energy, and poverty—all in conjunction with the United Nations. To further the GDI, Chinese Foreign Minister Wang Yi has urged cooperation with the World Bank and the Asian Development Bank. The GDI reflects a more multilateral approach to development—potentially signaling Beijing’s effort to diversify its strategy in the long run, said Sun of the Stimson Center. Parks said that the GDI could simply be an effort to rebrand the BRI amid mounting criticism. “I think it’s mostly smoke and mirrors,” he said. But for all of its problems, don’t expect Beijing to abandon the BRI—or its underlying goals—given how deeply intertwined it is with Xi himself. In 2017, the initiative was even enshrined in the party constitution. “Officially, you would never hear the Chinese government admitting that the Belt and Road was a mistake, or the way we approached Belt and Road was a mistake,” Zhang said. “That would not happen because Belt and Road is so closely tied to Xi Jinping’s personal political legacy.”

AT: Ukraine

Russia wins Ukraine war under Trump

Kakissis 24 [Joanna Kakissis, NPR Ukraine reporter and visiting professor at Princeton University, 11-6-2024, "What will Trump's presidency mean for Russia's war on Ukraine?", NPR, <https://www.npr.org/2024/11/07/nx-s1-5181985/2024-election-trump-russia-ukraine-war/>]/Kankee

After Donald Trump's resounding election win, Ukraine could lose the continued support of its most crucial ally, the U.S., which has spent \$108 billion on military, humanitarian and economic aid to help Ukrainians since Russia's February 2022 invasion. Trump has criticized the amount of aid for Ukraine and claims he will end the war in 24 hours, though he hasn't elaborated how. Many Ukrainians do not trust Trump because of his professed admiration for Russian President Vladimir Putin, who wants to occupy Ukraine. Trump has blamed Ukrainian President Volodymyr Zelenskyy, not Putin, for starting the war. Trump was also impeached in 2019 for pressing Zelenskyy to open criminal investigations into Joe Biden and his son Hunter for business dealings in Ukraine. On Wednesday, Zelenskyy brushed all that aside and congratulated Trump, even speaking with him by phone in what he called an "excellent" conversation. Zelenskyy said he embraced what he called Trump's "peace through strength" approach in global affairs.

"America and the whole world will definitely benefit from it," Zelenskyy said in his evening video address. "People want certainty, they want freedom, a normal life. And for us, this is life without Russian aggression and with a strong America, with a strong Ukraine, with strong allies." The Kremlin, meanwhile, claimed it wasn't celebrating Trump's victory, citing the U.S.' ongoing assistance of Ukraine. Putin did not immediately congratulate him. "Let's not forget that we're talking about an unfriendly country that is both directly and indirectly involved in a war against our state," Kremlin spokesman Dmitry Peskov said on Wednesday in his daily briefing with reporters. Ukraine faces immense challenges as the war closes its third year. Its economy, strangled by war, is highly dependent on foreign aid. Russian forces are advancing on the eastern front line, joined by thousands of soldiers from North Korea, according to Ukrainian defense officials and the Pentagon. Russia strikes Ukrainian cities and towns every day with attack drones, ballistic missiles and glide bombs. Russian attacks have destroyed much of Ukraine's energy grid, leaving millions vulnerable as winter approaches. Not far from the eastern city of Pokrovsk, which is now under fierce Russian attack, soldier Maksym Sviezhentsev insists nothing Trump says suggests "his victory will bring anything good for us." "That is, only if we judge by nothing other than words," Sviezhentsev told NPR by text message. "The reality is, we simply don't know what will happen. Trump is unpredictable." The soldier says he's focusing on keeping his crew warm, well-equipped and mentally prepared for battle against invading Russian troops. "Whatever Trump does, we have no other choice but to fight the enemy," he said. Many Ukrainians fear Trump will force them to give up land occupied by Russia in exchange for ending the war. Vice President-elect JD Vance has promoted that idea, which is unpopular in Ukraine. In Kyiv, 53-year-old Oksana Tsupii, who works in trade, says Ukrainians have already sacrificed so much to win back their territory. "It's difficult to look at the graves of our boys who have been killed, to think of all our cities Russia wiped off the face of the Earth," Tsupii says. "But we are so small in this world of politics, and unfortunately, our lives are worth nothing." Solomiya Khoma of the Ukrainian Security and Cooperation Center, a think tank in Kyiv, says the U.S. remains Ukraine's best chance at ending the war on its best terms. Other peace proposals from countries like China or Brazil "will lead to a temporary cessation of war, but not to the achievement of a lasting peace." Ukraine's fight for survival became highly politicized last year, when congressional Republicans who support Trump blocked a \$61 billion military aid package for several months, leaving Ukrainian soldiers short on weapons and ammunition on the front line, before the legislation eventually passed in April. Since the beginning of Russia's full-scale invasion, Ukrainian lawmakers and business leaders have reached out to Senate and congressional Republicans for bipartisan support.

ICC can't solve Ukraine

Servettaz 24 [Elena Servettaz, journalist on Russian politics and graduate of the French Press Institute and Moscow State University 5-1-2024, "Putin's one-way ticket to The Hague: international law experts, judges, and diplomats on a hypothetical trial of the Russian dictator", <https://theins.ru/en/politics/271233/>]/Kanke

Vladimir Putin cannot evade trial before an international tribunal because the International Criminal Court (ICC) in The Hague has already opened an investigation into war crimes and crimes against humanity committed in Ukraine by the Russian army. Putin is certainly liable to be found responsible for these crimes. Of course, the most important crime he could be charged with is the crime of aggression [a crime committed by a state or individuals in an armed conflict against a sovereign state]. This is a crime that the ICC cannot try because Russia has not signed the Rome Statute, which sets out the definition of this crime. So the international community would have to set up a special tribunal for Ukraine. Putin is certainly a war criminal. I see analogies with Slobodan Milosevic [the former president of Serbia who was put on trial at the ICC for failing to prevent genocide in Bosnia]. When Putin calls Ukrainians terrorists while boasting about fighting terrorism himself, this is exactly the same terminology used by Milosevic in the 1990s. Many conditions would have to be met for Putin to be brought to justice. First of all, there would have to be peace. The war has to end, but justice can move forward in parallel with a peace process. Justice itself can also promote peace. Take what happened in the former Yugoslavia with Milosevic: he was still president when the peace talks were happening [in early 1999 in Rambouillet, France]. But he wasn't there. Why not? Because he knew that he was under international investigation and that there could be an arrest warrant out against him. He didn't know if there was one or not, but he knew the risk was there. So it was clear that the investigation against Milosevic facilitated talks for a peace agreement. Can we use the term 'genocide' to describe the killing of Ukrainians by the Russian army? There is a very precise definition of the word 'genocide.' International law is very specific about this: for genocide, you have to show intent and will. And it is very complex to investigate. I wouldn't use these terms for the war in Ukraine. By contrast, the crime of aggression has already been proven and doesn't require any evidence beyond what we already have. This is a crime for which Putin is responsible. In his speeches, he admitted that he is the commander-in-chief of the Russian army and that it was he who led the aggression against Ukraine. The Ukrainian government's cooperation with the international judiciary facilitates any investigation of war crimes committed in Ukraine. In the former Yugoslavia, we received zero cooperation from the country's authorities, which made it very difficult to gather evidence. Civilians are the ones who have suffered the most in this war. You can see that by the number of mass graves. This is something unimaginable. And it's going to be difficult to get them out. You have to do examinations, autopsies, and DNA analysis, and determine whether they were civilians or the military. Many of these victims were buried with their identity cards, and that of course makes it easier to identify them. If you do a serious investigation, there will be no doubt left about who the perpetrator is. First of all, the Ukrainian prosecutor will take over the investigation. A Ukrainian court has already convicted a Russian soldier, but of course, this is only a first step. The ICC should be able to investigate quickly. The best solution would have been to set up a specific tribunal for crimes committed in Ukraine. But this sort of thing is difficult to obtain because of Russia's right of veto in the UN Security Council. Putin does not have diplomatic immunity for international war crimes and crimes against humanity under the jurisdiction of the International Criminal Court, but what is needed at this point is an independent international tribunal for the crime of aggression, as that crime is not prosecutable under the existing legal frameworks. That is where Putin has immunity. One could draw parallels with Bashar al-Assad. In both the cases of Assad and Putin, the international community indulged in a culture of criminality and impunity. For example, the international community did not intervene when Russia assaulted Chechnya, invaded Georgia, annexed Crimea, and bombed Syria. Putin might well have thought that if the international community did nothing at each of these points of assault, then why should it care if Russia invades Ukraine? Ukraine, in Putin's thinking, was not an independent state in any case; it had to be "de-Nazified" and was part of Russia. In fact, Russia is in standing breach of the Convention on the Prevention and Punishment of the Crime of Genocide in three areas: first, in its direct and public incitement to genocide, a standing breach of the Convention, whether or not acts of genocide follow, as the Supreme Court of Canada has declared; second, that genocidal intent may be inferred from Russia's planning and execution of mass atrocity crimes; and third, that the crime of aggression, the direct and public incitement to genocide, and the condition of mass atrocity crimes, have created a risk of genocide, and so state parties to the Genocide Convention are therefore under an obligation to prevent and protect the potential victims. It is a stand-alone obligation that does not await the actual commission of genocide itself. In an ideal world, we would be securing justice for victims and accountability for the violators. In our world, there are several initiatives that we are pursuing and others that need to be pursued. These include the International Court of Justice initiative, which, in a provisional judgment, has called on Russia to cease and desist from its acts of aggression and to withdraw from Ukraine; second, ongoing investigations for prospective prosecution at the ICC; third, prosecutions under the principle of universal jurisdiction; fourth, the ongoing prosecutions by Ukraine itself; and finally, the establishment of an independent tribunal for the prosecution of the crime of aggression, which is not now under the

jurisdiction of any of the existing approaches. History teaches us that there's a time of conflict, then a time of peace-making, and finally, a time for justice. As we witness the atrocities in Ukraine, as blood is still flowing, we all feel a need for justice — it's hard to accept our own powerlessness to stop the crimes. But we have to face the facts: now is not yet the time for justice. The moment for the law will certainly come, but when? And in which court? The ICC has the most universal jurisdiction. But countries whose authorities risk being pursued by the ICC have not adopted its Rome Statute, which created the Court. Russia is not party to the Rome Statute — nor, by the way, is the United States — so it's hard to imagine that Moscow would now willingly accept a special tribunal, a new Nuremberg Trials. Russia is no more likely to recognize the legitimacy of a “21st-century Nuremberg” than that of the ICC. In the history of humanity, the Nuremberg Trials represent immense progress, but the legitimacy of a court must be recognized by everyone — both victims and accused. Since Nuremberg, international justice has made significant advances in guaranteeing a fair trial and, importantly, curbing the impression that victors impose the verdicts. Of course, the question of the legitimacy of these trials came up. And it did again much later, notably in France during the trial of Klaus Barbie [head of the Gestapo in Lyon, Barbie was convicted of crimes against humanity and sentenced to life in prison in 1987]. Contesting the legitimacy of judges can be a line of defense, but it lacks honor or effectiveness. In the aftermath of the Second World War, Nazi defendants had little choice. Today, the legitimacy of a special tribunal would be bitterly debated. There's also the issue of Russia's veto power in the UN Security Council, where it would be supported by China. Any UN initiative would face that obstacle. The idea of justice in the near future is obviously appealing, but is it likely or realistic? What seems certain to me is that Ukraine has legitimate grounds to try these crimes, and international law allows it. Since the victims are primarily Ukrainian, the country's courts indisputably have jurisdiction. Ideally, Ukrainian courts would act with the assistance of the UN and maybe the technical support of the ICC. Ideally, if a case can't be referred to the ICC, an ad hoc tribunal would be established, as has been proposed. It would have clear benefits legally but also for history. Ultimately, I think Ukrainian courts are best placed to try the crimes: they have the information and the names, they know the language, they have a good grasp of the facts, the victims are local — it all happened on their soil — and, above all, they have perfectly integrated the requirements of a fair trial. Their legitimacy is indisputable. If Ukraine issues an international arrest warrant, the person in question will no longer be able to travel beyond Russia's borders. There's another option that might seem unimaginable but could become a reality: the Russian justice system. At some point, the people who committed these crimes will have to answer not only to Ukrainian courts, but also to Russian ones, which have jurisdiction too. This presupposes, of course, a regime change in Russia. Everything I've seen and heard throughout more than 100 missions around the world leads me to believe that even the most opaque and closed regimes contain fracture lines, which are as deep as they are hard to detect. There are obviously people in the Kremlin who don't agree with Putin. We've seen the unbelievably courageous reactions among a segment of Russian society — and the bravery of journalists who are starting to express themselves. A great many people have been affected directly or indirectly by the war. At some point, they will break their silence. In the current context, there's talk of bringing Vladimir Putin to justice. Since he's the head of state, he should be the target of any proceedings. He has decision-making power, so he's seen as having overall responsibility for what's happening. However, it's a bit of a fantasy. The ICC statute lays down that there is no immunity for genocide, crimes against humanity, and war crimes. The states that have ratified the Rome Statute have thus agreed to waive this customary-law immunity for their highest authorities. The ICC can only prosecute the heads of state or government or the foreign ministers of countries that are party to the Rome Statute. The question of whether immunities also apply to the heads of non-party states when the UN Security Council refers a situation to the ICC remains controversial. The only case that has occurred so far is that of Sudan, with the indictment against the then-president Omar al-Bashir. Importantly, the Security Council resolution didn't target an individual person, but rather all the acts committed in Darfur. The Security Council didn't mention specific people and said nothing about immunities. So can immunities be considered to apply, or not? The question will always remain open with regard to Darfur, as al-Bashir lost power before being tried. As soon as someone is no longer head of state, head of government, or foreign minister, they can be brought to trial, including for acts committed while in office. So the only way of prosecuting Putin today, or for example [Russian Foreign Minister] Sergei Lavrov, would be if they ceased to hold office. What are the chances of Putin being brought to justice in the near future? For years people said about [former Serbian and Yugoslav president] Slobodan Milosevic: “It's impossible, you'll never get him.” But one day he lost power, he was arrested, he was transferred to the International Criminal Tribunal for the former Yugoslavia, and he was tried. So it's possible. It's important here to adopt the point of view of a criminal lawyer and investigator and not a political ‘I want to try Putin’ approach. Because if we focus on Putin, what do we do next? What are we accusing him of, in terms of his criminal responsibility, rather than for his political or moral responsibility? He has never been on the battlefield himself, shooting civilians, raping and looting, or who knows what else. You may say that Hitler never operated a gas chamber himself. But there is a nuance: Hitler committed suicide and so escaped any proceedings. This raises the whole question about leaders, who bear different kinds of criminal responsibility from the direct perpetrators. A certain number of elements have to be proven before leaders can be incriminated and, if applicable, convicted. But just as it's questionable to try only the perpetrators while letting the leaders off the hook, prosecuting only the leaders without dealing with the perpetrators is also problematic. Determining the actual facts on the ground will be crucial. The missile that fell on a school, a maternity ward, a hospital, killed civilians and caused documentable damage — you have to determine where it came from. You can then establish who launched it, and once

you've identified the unit responsible, you'll be able to identify the chain of command above it and see how far back you can go to engage the possible criminal responsibility of the superior. A lot will depend on the level of evidence that can be collected. Crimes against humanity, war crimes, and genocide are extremely complex offenses. Clearly, they cause a large number of victims, but it's easy to forget that they are the result of a large number of acts committed by a large number of people — hence the difficulty of establishing the individual criminal responsibility of each potential perpetrator in connection with each act and victim. To charge someone with genocide, there must be proof of intent to destroy all or part of a national, ethnic, racial, or religious group as such. If this is not the case, there is no genocide, no matter how many people die. Ukraine has been calling for the creation of a special court to try Russian crimes and the people responsible for the war for more than a year. Personally, I'm not in favor of this. Ukraine referred the case to the ICC already back in 2014, recognizing its jurisdiction, and it was only much more recently that it called for a new body to be created. When the ICC was established, the goal was to change tack and avoid setting up ad hoc courts for a particular conflict after the event, as this would undermine the legitimacy of the ICC. What's more, I don't see how, legally speaking, we could create a new body to judge acts committed in Ukraine by Russian soldiers or agents without Russia's consent. It is a question of sovereignty. This seems to me to be a wrong good idea that will complicate matters further. We already have the primary jurisdiction of the very active Ukrainian national courts, the universal jurisdiction of any other country, the international jurisdiction of the ICC, a number of other investigative bodies set up by third states in cooperation with the Ukrainian authorities, and European bodies such as Eurojust, which are also taking action. Adding yet another player could lead to total confusion. The Independent International Commission of Inquiry for Ukraine set up by the UN Human Rights Council released its first report very recently, and it's a very strong indictment of Russia's war crimes. They have been able to catalog a lot of such crimes, including the use of explosive weapons in populated areas, targeting around schools and hospitals, endangerment of civilians, and a whole list of violations of personal integrity — for example, summary executions, unlawful confinement, torture, and wounding of captive persons, rape and other forms of sexual violence, and of course, all the deportations and Russia's renowned "filtration" operations. Normally, all of the underlying information can be shared with prosecutorial authorities around the world. This would include national-level prosecutors, for example, in Ukraine. But also there are prosecutors elsewhere in Europe, many of whom have opened their own investigations into the situation in Ukraine with an eye to potentially bringing war crimes cases should Russian defendants come within their jurisdictional reach. All of this information can be shared with the International Criminal Court, which has opened an investigation into the situation in Ukraine. So the Commission of Inquiry is one part of a larger effort around the world. It is remarkable that Ukraine could keep its war crimes unit fully operational. As soon as there are incidents around the country and there are potential war crimes, they are able to send a team of both national and international experts to the field to start immediately collecting evidence. Ukraine has also issued a few indictments already and conducted trials in their domestic courts. While Ukraine has some war prisoners in custody, many of the architects of this campaign of war crimes are located in Russia. We may have to wait for some time until these perpetrators begin leaving the safety of Moscow. It is very important to emphasize that the laws of war and the prohibitions against war crimes apply equally to the aggressor state and to the victim state. When it comes to this conflict in particular, that is where this equivalence ends. The data and information related to Russia's war crimes are vastly larger than allegations against the Ukrainian forces. We also see huge disparities between the reaction of the two states. Russia reacts to these claims and the allegations against it with denials and lies, whereas Ukraine has acknowledged that its forces have committed some abuses and has promised to investigate them. You would expect to see a high degree of violence and destruction in any war, even if it is fought in strict compliance with international law. But what we saw in areas from which Russian troops retreated was violence of a different order. That was interpersonal, gruesome violence — we saw bodies of people killed execution-style, with their hands tied behind their backs. There were credible reports of sexual violence against women and girls, and men and boys. So this is not just the typical sort of destruction you would expect from war, but really violent interpersonal abuses. And that is extremely difficult to see and hear.

AT: ICC Credibility

Material interests outweigh ICC hypocrisy – countries care whether a country is reliable now, not past behavior or rhetoric

Polansky 24 [David Polansky, research fellow with the Institute for Peace and Diplomacy with a Ph.D. in political science from the University of Toronto, 6-21-2024, "Hypocrisy Is Not a Real Problem in World Politics", War on the Rocks, <https://warontherocks.com/2024/06/hypocrisy-is-not-a-real-problem-in-world-politics/>]/Kankee

Somewhat amusingly, other powers like China have begun to take this same line. Of course, this is hardly new — such accusations were a staple of Soviet rhetoric during the Cold War. Nor is the United States a unique target, historically speaking. The British were notorious for what George Orwell called their “world-famed hypocrisy,” particularly where their empire was concerned. A recurring theme of these charges is not just that hypocrisy is undesirable on its own terms, but that to engage in it is somehow bad or dangerous to a state’s international position. This is a claim so often assumed that it has by now become an article of faith. Whether it has been proven is another question.

Almost everyone has had personal experience with hypocrisy — both displaying and observing it — but it appears to be especially acute in the domain of international politics. In a much-cited work, Stephen Krasner described the sovereign state system itself as one of “organized hypocrisy,” meaning that it rests upon certain fictions of authority and control that fall short of the reality. In her famous work, *Ordinary Vices*, political theorist Judith Shklar takes up the theme of hypocrisy at some length, noting: No occasion reveals the incoherence of our public values more than war... That is why war is psychologically and morally so revealing, as all readers of Thucydides know. In our age it is also the occasion on which charges of hypocrisy may be exchanged with unmatched virulence. Clearly, there is something here, but why and how does it matter? First, it must be said that pointing out hypocrisy is easy — especially when it involves the other guy. As Shklar also remarks, “It is easier to dispose of an opponent’s character by exposing his hypocrisy than to show his political convictions are wrong.” There’s a reason, after all, that *tu quoque* is considered a fallacy. This rhetorical habit has extended itself into the geopolitical sphere, where identifying instances of hypocrisy on the part of foreign governments, however trivial, has become a kind of parlor game for public commentators — particularly where they already bear some antipathy toward the state or leader in question. Beyond its rhetorical value, however, accusations of hypocrisy do seem to derive from certain intuitions about justice and injustice — much the same way we find ourselves offended by instances of hypocrisy in daily life. Hedley Bull referred to this logic as the “domestic analogy,” in which states in the international system are akin to individuals in society. The trouble here is that in liberal democracies we take for granted the basic equality of persons. That concept of equality forms the bedrock principle of rule of law, ensuring that the poorest and weakest do not lose their due protections and the wealthiest and strongest do not assert undue prerogatives. But states are simply very different entities. Just compare the global interests and obligations of the United States with those of, say, Belgium. Something similar goes for sanctioning behavior on the part of our allies that we would be loath to countenance among enemies or rivals. This sort of unequal treatment under the law is at best corrupt and nepotistic and at worst a miscarriage of justice when practiced at home — for it flouts the rule of law that we mutually rely upon. But in the world of international politics, states do have larger interests and goals that they can pursue in concert with allied countries, and it hardly serves them to spite those interests for the sake of some abstract notion of equality among states — particularly when it is doubtful that rival states enjoy any commitment to that principle in the first place. (This of course says nothing about the wisdom of any particular policy, or even the wisdom of maintaining an allied or client relationship with a given country at all, but that has no bearing on the underlying logic here.) Another problem with attributing such significance to hypocrisy is that it posits a kind of imaginary audience for one’s actions comprised of members who are not themselves also actors on the international stage. If there is such an audience, who might it be? Many argue that the answer is the countries that comprise the so-called “Global South.” Trita Parsi and Branko Marcetic provide an exhaustive rundown of instances in which the perceived hypocrisy of the United States is mooted as a reason to abstain from joining its support of Ukraine’s defense against Russia. But beyond highly public rhetoric, there is little evidence that anger over U.S. hypocrisy was a decisive factor in their calculations, or why it would override any consideration of material interests at stake. One is left pondering the rather implausible counterfactual of a perfectly sincere great power whose commitment to principle commands loyalty among distant states irrespective of their own several interests. Indeed, there is a kind of condescension at work in these discussions, as though the countries of the Global South were not capable of operating from the logic of interests in their own right. And at a minimum, it seems to presuppose that such countries are not themselves capable of displaying hypocrisy. After all, the “non-aligned nations” during the Cold War (many of which now comprise the Global South) were particular offenders — for example, decrying the invasion of Egypt by the British-French-Israeli coalition but remaining virtually silent about the Soviet Union’s concurrent invasion of Hungary. Meanwhile, there are still many who suppose that

international organizations might offer an alternative to the dirty business of geopolitics. This is a long-standing liberal position, which holds that formal institutions, with their embedded norms of cooperation, can replace the calculations of power politics with more pacific modes of managing global security. This view, however, overlooks how such institutions are hardly immune to the interplay of power and interest. Just consider the list of members of the U.N. Human Rights Council over the years, which is long and distinguished primarily by irony. Perhaps the most well-known attempt to justify hypocrisy in U.S. foreign policy was Jeanne Kirkpatrick's landmark essay, "Dictatorships & Double Standards," which was widely viewed as establishing much of the logic of policymaking under the subsequent Reagan administrations, in which the United States would favor friendly (typically anti-communist) non-democracies over unfriendly ones. Kirkpatrick in fact justified these policies by emphasizing their continuity with conventional practice: Inconsistencies are a familiar part of politics in human society. Usually, however, governments behave hypocritically when their principles conflict with the national interest. What makes the inconsistencies of the Carter administration noteworthy are, first, the administration's moralism, which renders it especially vulnerable to charges of hypocrisy; and, second, the administration's predilection for policies that violate the strategic and economic interests of the United States. The administration's conception of national interest borders on doublethink: it finds friendly powers to be guilty representatives of the status quo and views the triumph of unfriendly groups as beneficial to America's "true interests." In other words, some form of inconsistency with respect to principles was built in to geopolitics, and Kirkpatrick was arguing that if the United States was going to display inconsistency anyway, they might as well do so in ways that, as Polemarchus put it in *The Republic*, benefits friends and harms enemies. Now it must be said that much of America's support during that period both for right-wing anti-communist insurgents and for authoritarian regimes (El Salvador comes to mind) looks highly questionable in retrospect. But here too, the central problem wasn't hypocrisy per se, but that the United States provided diplomatic and material aid to some very nasty people, thus making itself complicit in their crimes without deriving much obvious benefit in many cases. The central problem then was strategic miscalculation: overestimating both the dynamism of Soviet-backed communism and the geostrategic importance of regions like Central America. Now, it may be that hypocrisy is just a particular problem for great powers — especially the great power. Martha Finnemore makes just this point in a thoughtful article on the matter. She readily accepts that hypocrisy "pervades international politics." But while this may not be a problem in itself, she argues that it may be a specific problem for a unipolar or hegemonic power that relies upon remaining legitimate in the eyes of other states to maintain its status. Hence the judicious application of hypocrisy can be useful, but when unrestrained, it "undermines respect and deference for the unipole and for the values on which it has legitimized its power."

This claim, like our general sense that hypocrisy matters, is intuitively plausible, but Finnemore does not actually demonstrate what the costs are for hypocritical behavior or how these are traced to perceptions of hypocrisy by other states. Moreover, legitimacy is a notoriously elusive concept. It is assumed, it seems, that hypocrisy must ultimately blow back on the one who displays it — e.g., America's global authority is somehow irreparably damaged in the eyes of those who can plainly see the distance between its rhetoric on behalf of the liberal international order and its actions. It is never quite clear, however, how this cashes out. In this way, hypocrisy is not unlike that other bugbear of international politics: credibility. The loss of credibility is intuitively thought dangerous to a nation's security. The operating assumption here is that a given state's past behavior may invite future threats. But as Daryl Press has persuasively argued, states are far more likely to base their decisions on a combination of their own interests and their assessment of their adversaries' material capabilities, than on an evaluation of past actions.

Thus, whatever impact past hypocrisy may have on a given state's credibility, it likely matters less than people presume for present and future dealings with other countries. Now, it should be noted that Press' argument is not above criticism, both because states are not purely rational utility maximizers and because, in the absence of certain knowledge of others' intentions, states are bound to at least consider their past actions in determining the best policy. But here is the larger problem: As with credibility, there is that same implicit analogy to interpersonal relations. We would, after all, not put our trust in someone who repeatedly failed to honor their word, nor would we much like someone who displayed blatant hypocrisy in their day-to-day behavior. But arguments about the risks of hypocrisy in world politics should ultimately issue in material conclusions. That is to say, the social externalities of being viewed as a hypocritical actor ought to eventually involve material costs to a state's economic and security interests — much in the way that a private individual with a reputation for hypocrisy might lose out on job promotions or business opportunities. The causal relationship between a state's hypocrisy and material damage to its international position has been more assumed than argued. However plausible, it has not really been demonstrated in any empirical or quantifiable way (and it is striking how many of the relevant discussions rely upon predictive rather than retrodictive arguments). In the absence of a clear understanding of those material costs, observers tend to fall back on what amount to rhetorical critiques. To take a recent example, Secretary of State Tony Blinken claimed in an interview, "Our purpose is not to contain China, to hold it back, to keep it down. It is to uphold this rules-based order that China is posing a challenge to." This led to inevitable criticism by members of the smart set, to the effect that the United States has always made its own rules, and that it was historically absurd to equate supremacy with international rule of law. This is to treat global politics like an academic seminar, in which students are exposed for their shaky knowledge. Blinken, however, is not a student but a diplomat making a public statement. What really matters is whether putting it this way is useful or not. Of course, it might not be. But one likely can't go around saying bluntly that U.S. policy is to hold China down at all costs. Moreover, it is difficult to imagine the critics in this instance preferring such a bald statement of primacy. To return then to the examples raised at the outset, was it hypocritical of Washington to lend rhetorical support for the International Criminal Court when they prosecuted Slobodan Milošević or issued arrest warrants for Vladimir Putin, but then criticize it for doing the same thing with Benjamin Netanyahu and Yoav

Gallant? Perhaps. But it was also simply a case of the United States treating an institution as useful when directed against perceived enemies and not useful when directed against allies. Of course, one can argue that an international institution like the International Criminal Court should simply not be allowed to aggrandize itself against leaders of sovereign states lest it grow too powerful altogether, or that the United States shouldn't be providing diplomatic cover to Israel's political and military leaders in the first place, but in either instance the hypocrisy involved is a comparatively trivial matter. All of this seems to presuppose that other states would be satisfied with the same (to them, unjust) outcomes provided that the United States or other powers were less hypocritical about it. But we might remember that hypocrisy is hardly the worst of vices, at least when compared with cruelty. Otherwise, it assumes that what states really care about is fairness as such. That is, they are offended by the failure of the United States to be impartial rather than by its failure to be partial in their favor. Needless to say, both of these are dubious propositions. Arguably, the real danger is that the practice of resorting to hypocritical rhetoric produces sloppy thinking and poor mental habits where geopolitics is concerned. In an essay in *Esquire*, F. Scott Fitzgerald wrote that "the test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function." And while America has unquestionably benefited from public servants who were also first-rate minds, from John Quincy Adams to George Kennan to William Odom, it is not really feasible or prudent to rely exclusively on such figures. The execution of a global foreign policy relies upon a vast bureaucratic network of diplomats, foreign service officers, analysts, and so on. On the one hand, the absence of strategic clarity as expressed in public statements at the highest level hampers their ability to perform. On the other, that same lack of clarity has a tendency to filter back up through higher channels resulting in a general confusion of purpose. Though this is another way of saying that the problem isn't hypocrisy at all but sincerity. That the continued reliance on rhetoric concerning the "rules-based international order" had the result of changing its users' perception of reality, Sapir-Whorf style, in ways that proved damaging to their foreign policy judgments. Beyond this, there is another way that hypocrisy might matter, but it is again domestic. For, it may be that the normalization of deeply hypocritical behavior is damaging to the social and political cohesion that is necessary for any society to function. The question is not whether a given state is straightforward in all its dealings with other states — the question is whether its own people continue to believe in their country and are prepared to sacrifice for it. If by hypocrisy, we mean a kind of pure expediency in our dealings with others, with little adherence to steadfast principles, one can see how this is acidic to the ordinary bonds of loyalty and belief that hold a nation together through good and ill fortune. The political theorist Laurie Johnson explains: Thucydides' *History* teaches that as the Athenians came to believe and act on their [cynical] theory of human nature and state action, their legitimacy declined among their allies and empire and their domestic political order became corrupt and disintegrated amid politicians who each followed his own self-interest. This may be an extreme case, but something like this is a legitimate concern for (particularly democratic) governments that are obliged to explain their reasoning to their own publics, who might in turn believe that there have to be limits to pragmatism. Ultimately, however, the consistency or hypocrisy of a given country's (including America's) international behavior is really a second-order problem, and focusing on it functions as a proxy for a more substantive issue, be it avoidable evils or ill-advised policy choices. And one suspects that so many dwell on it because it is easier than addressing the first-order questions: What are our interests here, if any, and what should we do about them? Otherwise, even where hypocrisy appears to be the main problem, there is an imprecision in how we discuss it: The exact nature of the harm it does — whether to ourselves or others — remains vague. And in such discussions, it almost invariably gets caught up with other imprecise terms like "trust" and "credibility," which are of similarly dubious significance in the arena of international politics. Indeed, what almost always matters when it comes to a policy that was pursued in a manner deemed hypocritical by others is whether it ultimately proved successful. But this, too, is testament to its irrelevance. For, people rarely highlight the hypocrisy of successful policies. The fact that it succeeded surely suggests it was at least *prima facie* advisable. Conversely, its failure and associated costs are surely more important than the fact that hypocrisy was somehow involved. In the end, though primacy or superiority accounts for much behavior we perceive as hypocritical, it is by no means the cause of it — the cause being rather the inevitable diversity of interests across different states, and the equally inevitable disagreement about the legitimacy of those interests. That these varied and not-infrequently opposed interests do not lead to the perpetual war of all against all is frequently attributed to the establishment of international law and international institutions. But it has far more to do with the credible authority of a hegemonic power in conjunction with the tools of diplomacy and statecraft, both of which entail in no small part — yes, hypocrisy.

Organizational hypocrisy isn't immoral - organizations lack individualizable blame and unitary thought

Lipson 6 [Michael Lipson, researcher at the Department of Political Science at Concordia University, 2006, "Dilemmas of Global Governance: Organized Hypocrisy and International Organization," Canadian Political Science Association, <https://www.cpsa-acsp.ca/papers-2006/Lipson.pdf>]/Kankee

Krasner's rulers are rational, unitary actors, relatively autonomous from societal influences and pursuing exogenously given preferences (to remain in power and promote the interests of the constituencies that maintain their position). They are closed-rational systems in organization theory's terms, clearly bounded and distinct from their 14 environments, with goals set exogenously from their environments.¹⁶ In fact, although they act through states, Krasner's individual rulers—the "ontological givens" of his analysis and the actors exhibiting organized hypocrisy—are not themselves organizations. Thus, organized hypocrisy as portrayed by Krasner is largely devoid of organizations.

In Brunsson's formulation, organized hypocrisy is fundamentally about organizations. Organizations, not rulers, face competing logics of consequences and action. These organizations, in turn, are not unitary actors but collectivities constituted and endowed with social agency by their social environments (Meyer and Jepperson, 2000). Thus, Brunsson's perspective falls within the "open systems" approach to organization theory, which regards organizations as possessing porous boundaries, and as constituted by and reproduced through their interactions with their environment (Katz and Kahn, 1966; Ansell and Weber, 1999; Scott, 2003). In such organizations, organized hypocrisy often arises unintentionally as a byproduct of uncoordinated responses to conflicting environmental pressures by loosely coupled or decoupled internal organizational elements.¹⁷ Thus, the negative moral connotation usually attached to hypocrisy does not apply in this understanding of organized hypocrisy. Condemnations of hypocrisy, in the normal sense of the term, assume that the hypocrite is a coherent, unitary actor. The moral stigma attached to hypocrisy flows from this assumption. Just as it makes little sense to speak of an individual afflicted with schizophrenia or dissociative identity disorder (i.e., multiple personalities) as hypocritical, the censure associated with the term is inappropriate to consideration of organized hypocrisy in open systems organizations. Brunsson introduces two significant innovations. First, he offers a distinction between decoupling of divergent internal aspects of an organization, which he terms "the organization of hypocrisy," and decoupling of inconsistent organizational outputs—for which he reserves the term "organized hypocrisy."¹⁸ Second, he revises the conventional understanding of decoupling by interpreting organized hypocrisy in terms of an inverse, rather than absent, causal relationship between rhetoric and action.¹⁹ The concept of "the organization of hypocrisy" (OOH) builds on Meyer and Rowan's (1977) classic argument that organizations in institutionalized environments reflect their organizational environments in their internal structure. In environments characterized by contradictory imperatives, these contradictions will be incorporated into organizations' internal structures. Brunsson refers to such organizations—those operating in institutional environments characterized by conflicting values and preferences—as "political" (as opposed to action) organizations.²⁰ If a political organization's structures and processes for responding to these pressures are decoupled, they can each independently respond to their corresponding external demands, and—because they are ¹⁶ decoupled—not be significantly affected by the inconsistency between them. Thus, the inconsistent pressures of the organization's environment are "reflected in organizational structures, processes, and ideologies," within the organization, and "these incorporated inconsistencies define the 'organization of hypocrisy.'"²¹ Because the inconsistencies stem from the organizational environment, OOH is a property of open systems. Organized hypocrisy, as opposed to OOH, refers to inconsistencies between organizational outputs. Brunsson identifies three fundamental types of organizational output—talk, decisions, and action.²² In organized hypocrisy, talk and decisions are inconsistent with action. But they are not decoupled. Rather, as Brunsson (2003: 205- 206) explains: In the model of [organized] hypocrisy talk, decisions and actions are still causally related, but the causality is the reverse: talk or decisions in one direction decrease the likelihood of corresponding actions, and actions in one direction decrease the likelihood of corresponding talk and decisions. The model of [organized] hypocrisy implies that talk, decisions and actions are "coupled" rather than "de- coupled" or "loosely coupled," but they are coupled in a way other than usually assumed.

Perceptions of western hypocrisy are inevitable

Lehne 24 [Stefan Lehne, Senior Fellow at Carnegie Europe, 9-18-2024, "The Rules-Based Order vs. the Defense of Democracy", Carnegie Endowment for International Peace, <https://carnegieendowment.org/research/2024/09/rules-based-order-vs-the-defense-of-democracy?lang=en>]/Kankee

The way the rules-based order relates to public international law is indeed somewhat unclear. There is no generally accepted definition of the concept. European governments and the EU often use the term as essentially synonymous with international law and frequently combine the two concepts in the same sentence or paragraph. The U.S. understanding of the rules-based order appears to be broader, encompassing not only international law but also nonbinding norms and standards, potentially including some that are not universally accepted. In statements about the rules-based order, U.S. politicians sometimes evoke broad values, such as respect for sovereignty, self-determination, or human rights, rather than concrete legal norms. Another problem that limits the attractiveness of the concept for countries in the Global South is the West's severely damaged reputation. The legacy of the colonial period remains a heavy burden, but it is now combined with accusations of double standards and hypocrisy. For example, the initial reluctance of Western governments to share COVID-19 vaccines triggered a wave of criticism in Africa. Southern governments also contrast the West's engagement for Ukraine with its neglect of conflicts and challenges in the South. Most recently, Western support for Israel in the Gaza war has further sharpened this resentment. The problem is compounded by persistent economic inequality. From a Southern point of view, Western states continue to impose unfavorable trade and investment rules on the South while turning increasingly to protectionist strategies. Against this background, it is unsurprising that Western sermonizing about the rules-based order is often perceived as an attempt to shore up an inequitable global status quo based on rules that are shaped by the U.S.-led West and serve to protect its interests and power. And of course, China and Russia are working hard to reinforce this perception. Enhancing the Appeal of the Rules-Based Order

Ilaw fails – norms are so widely broken that its impossible to enforce. Domestic human rights measures are comparably better

Brunk 17 [Ingrid (Wuerth) Brunk, Helen Strong Curry Professor of International Law at Vanderbilt Law School, 4-10-2017, "Does International Law Have a “Broken Windows” Problem?", Default, <https://www.lawfaremedia.org/article/does-international-law-have-broken-windows-problem>]/Kanke

Many norms of international law, especially international human rights law, are widely violated. The international legal system as a whole may suffer as result. International human rights law has changed international law. The two primary sources of international legal obligations—treaties and custom—have become more expansive and looser so as to bring more human rights norms into the ambit of international law, despite wide-spread non-compliance with those norms. In one sense, the success of the effort is clear: international law now regulates a vast array of human-rights-related conduct. Whether the expansion is an effective way to promote human rights is widely-debated. The broader, unacknowledged problem, however, is the potential effect of the expansion on international law as a whole, as I discuss in detail here. Today, international law includes a broad range of human rights norms which are routinely violated, from the U.N. reporting requirements to gross violations of human dignity. Wide-spread violations of some legal norms may, in turn, make it harder to enforce others. As a (very) imperfect analogy, consider the “broken windows” theory of crime prevention: widespread violations of human rights law may be a symbol of unaccountability, a signal that no one cares about violations of international law and that no one is in charge. Accountability is a fundamental concern of public international law because the system lacks a centralized enforcement mechanism. Whatever the merits of the “broken windows” argument in the context of domestic law enforcement, behavior which signals a lack of accountability may be especially damaging to international law writ large. Theoretical literature on compliance with international law suggests that non-compliance in some areas makes other norms of international law harder to enforce. Work on rational choice posits, for example, that states comply with international law in part to protect their reputations. If states as a whole tend to expect non-compliance from each other, the costs of entering into treaties or developing norms of customary international law become higher for all states. A baseline reputation of non-compliance among states generally harms interstate cooperation because it means that states will have to do more in a treaty agreement to generate trustworthy commitments (such as monitoring non-compliance), and because it makes some agreements not worth the time or effort. To be sure, these effects depend upon states having reputations for compliance which are not entirely issue-specific or compartmentalized, a plausible assumption for reasons explained here (pages 103-06). Other theories of compliance with international law, including constructivism and organizational sociology, also suggest that widespread non-compliance with human rights will make the rest of international law less effective. For example, constructivists Jutta Brunnée and Stephen Toope argue that international legal obligations arise from communities of practice which have shared understandings and which generate norms with specific characteristics of legality. Lack of congruence between a norm and behavior impedes the development of a community of practice. They reason in the context of torture (page 232) that “a widespread failure to uphold the law as formally enunciated leads to a sense of hypocrisy which undermines fidelity to law.” Research from domestic law and social psychology, including the work of Tom Tyler, suggests that widespread lack of faith in government and its ability to solve problems undermines peoples’ sense of their own obligation to follow the law. If international law does have a problem along these lines, one solution is to more effectively enforce international human rights law: Doing so would not only benefit human rights, but also international law as whole. Yet creating a truly effective international human rights enforcement system seems unlikely. A more complicated possibility is to find ways to promote and protect human rights that do not depend upon binding norms of international law, including regional human rights courts and tribunals, domestic statutes and constitutions, capacity building and iterative interactions with review bodies, the enforcement of soft obligations, and so on. Thanks to the successes of the international human rights movement, there are a wide variety of tools designed to improve global human rights practices. While we have yet to see whether those mechanisms will work if they are de-coupled from binding international legal commitments, it is clear that we should understand international human rights law as part of a broader international legal system. The debate around international law and human rights should be re-framed to consider not just potential benefits to human rights but also the potential costs to international law as a whole.

Too much focus on hypocrisy removes governmental flexibility and causes policy paralysis and apathy

Spektor 23 [Matias Spektor, professor of International Relations at Fundação Getulio Vargas in São Paulo and a Nonresident Scholar at the Carnegie Endowment for International Peace, 7-21-2023, "The Upside of Western Hypocrisy", Foreign Affairs, <https://www.foreignaffairs.com/united-states/upside-western-hypocrisy-global-south-america>]/Kankee

Those in the global South who shout against Western hypocrisy should also beware of the risk of being hypocritical themselves. Many critics tend to denounce the West selectively, criticizing only those instances of Western hypocrisy that hurt their interests directly but keeping quiet whenever it benefits them. India for decades loudly protested Washington's refusal to lead a global process to rid the world of nuclear weapons, only to toe the line the minute it secured concessions and signed a civil nuclear agreement with the United States in 2005. Finally, countries in the global South should recognize that too much criticism of hypocrisy can endanger international cooperation by breeding cynicism and political paralysis. Hypocrisy can sometimes be useful. It provides governments a pragmatic way out in situations when valuable principles are in conflict. Take the case of the Inflation Reduction Act introduced by the Biden administration. The law provides subsidies for industries to transition to low carbon energy sources and thereby reflects a commitment to mitigating climate change for the entire planet. But the IRA also violates the norms of free trade that the United States so forcefully applies to others. Hypocrisy in this case allows the White House to proclaim the value of both protecting the planet and maintaining free trade, even if the administration is not able to reconcile the two. A LITTLE HYPOCRISY, WELL DONE

AT: Congo

Complementarity thumps ICC prosecution

Labuda 17 [Patrik I. Labuda, Assistant Professor of (International) Criminal Law at the University of Amsterdam with PhD in international law from the Graduate Institute in Geneva, 4-28-2017, “Taking Complementarity Seriously: Why is the International Criminal Court Not Investigating Government Crimes in Congo?”, *OpinioJuris*, <http://opiniojuris.org/2017/04/28/33093/>]/Kanke

To hear Fatou Bensouda tell it, the ICC’s intervention in the DRC is something of a success story. The Court’s track record there seems positive, especially when contrasted with other ICC situations: Thomas Lubanga and Germain Katanga have been tried and convicted, and Bosco Ntaganda is currently on trial. Another Congolese, Jean-Pierre Bemba, is the Court’s only high-profile convict to date, even if his conviction formally stems from the situation in the Central African Republic. Thus, with the possible exception of Mathieu Ngudjolo’s acquittal in 2012, Congo is usually portrayed as a beacon of hope for an otherwise beleaguered institution struggling to gain legitimacy in Africa. But is this narrative of success compelling? A cloud of suspicion has hung over the ICC’s activities in the DRC ever since Joseph Kabila ‘invited’ the first Prosecutor, Luis Moreno Ocampo, to launch an investigation in 2004. Kabila’s ‘self-referral’ succeeded beyond his wildest dreams: lacking a strategy for a country the size of Western Europe, the Office of the Prosecutor (OTP) initiated sporadic prosecutions which targeted only Kabila’s rivals, including Bemba who had almost defeated him in the 2006 presidential election. In stark contrast, the Congolese government’s crimes received no scrutiny in The Hague. Thirteen years after Kabila’s invitation, the ICC’s neglect of government crimes is coming home to roost. The DRC is in the news for all the wrong reasons. Kabila’s refusal to relinquish power, despite being constitutionally required to do so, has stoked mass violence on several occasions, leaving dozens dead in the streets of Kinshasa and other cities. After a series of damning reports (see here and here), last month the UN High Commissioner for Human Rights formally requested a commission of inquiry to examine ‘recurrent reports of grave violations’. Most importantly from the ICC’s perspective, these reports show beyond a shadow of a doubt that the violence is part of a governmental strategy to keep Kabila in power at all costs. The pattern is familiar: each time the political opposition organizes protests, state agents – police and military – resort to deadly force. Yet despite thousands of cumulative deaths, reports of dozens of mass graves, and even graphic videos of summary executions by government troops, the ICC has been virtually absent from the debate about accountability. Why, despite such overwhelming evidence of state criminality, has the ICC not investigated Kabila and his supporters? The answer lies in the OTP’s contorted reading of complementarity. The ICC and Complementarity Complementarity is the structural principle that regulates the ICC’s relationship to states like the DRC. Unlike the ad hoc tribunals for Rwanda and Yugoslavia, the ICC is not supposed to simply assert jurisdiction over high-profile suspects or cases that it considers particularly grave. The ICC’s jurisdiction is only ‘complementary’, which means it gives priority to genuine national proceedings (Article 17, Rome Statute). To invoke a metaphor frequently used by Court officials, the ICC is not a ‘port of first call’ but rather ‘a court of last resort’. Put differently, the Prosecutor intervenes only when national authorities do not, or are ‘unwilling or unable’ to, discharge their prosecutorial duties. In its press releases, the ICC seizes on complementarity to explain its inaction in Congo. For instance, in her most recent press release, Bensouda urge[s] the competent DRC authorities, in accordance with the principle of complementarity, which lies at the heart of the Rome Statute of the ICC and which confers on States Parties the primary responsibility to investigate and prosecute, to take all measures required to conduct genuine investigations... This all sounds fine except that Kabila’s government has yet to ever discharge this ‘primary responsibility’ against its own state agents, at least none in positions of power. It is no secret that the Congolese justice system lacks independence, despite years of capacity building. A few dozen domestic trials have taken place since 2006, but initiating genuine national investigations into international crimes, especially against high-ranking military commanders allied with Kabila, is simply not possible. Bensouda’s exhortations notwithstanding, the Congolese judiciary is ‘unwilling or unable’ to prosecute state-sponsored crimes like the ones that have surged around Beni and elsewhere in the last four years. Bensouda has issued periodic statements since 2013, warning that her Office continues to ‘carefully monitor’ the situation in the DRC (see here and here). But Kabila will not be fooled easily. A regular attendee at the annual Assembly of States Parties, the Congolese government understands how the Court operates. Although the OTP does not formally disclose where it has active investigations, one can deduce from the ICC’s annual budget that there are no new investigations planned in Congo. Budgetary constraints mean that unless the Prosecutor reconsiders her approach to complementarity, there will be no accountability for Kabila’s crimes. Rethinking Complementarity The ‘unfolding horror’ – to paraphrase UN High Commissioner Zeid – has forced Bensouda’s hand in recent months. In addition to her periodic press releases, the OTP went one step further in October 2016, sending a delegation to Kinshasa to liaise with the authorities. Then, last week, her Office organized a workshop with the national Human Rights Commission. These initiatives were meant to show the ICC’s resolve in the face of a deepening crisis, yet the disconnect is apparent: as OTP

staff provided training to an institution with no prosecutorial powers, the UN's peacekeeping mission announced the discovery of 17 additional mass graves, bringing the number of mass killings in just one province (Kasai) to 40. Not for the first time, the UN made abundantly clear who was responsible. A UN human rights report released last month drives this point home (para. 78): ...no State agent or official has so far been investigated or prosecuted for the extrajudicial killings and other serious human rights violations committed in the context of the authorities' actions to prevent and contain the demonstrations. This was also the case during major demonstrations and opposition activities which occurred in September and November 2016. The lack of accountability for past human rights violations... may have encouraged a sense of impunity [for] defence and security forces to commit further violations in December 2016. Government-sanctioned impunity is precisely why the ICC was designed, in accordance with complementarity, to investigate as a court of last resort. Yet Ocampo and Bensouda have never explained why the Congolese army's atrocities, for instance the Minova rapes and the sham domestic trial that followed, did not trigger an ICC investigation. Instead, over the past thirteen years, the OTP has used the Court's limited resources to 'chase' rebels, most of whom the Congolese government wants prosecuted domestically anyway.

Complementarity was already an issue in the Lubanga trial, but it is the Katanga case that fully illustrates why the ICC's case selection is so problematic: detained in Kinshasa on domestic war crimes charges, the OTP asked the DRC authorities to turn Katanga over for prosecution in The Hague. The Congolese duly obliged, but a flawed (multi-million dollar) international trial and a light sentence meant Katanga would end up serving just two years in prison (in addition to the seven years he was detained during his ICC trial). No one was happy with this outcome, so shortly before his release the Congolese scrambled to resurrect their domestic case. In January 2016, instead of being released, Katanga was 're-arrested' and charged with crimes that mirrored the ICC's case.

ICC fails to address root of violence in the DRC

Sehmi 21 [Anushka Sehmi, Kenyan lawyer representing victims before the ICC in *The Prosecutor v. Dominic Ongwen*, 6-28-2021, “Is the International Criminal Court going after the wrong people?”, African Arguments, <https://africanarguments.org/2021/06/is-the-international-criminal-court-icc-going-after-the-wrong-people/>]/Kankee

Given that the Rome Statute, which established the court, declared that a key goal was to “put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”, one would expect the ICC’s colossal focus on the eastern DRC to have led to a reduction in violence in the region. Yet this does not seem to have been the case. Fighting has largely continued unabated. In the last few years, hundreds of people have been killed and thousands have fled. At the end of this April, UNICEF reported that there had already been 175 grave violations since the start of the year, including the recruitment of children into armed groups, killing and sexual violence. “Every day, children and their rights are undermined through relentless violence and grave rights violations,” said the humanitarian agency’s senior coordinator for the region. Following the roots Why have the high-profile prosecutions of war criminals, some leading to long prison sentences, not deterred others following in their footsteps? One reason could be that the ICC has been going after the wrong people. The court has thus far targeted militia leaders guilty of war crimes and has largely treated the conflict as being driven by ethnic rivalries. Many analysts, however, suggest that violence in the region is part of much wider dynamics that have their roots in the colonial and post-colonial administration of the DRC and involve factors including corruption, marginalisation, resource inequality and economic exploitation. As the UN Special Rapporteur on Human Rights in the DRC noted in 2003, “despite the ethnic appearance of the conflict, its root causes are of an economic nature”. Indeed, there are many interested parties in the eastern Congo’s conflict beyond armed groups. For instance, competition for the control of resources such as gold mines has long been a defining feature of life and violence between militants, yet a 2015 investigation found that just 2% of net profits from illegal resource exploitation in the DRC ends up in the hands of armed groups. Others that benefit from the insecurity include transnational criminal networks, neighbouring states, and multinational corporations. A UN Expert Panel in 2003 named 29 companies associated with “elite networks” in the DRC and listed 85 companies deemed to have breached OECD guidelines. Profits from the illegal extraction – and the associated violence and human rights abuses – have flowed to governments in Rwanda, Zimbabwe and Uganda as well as to mining companies, arms dealers and other businesses in the likes of Switzerland, Russia, Kazakhstan, Israel, Belgium, the Netherlands, and Germany. A paper by Global Witness has highlighted how foreign businesses in Ituri province made payments to rebel groups and provided them with the facilities to exploit natural resources. It concluded that “the trade in natural resources still underpins some of the most serious violence in eastern DRC”. Multinational corporations have also been implicated in high-level corruption by bribing corrupt leaders in exchange for access to the Congo’s natural resources. Follow the money The ICC is well aware of these underlying dynamics. In fact, before issuing its indictments in the DRC, the then ICC Prosecutor Louis Moreno Ocampo himself noted that “there is general concern that the atrocities allegedly committed in the country may be fuelled by the exploitation of natural resources there and the arms trade, which are enabled through the international banking system”. He added that “if the alleged business practices continue to fuel atrocities, these would not be stopped even if current perpetrators were arrested and prosecuted.” When it came to issuing indictments, however, the ICC simply targeted those directly involved in mass atrocities. This focus has obscured and absolved the wide network of more powerful actors facilitating, driving and profiting from the Congolese people’s misery. This approach has been mirrored in its trial of the Lord’s Resistance Army’s Dominic Ongwen in which I am currently representing the victims. The ICC’s focus on one prominent individual rather than deeper factors again means that many powerful people and organisations will avoid justice. So far, many of the ICC’s greatest successes have been in convicting armed leaders from the eastern Congo. Yet despite the vast amount of time, expertise and resources spent on the region, its activities appear to have done little to reduce violence there. The Rome Statute declares that the “most serious crimes of concern to the international community as a whole must not go unpunished”. Nearly 20 years after it began operations, it is high time for the ICC to rethink what those “most serious crimes” really are.

US ratification risks deepening West-Africa divide

Kaledzi 23 [Isaac Kaledzi, journalist for the DW and The 77 Percent with a bachelors degree from the University of Ghana, 7-17-2023, "Africa's fractured relationship with the ICC", DW News, <https://www.dw.com/en/africas-fractured-relationship-with-the-icc/a-66257611>]/Kanke

Since its inception 25 years ago, 33 African states have joined the ICC with Ivory Coast the most recent to do so in 2013. They were all expecting justice for victims of crimes. "I think that generally it has done well in its effort to provide some justice for victims in Africa," Ghanaian legal expert Alhassan Yahaya Seini told DW. But what started as a good relationship between Africa and the ICC is now fractured. In recent years, some Africa countries have complained about unfair targeting. While the ICC seems to enjoy strong support among civil society groups in Africa, it's a different story when it comes to some African leaders. 'Against Africans, against African leaders' Rwandan President Paul Kagame for instance suggested that Africans have become the scapegoat in the ICC's push to execute its mandate. "The ICC was supposed to address the whole world, but it ended up covering only Africa," Kagame told British-Sudanese telecoms tycoon and philanthropist Mo Ibrahim in 2018. "From the time of its inception, I said there was a fraud basis on which it was set up and how it was going to be used," Kagame said. "I told people that this would be a court to try Africans, not people from across the world. And I don't believe I have been proven wrong." Magdalene Mutheu, a filmmaker from Kenya told DW that she thought Kagame's position was justified. "The court seems to have been designed to work against Africans and against African leaders," she said. "There are so many leaders in the Western world who have committed crimes against humanity in different countries like Afghanistan, Yemen, Syria and none of them have ever been taken to the International Criminal Court." Legal scholar Seini though disagrees. "I wouldn't say it is targeting Africa as such because it is not like ICC is looking out for African leaders," Seini said "I don't think anyone is saying that." About 30 cases before the ICC involve individuals from the Central African Republic, Ivory Coast, Sudan, Democratic Republic of the Congo, Kenya, Libya, Mali and Uganda. These countries invited the ICC prosecutor to investigate crimes allegedly committed in their territories. "It was the states themselves who went to court and not the other way around," Mamadou Diallo, a public international law expert at Cheick Anta Diop University in Dakar, Senegal told DW. "From this point of view there is no problem. Because the crimes there have been in Africa, many in Africa and the states concerned have decided to refer the matter to the court, the court exercises its criminal jurisdiction."

AT: Kant

The aff destroys rights under the Constitution and self-government

Casey 18 [Lee Casey, partner in the law firm of Baker & Hostetler LLP and Adjunct Professor of Law at the George Mason University School of Law, 10-2018, "The Case Against Supporting the International Criminal Court," Washington University, <https://law.wustl.edu/wp-content/uploads/2018/10/The-Case-Against-Supporting-the-International-Criminal-Court.pdf>]/Kankee

The United States should not ratify the ICC Treaty. There are **two fundamental objections to American participation in the ICC regime**. First, **U.S. participation would violate our Constitution by subjecting Americans to trial in an international court for offenses otherwise within the judicial power of the United States, and without the guarantees of the Bill of Rights**. Second, our **ratification of the Rome Treaty would constitute a profound surrender of American sovereignty, undercutting our right of self government – the first human right, without which all others are simply words on paper, held by grace and favor, and no rights at all**. With respect to the Constitutional objections, by joining the ICC Treaty, **the United States would subject American citizens to prosecution and trial in a court that was not established under Article III of the Constitution** for criminal offenses otherwise subject to the judicial power of the United States. This, it cannot do. As the Supreme Court explained in the landmark Civil War case of *Ex parte Milligan* (1866), reversing a civilian's conviction by a military tribunal, "[e]very trial involves the exercise of judicial power," and **courts not properly established under Article III can exercise "no part of the judicial power of the country."**² This rationale is equally, and emphatically, applicable to the ICC, a court where neither the prosecutors nor the judges would have been appointed by the President, by and with the advice and consent of the Senate, and which would not be bound by the fundamental guarantees of the Bill of Rights. In fact, **individuals brought before the ICC would only nominally enjoy the rights we in the United States take for granted**. For example, **the ICC Treaty guarantees defendants the right "to be tried without undue delay."** In the International Criminal Tribunal for the Former Yugoslavia (an institution widely understood to be a model for the permanent ICC), and which also guarantees this "right," **defendants often wait more than a year in prison before their trial begins, and many years before a judgment actually is rendered**. The Hague prosecutors actually have argued that up to five years would not be too long to wait IN PRISON for a trial, citing case law from the European Court of Human Rights supporting their position.³ Such practices, admittedly, have a long pedigree, but they **mock the presumption of innocence**. Under U.S. law, the federal government must bring a criminal defendant to trial within three months, or let him go.⁴ By the same token, **the right of confrontation, guaranteed by the Sixth Amendment, includes the right to know the identity of hostile witnesses, and to exclude most "hearsay" evidence**. In the Yugoslavia Tribunal, both **anonymous witnesses and virtually unlimited hearsay evidence have been allowed** at criminal trials, large portions of which are conducted in **secret**. Again, this is the model for the ICC. Similarly, **under the Constitution's guarantee against double jeopardy a judgment of acquittal cannot be appealed**. Under the ICC statute, **acquittals are freely appealable** by the prosecution, as in the Yugoslav Tribunal, **where the Prosecutor has appealed every judgment of acquittal**. In addition, **the ICC would not preserve the right to a jury trial**. The importance of this right cannot be overstated. Alone among the Constitution's guarantees, the right to a jury trial was stated twice, in Article III (sec. 2), and in the Sixth Amendment. It is not merely a means of determining facts in a judicial proceeding. It is a **fundamental check on the abuse of power**. As Justice Joseph Story explained: "**The great object of a trial by jury in criminal cases is to guard against a spirit of oppression and tyranny on the part of rulers, and against a spirit of violence and vindictiveness on the part of the people.**"⁵ It is "part of that admirable common law, which had fenced round, and interposed barriers on every side against the approaches of arbitrary power." That said, the exclusion of jury trials from the ICC is not surprising, for that Court invites the exercise of arbitrary power by its very design. **The ICC will act as policeman,**

prosecutor, judge, jury, and jailor – all of these functions will be performed by its personnel, with nothing but bureaucratic divisions of authority, and no division of interest. **There would be no appeal from its judgments.** If the ICC abuses its power, **there will be no recourse.** From first to last, the ICC will be the judge in its own case. It will be **more absolute than any dictator.** As an institution, the ICC is fundamentally **inconsistent** with the political, philosophical, and legal traditions of the United States. ICC supporters suggest that U.S. participation in this Court would not violate the Constitution because it would not be "a court of the United States," to which Article III and the Bill of Rights apply. They often point to cases in which the Supreme Court has allowed the extradition of citizens to face charges overseas. There are, however, fundamental differences between United States participation in the ICC Treaty Regime and extradition cases, where American are sought for crimes committed abroad. If the U.S. joined the ICC Treaty, the Court could try Americans who never have left the United States, for actions taken entirely within our borders. A hypothetical, stripped of the emotional overlay inherent in "war crimes" issues, can best illustrate the constitutional point here: The Bill of Rights undoubtedly impedes efficient enforcement of the drug laws – also a subject of international concern. Could the federal government enter a treaty with Mexico and Canada, establishing an offshore "Special Drug Control Court," which would prosecute and try all drug offenses committed anywhere in North America, without the Bill of Rights guarantees? **Could the federal government, through the device of a treaty, establish a special overseas court to try sedition cases – thus circumventing the guarantees of the First Amendment.** Fortunately, the Supreme Court has never faced such a case. However, in the 1998 case of *United States v. Balsys*, the Court suggested that, where a prosecution by a foreign court is, at least in part, undertaken on behalf of the United States, for example, where "the United States and its allies had enacted substantially similar criminal codes aimed at prosecuting offenses of international character . . ." then an argument can be made that the Bill of Rights would apply "simply because that prosecution[would not be] fairly characterized as distinctly 'foreign' The point would be that the prosecution was as much on behalf of the United States as of the prosecuting nation. . . ."6 **This would, of course, be exactly the case with the ICC. If the United States became a "State Party" to the ICC Treaty, any prosecutions undertaken by the Court would be "as much on behalf of the United States as of" any other State party. Since the full and undiluted guarantees of the Bill of Rights would not be available in the ICC, the United States cannot, constitutionally, sign and ratify the ICC treaty.** ICC supporters also have argued that the U.S. should sign and ratify the Rome Treaty because the Court would be directed against people like Saddam Hussein and Slobodan Milosevic, and not against the United States. Here, as pretty much everywhere, the past is the best predictor of the future. We already have seen this particular drama staged at the Yugoslav Tribunal. Even though that Tribunal was established to investigate crimes committed during 1991-1995 Yugoslav conflict, and even though NATO's air war against Serbia was fought on entirely humanitarian grounds, and even though it was conducted with the highest level of technical proficiency in history, the Hague prosecutors nevertheless undertook a politically motivated investigation – motivated by international humanitarian rights activists along with Russia and China – of NATO's actions based upon the civilian deaths that resulted. At the end of this investigation, the prosecutors gave NATO a pass not because, in their view, there were no violations, but because "[i]n all cases, either the law is not sufficiently clear or investigations are unlikely to result in the acquisition of sufficient evidence to substantiate charges against high level accused or against lower accused for particularly heinous offenses."7 Significantly, in their report the prosecutors openly acknowledged the very elastic nature of the legal standards in this area, further highlighting the danger that the United States will be the subject of such politically motivated prosecutions in the future: "[t]he answers to these question [regarding allegedly excessive civilian casualties] are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision-maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to noncombatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases."8 These are, in fact, "will build to suit" crimes. Whether prosecutions are brought against American officials will depend entirely upon the motivations and political agenda of the ICC. In response, ICC supporters claim that we can depend upon the professionalism and good will of the Court's personnel. One of the ICC's strongest advocates, former Yugoslav Tribunal Prosecutor Louise Arbour has argued for a powerful Prosecutor and Court, suggesting that "an institution should not be constructed on the assumption that it will be run by incompetent people, acting in bad faith from improper purposes." The Framers of our Constitution understood the fallacy of this argument probably better than any other group in history. If there is one particular American contribution to the art of statecraft, it is the principle – incorporated into the very fabric of our Constitution – that the security of our rights cannot be trusted to the good intentions of our leaders. By its nature, power is capable of abuse and people are, by nature, flawed. As James Madison wrote "the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."9 The ICC would not be obliged to control itself. It is also often asserted that the principle of "complementarity," found in Article 17 of the Rome Treaty, will check the Court's ability to undertake prosecution of Americans. This is the principle that prohibits the ICC from taking up a case if the appropriate national authorities investigate and prosecute the matter. In fact, this limit on the ICC's power is, in the case of the United States, entirely illusory. First, as with all other matters under the Rome Treaty, it

will be solely within the discretion of the ICC to interpret and apply this provision. Second, under Article 17, the Court can pursue a case wherever it determines that the responsible State was “unwilling or unable to carry out the investigation or prosecution.” In determining whether a State was “unwilling” the Court will consider whether the national proceedings were conducted “independently or impartially.” The United States can never meet that test as an institutional matter. Under the Constitution, the President is both the Chief Executive, i.e., the chief law enforcement officer, and the Commander-in-Chief of the armed forces. In any particular case, both the individuals investigating, and prosecuting, and the individuals being investigated and prosecuted, work for the same man. Moreover, under command responsibility theories, the President is always a potential – indeed, a likely, target of any investigation. The ICC will simply note that an individual cannot “impartially” investigate himself, and it will be full steam ahead. As a check on the ICC, complementarity is meaningless. Finally, it’s important to understand exactly what is at stake here. Today, the officials of the United States are ultimately accountable for their actions to the American electorate. If the United States were to ratify the ICC Treaty this ultimate accountability would be transferred from the American people to the ICC in a very real and immediate way – through the threat of criminal prosecution and punishment. The policies implemented, and actions taken by our national leaders, whether at home or abroad, could be scrutinized by the ICC and punished if, in its opinion, criminal violations had occurred. As Alexis de Tocqueville wrote, “[h]e who punishes the criminal is . . . the real master of society.”¹⁰ Ratification of the ICC Treaty would, in short, constitute a profound surrender of American sovereignty – our right of self-government – the first human right. Without self-government, the rest are words on paper, held by grace and favor, and not rights at all.

AT: Gender-Based Violence

ICC fails at stopping gender-based violence

Godsiff ND [Natasha Godsiff, trainee solicitor at Clifford Chance and Law graduate from the University of Cambridge, No Date, "The Failure of the International Criminal Court to Prosecute Sexual and Gender-Based Violence", Cambridge University Law Society, <https://www.culs.org.uk/per-incuriam/the-failure-of-the-international-criminal-court-to-prosecute-sexual-and-gender-based-violence>]/Kankee

Introduction The 1998 Rome Statute of the International Criminal Court (ICC Statute) is a crucial piece of legislation for the advancement of women's rights in explicitly recognising and condemning sexual and gender-based violence. It refers to any act that is perpetrated against a person's will and it is based on gender norms and unequal power relationships. Sexual and gender-based violence can target any gender, yet women are disproportionately affected. These crimes are fundamentally a form of gender discrimination, effectively nullifying the rights of females to exercise their human rights. Despite this step forward on paper, the victims are often left unheard and lack access to justice in practice. This article will take a women's-centred analysis of sexual and gender-based violence during armed conflict, tracing the legal landscape of such crimes and outlining the failures of the ICC in holding States accountable. It will be concluded that reform is necessary to challenge the deeply ingrained subordination and violence perpetuated against women. Sexual and Gender-Based Violence

Traditionally, rape was dismissed as a "natural and inevitable" aspect of armed conflict. While other abuses, such as murder and torture, have long been denounced as war crimes, rape has been downplayed as an inevitable consequence of sending men to war. Rape was merely perceived as a crime of "honour", rather than a breach of law that necessitated international attention. Recent conflicts, such as the Yugoslav Wars, demonstrate rape being employed as a "weapon of war" in campaigns of genocide. The inherent gender-specific character of rape - being perpetrated by a man against a woman - has led to the narrow portrayal of these crimes as sexual or personal in nature. The issue of sexual and gender-based violence in conflict is subsequently depoliticised and results in it being ignored as a war crime. Sexual and gender-based violence is often dismissed as private, "opportunistic" crimes of rebel soldiers which are not officially sanctioned, subsequently obscuring the role of military and political leaders in the perpetuation of these crimes. These misconceptions disregard the pervasiveness of sexual and gender-based violence in armed conflict. A recent UN report found that 1,429 incidents of gender-based violence were reported in Democratic Republic of Congo within one 12-month period, with 68% of survivors being children. In Yemen, there has been a 70% increase in reports of sexual violence, including rape. Yet, the exact prevalence of sexual and gender-based violence is difficult to ascertain, particularly due to underreporting for fear of intimidation and stigmatisation of survivors. In fact, the UN estimates that in conflict zones, for every rape that is reported, between 10 and 20 rapes are unreported. The increasing attention paid to sexual and gender-based violence risks isolating the issue from other abuses occurring during armed conflict. The reality, however, is that sexual violence often occurs in connection with other forms of violence. In many instances, women are raped as men are beaten or forced into hard labour. In the 1992 case of Jahura Khatu, after her husband was taken by soldiers for forced labour, Khatu and three other women were marched to a nearby military camp where they were raped repeatedly for twenty-four hours. Once the soldiers are satisfied, women are often murdered or left to die by their attackers. Sexual and gender-based violence has also been used to displace "undesirable" groups from communities and to seize contested land and other resources. In South Sudan, for example, soldiers raped women and girls as part of a campaign to drive opponents out of southern Unity State. It is therefore clear that sexual and gender-based violence rarely occurs as an isolated form of abuse, and will often be utilised to achieve a further military goal. The Failure of the ICC

The end of the 20th century proved to be a turning point where much deserved and long overdue international attention was given to crimes of sexual and gender-based violence. The ICC Statute has been praised for expressly recognising sexual violence and categorising gender persecution as a crime against humanity. The Statutes of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) included rape as a "crime against humanity". The 1998 prosecution of Jean-Paul Akayesu before the ICTR held that rape and sexual violence constituted a form of "genocide", and, in 2001, the ICTY widened the definition of "slavery" to include sexual slavery. Several human rights documents, such as the Convention on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 19, seek to uphold women's rights through equal access to justice under humanitarian norms and international criminal law. Nevertheless, these developments are limited. The international criminal law engages sexual and gender-based violence not because it is a crime of violence against women, but because it is an assault on the community. The violation of a woman's body is therefore "secondary to the humiliation of the group" and "relegates women to the role of symbolic embodiments of community". This construct of sexual and gender-based violence creates a pattern of gender inequality which perpetuates a gender-biased system of prosecution and accountability in the ICC. In its 15-year history, only eight cases in this area have reached the trial stage, and only two have led to convictions. In the investigation of crimes, there is a perception that sexual and gender-based violence is too difficult to investigate, due to victims being unreliable or unlikely to testify. In the Lubanga case, for example, the need for expediency led the

Prosecution to pursue child soldier charges, instead of gender-based violence charges. The result is the silencing of gender-based narratives of victimisation behind the guise of other war crimes. Another notable case is the prosecution of Uhuru Muigai Kenyatta in 2014. Despite reasonable grounds to believe that he was responsible under article 25 of the ICC Statute for rape and other forms of sexual violence, the Prosecutor had no alternative but to withdraw charges given the refusal for the Kenyan government to cooperate. Similarly, in 2015, the ICC brought charges against Simone Gbagbo for four counts of crimes against humanity (including rape and other sexual violence) committed in Côte d'Ivoire in 2010 and 2011. After a refusal to transfer Gbagbo to the ICC, she was granted amnesty by the High Court of Cote d'Ivoire. The strict impunity for crimes during armed conflict leaves many unanswered questions about the Government's role in such atrocities and deprives the victims of an opportunity to obtain justice. The issue is exacerbated by the fact that many victims will never gain access to the justice system in the first place. It is common for victims to express reluctance to report the violence owing to stigma, rejection by their families and communities, and lack of confidence in the justice system. Survivors often require immediate healthcare and psychological support, but, in many countries, post-abuse support is unavailable or insufficient. Even where support is available, survivors often do not seek help due to fear of stigma and community pressure, or simply lack of awareness about services. The limited capacities for investigating sexual and gender-based violence in conflict, in conjunction with the deeply rooted gender bias against women, can impede the effectiveness and sensitivity of investigative and judicial authorities.

The Need for Reform The prosecution of sexual and gender-based violence has been identified as a key priority for the International Criminal Court (ICC). Yet it is increasingly evident that the current prosecutorial landscape fails to address the ICC's aims of accountability and deterrence. The ICC must rectify the flaws and inconsistencies within its approach in order to advance the prosecution of these crimes. These advancements are "critical to the process of empowering victims, marginalising perpetrators, recognising the severity and gravity of sexual violence, eliminating the historic misunderstanding of rape and sexual violence, and contributing to the elimination of sexual violence altogether." The primary consideration must be the needs of the survivors. Victims must have access to justice, protection and support before, during and after the trial. Measures may include creating specific victim and witness protection units to encourage participation in the trial. The mechanisms for reporting sexual and gender-based violence must be strengthened, and awareness increased in an endeavour to reduce the stigmatisation of these crimes. Perpetrators must be charged with the full range of their crimes, instead of side-lining gender-based violence for easier-to-prove offences. A broader understanding of the political function of rape as a military strategy is necessitated for adequate remedies. Reparations must be integrated into accountability mechanisms, and States should consider how to support reparations initiatives globally. Crucially, the prevention of future cases of sexual and gender-based violence requires the advancement of substantive gender equality before, during and after conflict. This includes women's full and effective participation in political, economic and social life and ensuring accessible and responsive justice and security institutions. There has been a "profound systemic failure to recognise that sexual violence is, at its core, an instrument of the subordination of women." The only way forward is to promote equality for women and to ensure that sexual and gender-based crimes are given equal status to other crimes under the ICC Statute.

Conclusion Although the international response to sexual and gender-based violence has improved in recent decades, the limited prosecutorial response of the ICC fails to stand up to scrutiny. The situation remains inauspicious whilst there is persistent stigma attached to these crimes, a lack of understanding of the complexity surrounding the motivations of sexual violence, and a reluctance to reform the investigative process to make it more appropriate for sexual violence cases. The unfortunate consequence for women is that they lack access to justice, their narratives remain unheard, and they rarely receive reparations for the abuse that they have suffered. The challenges and inconsistencies within the ICC's approach must be effectively addressed to meet the increasing demand for accountability for such crimes, and to promote gender equality under norms of humanitarian and international criminal law.

ICC involvement causes more sexual violence

Broache and Kore 23 [M. P. Broache, researcher at the University of North Carolina at Greensboro, and Juhi Kore, researcher at University of Oxford, 1-31-2023, "Can the International Criminal Court prevent sexual violence in armed conflict?", Taylor & Francis, <https://www.tandfonline.com/doi/full/10.1080/14754835.2022.2150517#d1e1165>]

Results and discussion The models reported in Table 2 suggest that the ICC jurisdiction, sexual violence cases, and global actions do not prevent sexual violence by government forces in intrastate conflicts, and that general ICC interventions may exacerbate, rather than ameliorate, sexual violence by government forces. Models 1–2 and 4–6 indicate statistically insignificant relationships between the respective ICC variable and sexual violence. Accordingly, we cannot reject the null hypothesis that the relevant ICC variable in each model—Rome Statute membership (Model 1); ICC jurisdiction (Model 2); sexual violence cases (Model 4); and global actions, whether general (Model 5) or focused on sexual violence (Model 6)—had no effect on sexual violence. To illustrate this dynamic, Figure 1 compares the predicted probabilities for each category of sexual violence prevalence for country-years under the Rome Statute versus country-years not under the statute, based on Model 1 (setting other variables at their means). As illustrated in this figure, the predicted probabilities for each category of sexual violence prevalence are essentially equal for Rome Statute = 1 and Rome Statute = 0. Moreover, Model 7 indicates that the results for Rome Statute are robust to correcting for selection dynamics using a two-stage model. Whereas Models 1–2, 4–6, and 7 report insignificant effects for the ICC variables, Model 3 indicates a positive, significant relationship between ICC intervention and sexual violence. This suggests that governments in situations under ICC preliminary examination or investigation perpetrate sexual violence at significantly higher levels than governments in situations in which the ICC has not intervened. Figure 2 illustrates the substantive effects of ICC intervention on sexual violence prevalence by comparing predicted probabilities of ICC intervention = 0 versus ICC intervention = 1 across categories of the dependent variable. As illustrated in this figure, the predicted probability of no reported sexual violence is substantially lower (.31) in situations under ICC intervention versus situations in which the ICC has intervened (.56). Moreover, the predicted probabilities for all positive values of reported sexual violence are greater for situations under ICC intervention than for situations in which the Court has not intervened. These findings suggest that the logics of deterrence and social learning do not apply to sexual violence by government forces in intrastate conflict. Why might this be the case? One initial hypothesis is that preventive effects might be obscured by the consistently significant relationship between battle deaths and sexual violence prevalence. For example, if ICC jurisdiction directly influences conflict intensity, as measured by battle deaths, and conflict intensity in turn affects sexual violence, our estimates of the impact of ICC jurisdiction would be biased downward by including battle deaths. To test for this, we reran the models in Table 2, omitting battle deaths. However, even when omitting this variable, the sign and significance of our ICC variables remained the same, suggesting this is not a plausible explanation for our findings (see Online Appendix, Table A5). Other particularities of our data and modeling strategy might have influenced our findings. Most notably, our analysis was limited to government forces involved in intrastate conflicts as the primary belligerent, which constitute approximately 40% of the conflict-actor-years for government forces in the SVAC, version 3.0. As such, our analysis excluded secondary belligerents in intrastate conflicts and government forces in international conflicts. Furthermore, our analysis focused specifically on the average, unconditional effects of ICC jurisdiction on CRSV. Given findings in the deterrence literature on civilian killings suggesting that the effects of international justice initiatives may depend on various factors, such as domestic rule of law or external support (Jo & Simmons, Citation2016; McAllister, Citation2020; Meernik, Citation2015), it is possible that our focus on the direct impacts of ICC jurisdiction has obscured more conditional effects. Beyond specifics of our sampling and modeling strategies, there are various plausible explanations for our mostly null findings. Perhaps most importantly, the ICC has had minimal success in prosecuting sexual violence crimes by government actors. As of July 1, 2022, the Court had issued public arrest warrants or summonses for sexual violence crimes for 21 suspects. However, the Court had secured only one final conviction for sexual violence crimes, for Bosco Ntaganda, a rebel commander in the Democratic Republic of Congo. More broadly, including the Ntaganda case, the Court had returned just four final convictions for substantive crimes—all for members of rebel groups, and the ICC had yet to secure the arrest of a sitting government official for any crime.^{Footnote16} There are several possible reasons for the ICC's limited success in prosecuting CRSV and crimes by government actors. First, the ICC remains a relatively new institution, and it has experienced significant "growing pains" during its first two decades, including persistent issues relating to funding, management, and relations with state governments, inter alia. This suggests that the Court's record in prosecuting sexual violence and crimes by government actors might improve as it "matures" as an institution and

addresses these issues (Bassiouni, Citation2015). More fundamentally, however, sexual violence crimes are potentially more difficult to investigate and prosecute than other crimes under the Court's jurisdiction, due to challenges in collecting evidence and stigmatization of survivors (Temkin, Citation2000). Furthermore, it may be more difficult to prosecute government actors (whether for sexual violence or for other crimes), as incumbents can leverage the instruments of state power to shield themselves from arrest (Cronin-Furman, Citation2013; Krcmaric, Citation2020; Mendeloff, Citation2018; Prorok, Citation2017), and the ICC depends on cooperation from state governments to conduct investigations and execute arrest warrants (Tiemessen, Citation2014). To the extent that both deterrence and social learning require a record of effective prosecutions, the ICC's limited success in prosecuting CRSV by government actors may explain the null effects of ICC jurisdiction, sexual violence cases, and global actions in our analysis. With respect to deterrence, the ICC's record provides little reason for sitting government officials to fear arrest and punishment for sexual violence crimes, even in situations where the ICC has jurisdiction and/or it has initiated sexual violence cases. At the same time, the Court's lack of success in prosecuting CRSV by state actors may also undermine any effects of global ICC actions, which—rather than signaling an increased risk of prosecution—effectively demonstrate that the probability of arrest and punishment for government officials is low. Similarly, with the Court's limited success in prosecuting CRSV by state actors, there have been few high-profile, symbolic events—such as arrests and convictions—to dramatize and communicate anti-CRSV norms for government officials, per the logic of social learning. Furthermore, there have been multiple, high-profile examples of incumbent and former government officials who have avoided arrest (e.g., Omar al-Bashir of Sudan) or whose cases have been dismissed (e.g., Uhuru Kenyatta of Kenya) or ended in acquittal (e.g., Laurent Gbagbo of Côte d'Ivoire). In this context, rather than reinforcing anti-CRSV norms, the ICC's record might signal that these norms are weak and/or not relevant for government actors. Although the ICC's limited success in prosecuting CRSV by government actors may partially explain our mostly null findings, it might also be that the logics of deterrence and/or social learning are less applicable to CRSV than other crimes under the ICC's jurisdiction. For example, to the extent that CRSV is not primarily motivated by strategic or tactical considerations—as recent research critiquing the framing of sexual violence as a “weapon of war” would suggest (Cohen, Citation2013)—the logic of deterrence is unlikely to operate. Relatedly, insofar as gender norms that sustain CRSV are deeply embedded in sociocultural practices (Berry & Lake, Citation2021; Kreft, Citation2022), even successful prosecutions may have limited effects on underlying logics of appropriateness relevant for social learning. Although these dynamics might explain why ICC jurisdiction, global actions, and sexual violence cases have negligible effects, it remains less clear why ICC interventions—preliminary examinations and investigations—are associated with increased sexual violence by government forces. One plausible explanation focuses on the ability of governments to initiate ICC interventions by self-referring situations on their territory or, for nonstates parties, lodging Article 12(3) declarations. Indeed, eight of the ICC's 17 investigations—including six in which the ICC subsequently opened sexual violence cases—have resulted from this process. Because the Court relies on government cooperation to conduct effective investigations, the prosecutor may be reluctant to target government officials for prosecution in such situations. Indeed, in interventions self-initiated by states, the Court has yet to issue a public arrest warrant or summons for any sitting government official. This allows governments to initiate ICC interventions strategically to undermine domestic opponents (Ba, Citation2020; Hashimoto, Citation2020; Hillebrecht & Straus, Citation2017) and may embolden government forces to escalate sexual violence (and other crimes) in such situations. Conversely, global actions are not within the direct control of any individual government, and sexual violence cases can only be initiated by the Court itself after an investigation is opened. Furthermore, the primary mechanism by which states accept the Court's jurisdiction—ratifying the Rome Statute—enables the ICC to intervene but still requires further governmental or Court action to initiate investigations and prosecutions. Accordingly, ICC jurisdiction, global actions, and sexual violence cases may be less likely to embolden escalation by government forces. Conclusion Using the SVAC dataset, we have examined the effects of ICC jurisdiction and actions on CRSV by government forces in intrastate conflicts from 1989 to 2018. Contrary to the claims advanced by proponents of prosecutions, we found that we cannot reject the null hypothesis that ICC jurisdiction, sexual violence cases, and global actions have negligible effects on sexual violence, and we found that ICC interventions are associated with increased sexual violence by government actors. On one hand, these findings will be disappointing for advocates and practitioners who have placed faith in the ICC and other legal mechanisms to prevent CRSV. The findings suggest that legal interventions are no panacea for wartime sexual violence and that prevention might require alternative—and, in some cases, potentially more costly—approaches. At the same time, the finding that ICC jurisdiction (although not interventions) has negligible effects

suggests that jurisdiction, at least, “does no harm” in exacerbating sexual violence and might be worthwhile to pursue from a consequentialist perspective. More generally, we have adopted an admittedly narrow focus on the ICC’s immediate effects on CRSV. In doing so, we have ignored the possible long-term effects of ICC jurisdiction and interventions on outcomes such as gender equality, economic development, and the rule of law that have potentially important implications for future sexual violence. More broadly, prosecutions may serve much broader purposes than prevention, such as validating the experiences of survivors, and cannot be evaluated in solely consequentialist terms (Aukerman, Citation2001). This, in turn, points to the critical importance of engaging with CRSV survivors and other stakeholders and considering how prosecutions may serve broader purposes beyond prevention.

Humanitarian law ignores non-masculine experiences

Dutton and Sterio 22 [Yvonne Dutton, Professor of Law, Indiana University Robert H. McKinney School of Law, and Milena Sterio, Professor of Law at Cleveland State College of Law, 2022, “Prosecuting Gender Persecution at the ICC: Definitions, Policies, and Practice,” *Fordham International Law Journal*, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2863&context=ilj>]/Kanke

I. INTRODUCTION As Beth Van Schaack, now Ambassador-at-Large for Global Criminal Justice, has aptly noted: “[f]or most of human history, the rape and sexual abuse of women associated with the enemy was an expected spoil, inevitable by-product, or legitimate tactic of war. Where gender violence was condemned, humanitarian law—which primarily reflected the male experience with armed conflict—conceptualized such conduct as an offense against a woman’s dignity or a family’s honor.”¹ Indeed, history has demonstrated that although “war-time abuses against women, girls, lesbian, gay, bisexual, intersex, queer, non-binary and gender nonconforming persons” are common, perpetrators of such abuses are rarely held accountable.² Although the crime of gender persecution has been long-recognized, charges have rarely been pursued.³ There is, however, hope that the course of human history will change. With the adoption of the Rome Statute creating the International Criminal Court (“ICC”), the international community has made great strides in finally recognizing that sexual and gender-based crimes (“SGBV”) are amongst the gravest and most serious crimes worthy of condemnation.⁴ As discussed below, the ICC statute was the first international criminal instrument to contain the definition of gender.⁵ As compared to other international criminal tribunals, the ICC is authorized to investigate and prosecute a wider range of SGBV crimes, and the first to expressly recognize the crime of gender persecution as a crime against humanity.⁶ Moreover, for at least the past decade, the ICC’s Office of the Prosecutor (“OTP”) has been focused on investigating and prosecuting SGBV crimes, including the crime of gender persecution.⁷ That office is aiming to draw the world’s attention to the many SGBV crimes that are being committed and to provide justice to the victims of those crimes. The OTP announced its intention to focus its resources and attention on SGBV crimes with the publication of its 2014 Policy on Sexual and Gender-Based Crimes (“2014 Policy Paper”).⁸ With the launch of its Policy on Gender Persecution (“Gender Persecution Policy”) in December 2022, the OTP signaled its intention to continue the path of pursuing accountability for SGBV crimes, specifically the crime of gender persecution.⁹ This Article, like other commentaries,¹⁰ applauds the OTP’s recent launch of its Policy on Gender Persecution and remains hopeful that the policy will lead to robust development of this specific area of international criminal law and do justice for gender persecution victims. As Lisa Davis, Professor and Special Adviser to the ICC’s OTP, has stated: By definition, gender-based crimes target women, men, children, LGBTIQ, non-binary and gender non-conforming persons, on the premise of gender discrimination. At its core, gender-based crimes are used as punishments against those who are perceived to transgress assigned gender narratives that regulate “accepted” forms of gender expression manifest in, for example, roles, behaviors, activities, or attributes Gender-based crimes may meet the threshold for persecution when, for example, underlying crimes such as rape, enslavement, torture, or murder are used as punishments for deviating from gender narratives, or when the crime itself is the narrative, as it often is in the case of enslavement and forced marriage.¹¹ By committing to investigate and prosecute the crime of gender persecution, the OTP continues the positive trajectory outlined above in its commitment to hold perpetrators of SGBV crimes accountable. One hopes that the practice will live up to the policy’s goals, and lead to the protection and recognition of the fundamental rights of women, girls, lesbian, gay, transgender, intersex and queer people, and any and all persons who defy gender norms and stereotypes. This Article’s primary goal is to highlight the OTP’s Gender Persecution Policy, while also demonstrating its place in the trajectory of the ICC’s progress in changing the course of human history as relates to the recognition of and prosecution of SGBV crimes. To that end, some background is necessary to contextualize the ICC’s current policy and practice as relates to the crime of gender persecution. Part II of this Article discusses the Rome Statute’s unique contributions to the development of international criminal law regarding SGBV crimes, including the crime of gender persecution. Part III moves from codification to practice, addressing the OTP’s 2014 Policy Paper, and some of the investigations and prosecutions of SGBV crimes that resulted from the Office’s specific decision to develop and devote resources to ensure that such crimes were not overlooked—as they often had been historically. Part IV turns to the 2022 Gender Persecution Policy which was released in December 2022, detailing the Policy’s key features. Part IV concludes by addressing implementation and some key challenges that may arise. As past practice demonstrates, achieving positive outcomes in terms of convictions is no easy task. Nevertheless, this Article commends the OTP for plainly stating its intention to engage in training, and to educate their staff and others to ensure the successful implementation of the policy.

II. THE ROME STATUTE: DEVELOPING INTERNATIONAL CRIMINAL LAW AS RELATES TO INVESTIGATING AND PROSECUTING SEXUAL AND GENDER-BASED CRIMES

Current ICC leadership deprioritizes women's voices and obscures sexual violence

Davies and Flummerfelt 24 [Harry Davies, investigations correspondent at the Guardian, and Robert Flummerfelt, investigative journalist and documentary filmmaker, 10-27-2024, "ICC prosecutor allegedly tried to suppress sexual misconduct claims against him", Guardian, <https://www.theguardian.com/law/2024/oct/27/icc-prosecutor-karim-khan-allegedly-tried-suppress-sexual-misconduct-claims/>]/Kankee

The chief prosecutor of the international criminal court allegedly responded to a formal complaint of sexual misconduct by trying to persuade the alleged victim to deny the claims, the Guardian has been told. Multiple ICC staff with knowledge of the allegations against Karim Khan said the prosecutor and another official close to him repeatedly urged the woman to disavow claims about his behaviour towards her. The alleged attempts to deter the woman from formally pursuing the claims took place in phone calls and in person, and came after Khan learned court authorities had been made aware of allegations of misconduct, four sources said. At the time, the chief prosecutor had been advised to avoid one-on-one contact with the alleged victim after an aborted internal inquiry into the matter. Contacted by the Guardian for comment, Khan denied asking the woman to withdraw any allegations. His lawyers said: "Our client denies the whole of the allegations and we are most concerned the exposure of a confidential and closed internal matter is designed to undermine his high-profile ongoing work at a delicate time." After reports of alleged sexual misconduct began to circulate in the media in recent days, Khan denied the claims in a public statement that said he and the court had been "subject to a wide range of attacks and threats". In anonymous briefings, court officials close to the prosecutor have suggested he may have been the target of a smear campaign. "There is no truth to suggestions of such misconduct," Khan's statement said. "I have worked in diverse contexts for 30 years and there has never been such a complaint lodged against me by anyone." The woman at the heart of the allegations – who ICC colleagues describe as a well-regarded lawyer in her 30s who worked directly for Khan – has declined requests for comment. But multiple sources familiar with the situation said she told colleagues she declined the alleged requests to disavow the claims. She believed the alleged approaches by Khan and another ICC official were part of an attempt to make her say that the claims against the prosecutor had been fabricated, the sources added. According to a document seen by the Guardian, the accusations against Khan, 54, include unwanted sexual touching and "abuse" over an extended period. They include an alleged incident in which he is said to have "pressed his tongue" into the woman's ear. Khan denies such allegations of misconduct. Four ICC sources familiar with the allegations said they also include coercive sexual behaviour and abuse of authority. The Guardian has interviewed 11 current and former ICC officials familiar with the case, as well as diplomatic sources and friends of the alleged victim. All declined to be identified because they were not authorised to discuss the allegations, or because they wanted to protect the woman. Multiple sources said misreporting about the allegations and efforts to politicise the situation have been deeply distressing for the woman, who is said to have initially held back on pursuing a complaint against Khan over concerns about reprisals, and fears it could be exploited by Israel or opponents of the court. Sources who know the alleged victim said she has been left traumatised by the situation and is "experiencing severe emotional distress". "She never wanted any of this," one person close to her said. "But the complaint filed against her wishes, followed by Khan's denials and attempts to suppress the allegations, have forced her into a very difficult position." The public emergence of the allegations comes at an intensely sensitive moment for the ICC, a court of last resort that prosecutes individuals accused of atrocities. A panel of three ICC judges is weighing politically explosive requests by Khan to issue arrest warrants for Israeli leaders for alleged war crimes and crimes against humanity committed in Gaza. The ICC, which is headquartered in The Hague, now faces an unprecedented crisis amid growing internal strife over the handling of the allegations and apparent attempts by the court's opponents to weaponise them. Critics of the court have seized upon the allegations, which Khan first learned about weeks before his announcement in May requesting arrest warrants for the Israeli prime minister, Benjamin Netanyahu, his defence minister and three Hamas leaders. Khan has stopped short of explicitly accusing Israel of being behind the allegations, but in his statement denying misconduct he noted that he and the court have been the target of "a wide range of recent attacks and threats" in recent months. The Guardian revealed earlier this year how Israel's intelligence agencies ran a decade-long campaign against the ICC that included threats and attempts to smear senior staff. Against this backdrop, ICC officials close to Khan are strongly hinting the allegations may be part of a smear campaign by Israel. However, in a months-long investigation into the allegations against Khan, the Guardian has found no evidence that Israel, or any other country, had any involvement in the underlying allegations – although there does appear to have been a subsequent effort by anonymous actors to brief journalists and post leaks online. Online leaks

AT: Prosecute Russia

Russia deleted and manipulated all the ICC war crime evidence to avoid blame

Neilsen 24 [Rhiannon Neilsen, Cyber Security Postdoctoral Fellow at the Center for International Security and Cooperation at Stanford University, former postdoctoral fellow at the Australian National University, former research consultant for the Institute for Ethics, Law and Armed Conflict at the University of Oxford, and former visiting fellow at the NATO Cooperative Cyber Defence Centre of Excellence, 5-14-2024, "File Not Found: Russia Is Hacking Evidence of Its War Crimes", War on the Rocks, <https://warontherocks.com/2024/05/file-not-found-russia-is-hacking-evidence-of-its-war-crimes/>]/Kanke

It is often quipped that history is written by the victors. But, as the bloodshed in Ukraine drags into a third year, Russian President Vladimir Putin does not have to win his unjust war to rewrite the events of the conflict and undermine post-war justice. Russian hackers from the Federal Security Services and Main Intelligence Directorate are reportedly targeting the Ukrainian Prosecutor General's Office, the entity responsible for documenting war crimes committed by Russian combatants on Ukrainian soil. At the same time, the International Criminal Court declared that it had been hacked, having "detected anomalous activity" in its systems. The hackers' aim? To obtain — even delete — evidence of war crimes and help Russians arrested in Ukraine to "avoid prosecution and move them back to Russia." Russia's interest in meddling with the prosecution of alleged war crimes is blatant. The International Criminal Court has a current arrest warrant out for Putin himself for the forcible transfer of Ukrainian children to Russia (a violation of the genocide article of the Rome Statute). It also has ongoing investigations regarding Russian war crimes in both Ukraine and Georgia. Russia is no stranger to doctoring its official records. For example, Soviet leader Joseph Stalin famously blotted out from photographs those whom he ordered to be purged. But that was Moscow manipulating its own records. Today, Russia is waging cyber attacks against others' systems in order to alter evidence of its atrocities and thus subvert war crime tribunals. Russia's breach of the digital depositories of war crime evidence highlights two new, troubling realities of 21st-century wars. First, it is widely recognized that perpetrators are using cyberspace and social media to organize, fund, execute, and celebrate their atrocities. Indeed, Russia has consistently deployed cyber attacks as part of its unjust war against Ukraine. Some claim that such operations have had little effect and are even backfiring. Others maintain that, despite their lack of "shock and awe", Russia's persistent cyber attacks form a strategically valuable part of Putin's offense. Either way, this recent revelation signals a worrying development: Perpetrators of atrocities are likely to employ offensive cyber operations to cover up their battlefield crimes. Second, war crime trials are already fraught with complexity, accusations of victors' justice, legal exasperation, perfunctory showmanship, abortive reconciliation, and issues regarding postwar stability. Cyber operations that contaminate evidence are yet another hurdle in the broader pursuit of justice — and they will continue after the bullets stop flying. Lies, AI, and Tainted Trials Russia's cyber incursions into war crime databases are alarming. If the Russian hackers can retrieve information pertinent to war criminal cases, their goal (according to the Office of the Ukrainian Prosecutor General) will be to extradite accused Russian-affiliated perpetrators to escape prosecution. However, there is an even scarier prospect that is not being reported. If Russian hackers obtain access to sensitive evidence of war crimes, they can not only steal it, but also delete, manipulate, and supplant it with fictitious, AI-generated evidence — entirely unbeknownst to system operators. Via the application of AI, individuals can "manipulate images, video, audio and text in such a way that even the keenest observers can be deceived." A prime example is deepfakes. There are already widespread calls around the dangers of deepfakes in war — including in the Russo-Ukrainian conflict itself (although this quickly became a notorious failure). Less has been said about deepfakes postwar and in war crime tribunals. The hackers — once in the system — could plant false (AI-generated) images, videos, and audios that cast doubt on whether war crimes were committed by Russian combatants. Or deepfakes could make it appear as though Ukrainian forces were perpetrating war crimes: mutilation of Russian corpses, rape of Russian soldiers, or torturing Russian prisoners of war. Depending on quality and quantity, the fake photos or videos could muddy the waters about what is true and what is false. The potential damage of misleading AI-generated

content — especially audio deepfakes, which may be harder to verify — is serious, and automatic deepfake detectors are still in development. Even breaching the database without making any changes, or just the public sense that the database could hypothetically be breached (even if there is no evidence of sabotage), could raise questions about the validity of the evidence. Russian disinformation campaigns are designed to elicit public division and distrust — including when there is no viable proof of the claims being made. At the very least, hacking these systems could lead to tribunal cases being painstakingly drawn out, delaying the justice owed to victims and their families. Worse still, hacked information could lead to false accusations, acquittals, and cases being thrown out altogether due to insufficient, unclear, or tainted evidence. Digital evidence pertinent to atrocities and violations of international humanitarian law, by any party to an armed conflict, is strictly off limits. This is especially the case given states' duties under customary international law to investigate and prosecute violations of the laws of war, crimes against humanity, and genocide. The preservation of war crime data repositories is therefore critical to facilitate such obligations. Of course, this does not mean that all covert cyber operations are inherently wrong. According to the U.S. Joint Chiefs of Staff Handbook on Psychological Operations, information operations that "influence, disrupt, corrupt, or usurp adversarial human and automated decision making" can be "conducted ... at all levels of war". Elsewhere, I have argued for hacking into adversaries' networks and clandestinely tampering data resident in those systems to prevent atrocities. Specifically, I suggested manipulating atrocity perpetrators' information so that it delays their operations. This includes subtly misrouting weapons shipments, editing concentration camp blueprints (such that they cannot be properly built), or slightly altering orders in a way that does not "raise suspicion, but are sufficient to redirect, forestall, or confuse [the enemy's] subordinates." Further, I have suggested that cyber enabled psychological operations — like the Ukrainian hacktivists' "Patriotic Photoshoot" campaign last year — may be morally preferable to kinetic uses of force because they are less harmful (although I also raised questions over who is a liable target in such cyber operations). Furtive hacking operations and (dis)information campaigns are an easier and quicker way to thicken the fog of war than human intelligence operations — and, as others have highlighted, ambiguity can be an asset. Crucially, to reiterate, the cyber operations I defend are to help parry the commission of atrocity crimes — not obfuscate them. Russia, by contrast, is employing cyber operations to dodge accountability for its grave abuses — torture, sexual assault, indiscriminate killing, inhumane treatment, and summary executions — of Ukrainians. All of this is occurring against the backdrop of social media companies deleting videos and photos of potential war crimes uploaded by victims, witnesses, activists, journalists, and even the perpetrators themselves (often as "trophies"). For years, corporations like Meta, X (formerly Twitter), and YouTube have been using AI to rapidly remove posts that violate their standards regarding gratuitous, gory, and gruesome content. But they have not been archiving this evidence. Crucial content that could help hold perpetrators to account is lost. The War After

The ICC lacks jurisdiction and can't guarantee retribution for past crimes.

McDougall 23 [Carrie McDougall, Senior Lecturer at the University of Melbourne and barrister and solicitor of the Supreme Court of Victoria and the High Court of Australia with a PhD in international criminal law from Melbourne Law School, 3-20-2023, "The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine", OUP Academic, <https://academic.oup.com/jcs/article/28/2/203/7081290>]/Kanke

The only viable path to the prosecution of crimes of aggression committed against Ukraine is the establishment of a special international tribunal. The Rome Statute's definition of the crime of aggression was only adopted in 2010—12 years after the balance of the Rome Statute was agreed; 60 years after negotiations on the definition of an act of aggression initially opened within the framework of the United Nations. The reasons for the lengthy debate are largely self-evident: as Theodor Meron neatly explained in the midst of negotiations: '[t]he mission is more sensitive, the precedents fewer, the implications for the integrity of international law and the UN Charter deeper and broader, and national security interests more directly involved.'³³ As difficult as reaching agreement on the definition was, ultimately the real fight was over the scope of the ICC's jurisdiction over the crime. The result is a tailor-made regime that gives the ICC jurisdiction in a narrower range of situations compared to other Rome Statute crimes—an outcome insisted upon by the Permanent Five (P5) and reluctantly accepted by other States as the price paid for the adoption of the aggression amendments.³⁴ The jurisdictional provisions are complex and their interpretation remains contested.³⁵ These unresolved debates are, however, irrelevant in the current context for it is clear that, in the absence of a referral from the Security Council (which, in the current context can be discounted because of the Russian veto), the ICC is unable to exercise jurisdiction over a crime of aggression involving a non-State Party (such as Russia or Ukraine³⁶) as either aggressor or victim, as a result of a comprehensive non-State Party carve out.³⁷ It has been suggested that the Rome Statute should be amended to enable the General Assembly to activate the ICC's jurisdiction to get around the veto.³⁸ However, under Articles 10, 11, 12 and 14 of the UN Charter, the Assembly's powers are limited to making recommendations: as confirmed by the ICJ in the Certain Expenses Case, the Assembly lacks the ability to take coercive or enforcement action, which is the exclusive prerogative of the Security Council.³⁹ As the ICTY Appeals Chamber has made clear, the creation of compulsory criminal jurisdiction is a form of such coercive or enforcement action.⁴⁰ As such, the General Assembly lacks the power to create criminal jurisdiction where it would otherwise be lacking.⁴¹ It would, at least in theory, be possible, indeed desirable, to amend the Rome Statute to remove at least some of the jurisdictional limitations that are unique to aggression. Indeed, ICC States Parties have already committed to reviewing the aggression amendments 7 years after the beginning of the Court's exercise of jurisdiction (ie 2025).⁴² Experience suggests, however, that securing the necessary support for a broader jurisdictional regime will be exceeding difficult. Even if the necessary support materialises, under Article 121(4), the amendment would have to be ratified by seven-eighths of States Parties to enter into force.⁴³ There is also a real question as to whether the amendment could be given retroactive effect.⁴⁴ In other words, the ICC is not a realistic option for the prosecution of crimes of aggression committed against Ukraine. Domestic prosecutions are clearly being contemplated. Ukraine has criminalised aggression,⁴⁵ it enjoys territorial jurisdiction, and it has opened investigations into the crime.⁴⁶ Among others, Lithuania and Poland have also opened relevant domestic investigations.⁴⁷ Any domestic prosecution of crimes of aggression, however, will face significant hurdles.

ICC Russia prosecution fails

Mcdougall 23 [Carrie Mcdougall, Senior Lecturer at the University of Melbourne and barrister and solicitor of the Supreme Court of Victoria and the High Court of Australia with a PhD in international criminal law from Melbourne Law School, 3-20-2023, "The Imperative of Prosecuting Crimes of Aggression Committed against Ukraine", OUP Academic, <https://academic.oup.com/jcsl/article/28/2/203/7081290>]/Kanke

An alternative version of the redundancy critique is that it is unnecessary to establish a second tribunal to prosecute persons who could be tried by the ICC for other crimes. The ICC's ongoing investigation into other serious international crimes—and its status as the only permanent international criminal court—is of vital importance. For this reason, the proposed tribunal's jurisdiction should be limited to the crime of aggression, and to the situation in Ukraine, so as not to undermine the ICC; ideally, a partnership agreement would also be concluded to emphasise the joint justice project and to deal with practical matters such as the sharing of evidence, and the sequencing of any trials of individuals wanted for prosecution by both institutions.¹¹⁰ However, the idea that a prosecution for war crimes or crimes against humanity (possibly even genocide) would be a substitute for the crime of aggression overlooks the difficulty of establishing the criminal responsibility of those at the top table. President Putin will not himself have directly perpetrated any of the other three crimes. Thus, his liability would have to be established using complex theories of (indirect) co-perpetration still being developed by the ICC,¹¹¹ or on the basis that he ordered the crimes,¹¹² or command responsibility.¹¹³ While the trials of Charles Taylor, Radovan Karadzic, Nuon Chea and Khieu Samphan demonstrate that the responsibility of puppet masters for crimes committed in the field can be established, the same examples (together with a string of acquittals before the ICC) demonstrate the inherent difficulty of establishing guilt beyond reasonable doubt is a criminal law term of art. The argument also disregards the benefits of separately prosecuting aggression. Russia's invasion of Ukraine opened the door to the commission of other crimes: it is the original and all-encompassing wrong. The victims of Russia's invasion are, moreover, not limited to civilians but also include Ukrainian combatants, as well as members of the Russian armed forces who have reportedly been forced to fight a war on false premises. Indeed, it is arguable that the indirect victims of Russia's invasion extend to all those who are being impacted by the growing food and energy crises, and states whose interests have been threatened by the unprecedented attack on the international order. A prosecution for crimes other than aggression simply could not deliver justice for the totality of the wrong committed. The third major criticism of the proposed tribunal is that it would amount to selective justice, which would undermine the broader international criminal justice project. This argument has two major variations: that it would be inappropriate to establish another justice mechanism for Ukrainians when the plight of victims in places such as Syria and Yemen have largely been ignored; and that past crimes of aggression have gone unpunished, often coupled with a related assertion of hypocrisy—an argument that assumes that those primarily responsible for past acts of aggression and neutering the ICC's jurisdiction would be the first to support the proposed tribunal.¹¹⁴ In my assessment, neither of these claims withstand scrutiny. In terms of geographic disparities: considering the unparalleled support provided to the ICC's investigation into the situation in Ukraine,¹¹⁵ the establishment of complementary accountability mechanisms¹¹⁶ and the number of domestic investigations that have been opened, is beyond dispute that there has been a disproportionate criminal justice response to crimes committed in Ukraine compared to Syria and particularly Yemen (to cite just two illustrative examples). I would also agree that the response to the crisis more broadly has been marked by racism, exhibited most clearly in relation to the comparative treatment of refugees.¹¹⁷ It would, however, be an oversimplification to conclude that the criminal justice response reflects a view that Ukrainian victims are more worthy of justice than victims in places like Syria or Yemen. In the first place, this overlooks the fact that, absent action on the Security Council's part, a relevant State's consent is an integral precursor to justice, and Ukraine (unlike Syria and Yemen) is an enthusiastically cooperative partner.

AT: I-law Credibility

US not key – other holdouts and withdrawals

Wittner 22 [Lawrence Wittner, US Historian, BA from Columbia College, MA from University of Wisconsin, Ph.D from Columbia University, 8-11-2022, "Why Should War Criminals Operate with Impunity?", CounterPunch.org, <https://www.counterpunch.org/2022/08/11/why-should-war-criminals-operate-with-impunity/>]/Kanke

The development of a permanent international court dealing with severe violations of human rights has already produced some important results. Thirty-one criminal cases have been brought before the ICC, resulting, thus far, in 10 convictions and four acquittals. The first ICC conviction occurred in 2012, when a Congolese warlord was found guilty of using conscripted child soldiers in his nation. In 2020, the ICC began trying a former Islamist militant alleged to have forced hundreds of women into sexual slavery in Mali. This April, the ICC opened the trial of a militia leader charged with 31 counts of war crimes and crimes against humanity committed in Darfur, Sudan. Parliamentarians from around the world have lauded "the ICC's pivotal role in the prevention of atrocities, the fight against impunity, the support for victims' rights, and the guarantee of long-lasting justice." Despite these advances, **the ICC faces some serious problems**. Often years after criminal transgressions, it **must locate the criminals and people willing to testify** in their cases. **Furthermore, lacking a police force, it is forced to rely upon national governments, some with a minimal commitment to justice, to capture and deport** suspected **criminals for trial**. Governments also occasionally **withdrew from the ICC, when angered, as the Philippines did** after its president, Rodrigo Duterte, came under investigation. The ICC's most serious problem, however, is that **70 nations, including the world's major military powers, have refused to become parties** to the treaty. The governments of **China, India, and Saudi Arabia never signed** the Rome Statute. **Although** the governments of **the United States, Russia, and Israel did** sign it, **they never ratified** it. Subsequently, in fact, **they withdrew their signatures**. The motive for these holdouts is clear enough. In 2014, Russian President Vladimir **Putin ordered the withdrawal** of his nation from the process of joining the ICC. This action occurred in response to the ICC ruling that Russia's seizure of Crimea amounted to an "ongoing occupation." Such a position, said Kremlin spokesman Dmitry Peskov, "contradicts reality" and the Russian foreign ministry dismissed the court as "one-sided and inefficient." Understandably, **governments harboring current and future war criminals would rather not face** investigations and possible **prosecutions**.

AT: Mideast Affs

Prosecuting terrorists is impeccably hard

Abbas 21 [Muhammad Sher Abbas, Additional District & Sessions Judge/ Senior Research, 1-5-2021, "Challenges To The Successful Prosecution Of War Crimes", SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3760300]/Kankee

Inadequate Contemplation for War-On-Terror The insufficient procedural consideration for the trials of those involved in terrorism also poses a challenge to the prosecution of war crimes committed by them. International law applies to various situations including declared war between two or more states and also may include armed conflict of non-international character initiated by non-state actors like terrorist organisations of ISIS and Al-Qaeda, as envisaged by Article 2 of the Geneva Convention. The international armed conflict (IAC) is distinguishable from non-international armed conflict (NIAC) depending on the nature of operations meant to counter terrorism. The UN Security Council and even the belligerents have deemed the same rules applicable to the situations which are different from IAC. For instance, the US Joints Chief Staff Standing Rules enjoin upon the US forces to abide by those laws regardless of the character of operation.[32] The farcical notion that universal jurisdiction of the ICC only applies to the prosecutions of war crimes committed in international armed conflicts stands nullified and the development of law admits of such jurisdiction in non-international conflicts as well. The customary law also lends support to this concept which was further vindicated by the international tribunals of Rwanda, Cambodia and Sierra Leone. A resolution of the Institute of International Law in the year 2005 urged that the prosecution of both international and non international armed conflicts were encompassed in the universal jurisdiction in connection with the war crimes.[33] However, a crime under International Humanitarian Law does not enable every state to have jurisdiction on it for its prosecution. The criminal nature of an act and exercise of jurisdiction are two different propositions to be dealt with accordingly. It is pertinent to point out that excuse of absence of implementing legislation after the act perpetrated and defence of no violation of ex post facto rule, cannot be valid in prosecutions of such crimes of terrorism particularly when such responsibility already finds mention in the international rules.[34] But the omission of competent trials, on such excuse, was a treatment meted out to prisoners of Guantanamo which not only discredited domestic legislation of the USA but was also violative of human rights on the pretext of security[35] and posed a serious challenge to the effective and transparent prosecution of war crimes. Even the reports of a perverse approach of the Northern Alliance in Afghanistan to let the Taliban prisoners die in the shipping containers and suggestion of Rumsfeld[36] that unlawful combatants were not entitled to the treatment for POWs is an outlook which must be taken care of and those prisoners involved in the terrorism ought to be put to the trial under the concurrent universal jurisdiction contemplated by the Rome Statute. There is also a possibility that the prosecutors may prevent the investigation of these incidents on account of inherent difficulties and lack of support by the UN Security Council due to the mighty powers like member countries of the NATO. Many innocent villagers died when bombing was carried out by the Allies on December 1, 2001 in a village of eastern Afghanistan not far from Torah Bora[37] but no investigation was carried out for the massive killings of the civilians. No illegality of intentional and wilful attacks and the killings of civilians can be condoned under the International Humanitarian Law. Even the relevant provision of Article 57 of 1977's Geneva Protocol explicitly makes it obligatory for a commander of the military force to exercise due care and caution to protect the civilian population as well as the civilian objects. There is a pressing need for the doctrinal provisions to be applied to the complex situations like the war-on-terror for the effective prosecution of the war crimes. Such a situation ought to be addressed within the purview of the Rome Statute. These are palpable challenges for prosecuting the war crimes, committed in the scourge of global terrorism, require unequivocal supplementary legislative provisions to punish those involved in the atrocious terrorist activities. Conclusion The potential deterrence of the ICC is essentially liable to be increased failing which the very purpose of its creation may be frustrated and essence of the administration of International Criminal justice may end in the smoke. It has been observed that many of the member states failed to discharge their obligation to cooperate with the ICC which is lacking an independent enforcement mechanism, and non-cooperation by them further undermined the authority this international organisation is supposed to wield. On many occasions the serious

war crimes were neither investigated nor the culprits were prosecuted before the national courts under the complementarity provision but there was no tangible attempt on the part of the ICC to ferret out the reasons for their failure nor could it properly evaluate the political manipulations in prosecutorial process and the referral was also not even made by its Office of the Prosecutor to make sure that no culprit of war crimes goes scot free. Therefore, the structural and procedural reforms as discussed above are direly needed through legislative measures to evolve an effective monitoring and enforcement mechanism for the diligent prosecution of war crimes at both local as well as international levels. The purpose of creation of the ICC depends entirely upon the successful prosecution of these crimes as such. The failure of universal recognition of the ICC has also circumvented the comprehensive and all-embracing dispensation of justice. The greater population of the world habitats in the countries like China, India, Russia, USA, and Pakistan etc. that have been involved in many wars in the past but none of these countries have ratified the Rome Statute so far despite the fact that all of them are in possession of the weapons of mass destruction. Similarly, the criticism on account of the focus of ICC on prosecuting the alleged war crimes in Africa only has also been characterised as selective justice. These issues of sovereignty, universality, alleged selective justice and the absence of efficacious prosecutorial mechanism to cater to war-on-terror are serious impediments to prosecute the war crimes and liable to be addressed imminently having due regard to the very rationale the Rome Statutes were conceived on, otherwise it will not only be enormously difficult to successfully prosecute the war crimes rather the commission of these crimes with impunity may also increase manifold and the politics of power at the cost of innocent lives across the world, will continue to predominate at the international level

AT: Deterrence

ICC can't achieve general deterrence. Too many restrictions exist

Jenks and Acquaviva 14 [Chris Jenks, Affiliate Research Professor of Law, B.S. from the US Military Academy West Point, JD from the University of Arizona College of Law, PhD from the Melbourne University Law School, and Guido Acquaviva, LLM in International and Comparative Law from Tulane, PhD in Law, History, and Theory of International Relations from the University of Padua, 2014, "Debate: The role of international criminal justice in fostering compliance with international humanitarian law", International Review of the Red Cross, https://international-review.icrc.org/sites/default/files/irrc-895_896-jenks-acquaviva.pdf]/Kanke

Much has been written about the "deterrent" role of international courts and tribunals in preventing potential atrocities. Since the establishment of the ad hoc tribunals and the International Criminal Court, the international community has sought to anchor the legitimacy of international justice in the "fight against impunity". Yet recent studies have suggested that an overly broad characterization of international courts and tribunals as "actors of deterrence" might misplace expectations and fail to adequately capture how deterrence works – namely, at different stages, within a net of institutions, and affecting different actors at different times.¹ The Review invited two practitioners to share their perspectives on the concrete effects of international criminal justice on fostering compliance with international humanitarian law. Chris Jenks questions the "general deterrence" role of international criminal justice, contending that the influence of complicated and often prolonged judicial proceedings on the ultimate behaviour of military commanders and soldiers is limited. Guido Acquaviva agrees that "general deterrence", if interpreted narrowly, is the wrong lens through which to be looking at international criminal justice. However, he disagrees that judicial decisions are not considered by military commanders, and argues that it is not the individual role of each court or tribunal that matters; rather, it is their overall contribution to an ever more comprehensive system of accountability that can ultimately foster better compliance with international humanitarian law. This article contends that international criminal justice provides minimal general deterrence of future violations of international humanitarian law (IHL). Arguments that international courts and tribunals deter future violations – and that such deterrence is a primary objective – assume an internally inconsistent burden that the processes cannot bear, in essence setting international criminal justice up for failure. Moreover, the inherently limited number of proceedings, the length of time required, the dense opinions generated, the relatively light sentences² and the robust confinement conditions³ all erode whatever limited general deterrence international criminal justice might otherwise provide. Bluntly stated, thousands of pages of multiple Tadić⁴ decisions have not factored into any service member's decision-making on whether to comply with IHL. International criminal justice can play many roles⁴, including fostering compliance with IHL, but not through general deterrence and the threat of punishment. Adherence to IHL is an indirect byproduct of international criminal justice as a moral statement, an explication of how the international community views certain actions in armed conflict. This statement, often translated by military legal advisers and conveyed to service members by military leaders through personal example, briefings, training exercises, and military manuals and regulations, reinforces behavioural norms of how to conduct oneself in the most immoral of circumstances: armed conflict. International criminal justice's moral statement aids service members in navigating the moral abyss which results from a State lawfully ordering them to intentionally direct lethal force against fellow human beings.⁵ The result is service members who, in the aftermath of armed conflict, can live with themselves and the decisions they made during armed conflict. In the process, and in part as an indirect result of international criminal justice, the arc of service members' behaviour tends towards complying with IHL.⁶ This article first clarifies what is meant by "general deterrence" before reviewing how the claim that international criminal justice provides such deterrence is relatively new and stems from misunderstandings of what the International Criminal Court (ICC) can achieve. From there, the article explains how general deterrence is a challenging proposition for any criminal justice system and amounts to an unbearable burden at the international level. I then describe the indirect role that international criminal justice plays in providing if not moral clarity, then at a minimum, less moral ambiguity in defining by exception the bounds of permissible conduct during armed conflict. General deterrence?

Affirmative (UNCLOS)

AT: Dark Ships

Satellites and radio waves solve dark ships

Byerly et al. 22 [Adam B. Byerly, Ground Applications Group of APL's Space Exploration Sector with a BS in mathematics from the University of Maryland, Baltimore County and an MS in applied mathematics from Johns Hopkins University, William C. Zhang, algorithm developer in the Electromagnetic Systems Group in APL's Force Projection Sector with a BS in electrical engineering, an MS in electrical engineering, and an MS in applied mathematics, all from Johns Hopkins University, Sesan A. Iwarere, member of the Electromagnetic Systems Group in APL's Force Projection Sector with a BS in electrical engineering and a BS in computer science from the University of Maryland, College Park, an ME in electrical engineering from the University of Florida, and a PhD in electrical engineering from the University of Wisconsin, Waseem A. Malik, section supervisor in the Guidance, Navigation, and Controls Group in APL's Force Projection Sector with a BS in electrical engineering, a BS in mathematics, an MSc in electrical engineering, and a PhD in electrical engineering, all from the University of Maryland, College Park, Sheldon F. Bish, software engineer in APL's Force Projection Sector with a BS in biomedical engineering from the University of Connecticut and a PhD in biomedical engineering from the University of Texas at Austin, Musad A. Haque, member of the Embedded Applications Group in APL's Space Exploration Sector with a BS in electrical engineering from the University of Texas at Arlington and an MS and a PhD in electrical and computer engineering from the Georgia Institute of Technology. and Tamim I. Sookoor, member of the Critical Infrastructure Protection Group in APL's Asymmetric Operations Sector with a BE in computer engineering from Vanderbilt University and an MS and a PhD in computer science from the University of Virginia, 2022, "Neptune: An Automated System for Dark Ship Detection, Targeting, and Prioritization," John Hopkins Applied Physics Laboratory, <https://secwww.jhuapl.edu/techdigest/content/techdigest/pdf/V36-N02/36-02-Byerly.pdf>]/Kanke

*also answers illegal fishing if rehighlighted

ABSTRACT The ability to detect dark ships at open-ocean scale requires enhanced space-based intelligence, surveillance, and reconnaissance capabilities. With the boom of commercial space-based sensing, the nation needs an automated process to meet the growing volume and velocity of data. Multimodal data from the variety of existing and proposed space-based sensor networks can be aggregated and fused to produce target-quality tracks on ships. These sensor modalities include synthetic aperture radar (SAR), electro-optical/infrared (EO/IR), and Automatic Identification System (AIS). In this article, we demonstrate the work of a Johns Hopkins University Applied Physics Laboratory (APL) team to automate recognition of target surface vessels from these modalities on a next-generation spaceflight processor to simulate on-orbit detection. These detections can be fused to form quality tracks that can then be used to detect dark ship anomalies via pattern-of-life analysis. Tracks formed over a continental or global scale motivate the need for further automated analysis since a significant amount of human effort would be needed to analyze thousands or tens of thousands of tracks in detail and in real time. To address this challenge, the APL team developed a suite of pattern-of-life tools that extract features from tracks and flag tracks that deviate too far from some learned definition of normality.

INTRODUCTION Dark Ships Crews on vessels engaging in illicit activity, such as selling oil to regimes in violation of international sanctions,¹ smuggling drugs and arms,² and fishing illegally,³ routinely attempt to evade detection. A critical national security challenge is finding ways to quickly and reliably locate and identify these ships anywhere in the world. The Automatic Identification System (AIS), a radio frequency (RF) system for identifying and locating maritime vessels, relies on ships being fitted with transceivers and broadcasting information such as their identity, position, course, and speed. These messages can be received by other vessels, as well as by coastal AIS base stations and on satellites. International law requires all voyaging ships over 300 gross tons to participate in this system.⁴ Yet, crews attempting to hide their ships' identities or locations can spoof the information of other vessels or simply turn off their ships' transponders. Further, any vessel under 300 gross tons is not required to participate in AIS, giving rise to the possibility of nefarious actors leveraging smaller craft for their activities while appearing benign. In addition to ships going dark in terms of AIS transmissions, they could go radio silent by turning off other sources of RF

emission through emission control. Military vessels, for instance, engage in this activity by switching to commercial radar or previously unseen war reserve waveforms to hide from sensors monitoring military waveforms. Therefore, for this article, we expand our definition of dark ships from those that are simply AIS dark to all ships attempting to evade detection or engage in nefarious activity. Furthermore, the nation needs to develop a capability to generate target-quality data on ships of interest by establishing and maintaining accurate tracks and ship identification. There are a number of constraints to locating and identifying dark ships and developing quality tracking data on them. First, generating targeting solutions and enabling interdiction requires that location data with sufficient precision and confidence be processed, exploited, and disseminated rapidly. Second, targeting these ships anywhere in the world requires global coverage. Third, detecting nefarious vessels, whether transmitting AIS or not, requires that automated processing be enhanced so that it can “see through” the evasion and identify the true high-value bad actors, the “needles in the needle stack.” Finally, it must be easy for various stakeholders to field the solution. These stakeholders include analysts and operators tracking vessels in the field, commanders planning missions at headquarters, and captains navigating vessels against adversaries in the open oceans.

Existing Capabilities A number of commercial and nonprofit organizations are attempting to solve the dark ship problem. For instance, Global Fishing Watch⁵ is a partnership among Google, Oceana, and SkyTruth to offer an unprecedented global view of commercial fishing activities. The goal is to reduce illegal and harmful activities, such as overfishing and habitat destruction, by increasing transparency on fishing activity through an online map of fishing vessel tracks from January 2012 through 3 days before the time the map is viewed. The system uses satellite-based optical, synthetic aperture radar (SAR), and Visible Infrared Imaging Radiometer Suite (VIIRS) sensors to supplement AIS and detect dark fishing fleets. While this solution provides global coverage through an easy-to-use interface, shedding light on illegal fishing activity in aggregate, it does not solve the problem of enabling real-time targeting of dark ships. Its interface also provides only the locations and tracks of all vessels and does not flag any activity as being illegal or a ship as being dark, leaving it up to a human analyst to derive these conclusions. Another solution is HawkEye 360’s⁶ approach of instrumenting satellites with RF sensors to monitor widely used communications channels that can give away the position of ships that have turned off, or do not have, AIS transponders. ICEYE⁷ and Spire⁸ extend this approach by augmenting the satellite-based radios with SAR to detect ships engaging in emission control activity, enabling detection of a ship that goes dark in the RF spectrum but is still visible to SAR. Planet⁹ in a similar approach, provides a data feed for vessel detection that locates ships seen from their satellite optical imagery, regardless of their AIS broadcasting status. Again, these systems work well to locate vessels that are not broadcasting AIS, but they fail to adequately sift through the trove of vessel detections to identify bad actors. In particular, Planet’s vessel detection feed identifies that users can “monitor [ships’] patterns of life and anomalies,” but the company does not claim to have developed a capability to analyze the patterns and anomalies. Neptune System

Forcefully stopping dark ships causes nuclear war with Russia

Johnson 23 [Keith Johnson, reporter at Foreign Policy covering geoeconomics and energy, 1-18-2023, "Can Denmark Use International Law to Fight Russia's Shadow Fleet?", Foreign Policy, <https://foreignpolicy.com/2024/09/16/russia-oil-tankers-shadow-fleet-international-law-denmark-unclos/>]/Kanke

"There is no doubt that Russia is flagrantly breaking the law, so if the allies are working together to ratchet up the legal response, that is entirely understandable," said Harold Koh, a professor at Yale Law School and a former legal advisor to the U.S. State Department. But it's not clear that even the black letter of maritime law that gives coastal states rights against environmental threats would be enough to curtail Russia's shadow fleet, said Siig, who is a professor of maritime law at the University of Southern Denmark. **Forcing compliance** with insurance rules, for instance, **could add burdens to Russia's** makeshift **fleet** but likely wouldn't stop it. And any effort to plug the straits would run into equally valid legal protections, long defended by Denmark, of free passage through those very same waters. "I see this as more of a diplomatic problem than a strict legal problem," she said. **"If you want to stop Russian oil from coming through the straits, forget it."** Legal fig leaves aside, **Russia would not be happy.** "This would be a legal charade, and seen as such," said Sergey Vakulenko, an energy expert at the Carnegie Russia Eurasia Center and a former Russian oil executive. He said even a legalistic **effort to restrict traffic through the straits would undermine international law and potentially be seen as a blockade—a potential act of war—by Russia.** Or as Siig puts it: **Even if Denmark and some allies were to muster the legal arguments to go after that illicit trade, Russia remains as physically close as it was during the atomic-frightened years of the Cold War.** **"If you are going to poke a bear, do it with a very long stick,"** she said. The search for legal remedies to bad actors isn't limited to shadow fleets, or even to Russia. The International Criminal Court (ICC) has issued arrest warrants for Russian President Vladimir Putin and others for some war crimes already; the West has tied itself in knots to justify first the freeze, and now a partial seizure, of Russia's huge overseas central bank reserves. The Philippines took China to court over its maritime depredations years ago and won handily. But maritime law is such an important battlefield because the seas and oceans are so central to the modern world. Take the undersea cables and pipelines that form the central nervous system of the global economy. That sprawling infrastructure is a particular target for Russia, which when not attacking those structures directly or indirectly is mapping them out for the future. NATO, the CIA, MI6, and others are growing more concerned by the day about the vulnerability of European infrastructure in particular to Russian sabotage. But the 40-year-old constitution of the sea has little to say about protecting now-vital assets. The only parties that have jurisdiction if something goes wrong—if a Chinese ship damages a crucial energy pipeline between two European states, say—are the wrongdoers themselves; coastal states have no clear legal remedies as yet. The flag state that is legally responsible for a ship, whether a true maritime nation like the United Kingdom or a black-flag state for rent like Gabon, is the one with jurisdiction over such incidents.

AT: Drilling DA

Biden ocean drilling protections thump

Domonoske 25 [Camila Domonoske, NPR energy reporter and graduate from Davidson College in North Carolina, 1-5-2025, "Biden makes an 11th-hour move to block coastal oil drilling", NPR, <https://www.npr.org/2025/01/06/nx-s1-5249765/biden-offshore-drilling-ban/>]/Kanke

President **Biden** is using a decades-old law **to block drilling for oil in** more than **625 million acres** of U.S. **ocean** — **the largest** region a president has ever protected using this authority. **It's a move designed to help cement his climate legacy**, and one the incoming Trump administration is expected to challenge. **Biden** has previously **protected much smaller regions from oil development**, but **Monday's announcement covers** vastly more territory: **the entire East Coast and West Coast, the eastern Gulf of Mexico, and a portion of the Bering Sea**. Oil and gas companies that want to find or produce offshore oil have to pay the U.S. government to lease sections of the ocean.

Biden's action prohibits new leases in the identified regions; it does not affect any existing leases. Most of the newly-protected territory is not particularly appealing to the oil industry, at least right now. That's led some to dismiss this move as merely symbolic. But **the region includes the eastern Gulf of Mexico, where oil companies are interested in expanding when an existing moratorium expires**. And all together, the **huge swathes of ocean set aside in this move — hypothetically forever — include more than a third of the offshore U.S. oil and gas that is likely**

economical to extract, according to government data and analysts at Clearview Energy Partners. The oil industry has objected to the moratorium. "American voters sent a clear message in support of domestic energy development, and yet the current administration is using its final days in office to cement a record of doing everything possible to restrict it," American Petroleum Institute president Mike Sommers said in a statement. The API suggested that reversing this "politically-motivated" action should be a top priority for Congress. "Even if there's no immediate interest in some areas, it's crucial for the federal government to maintain the flexibility to adapt its energy policy, especially in response to unexpected global changes like the Russian invasion of Ukraine," Erik Milito, the president of a trade group representing offshore energy development, said in a statement. "Blanket bans only serve to transfer energy production and economic opportunities abroad." Green groups, meanwhile, celebrated the announcement. "We see this as an epic ocean victory," says Joseph Gordon, campaign director for Oceana, a nonprofit that advocates for ocean conservation worldwide. "This is a commitment to turning the corner from fossil fuels to clean energy. And we hope that millions of Americans who live near the ocean or visit or see places on the map protected today ... can take comfort knowing that those places will never be subject to offshore drilling and they'll never [experience] an oil spill like Deepwater Horizon," the devastating 2010 BP spill in the Gulf of Mexico. This is, of course, a familiar divide, with industry representatives on one side and environmental groups on the other. For his part, Biden rejected that framing. "We do not need to choose between protecting the environment and growing our economy," he said in a statement, calling it a false choice. "Protecting America's coasts and ocean is the right thing to do." Bipartisan history, uncertain future. Previous presidents have used the same authority Biden exerted today to protect ocean regions from drilling, though never so many acres at one time. Trump himself used it to protect the coasts of Florida, Georgia and South Carolina for 12 years. But, significantly, **Biden's move has no expiration date**. And **courts have previously found that makes the move essentially permanent**.

After former President Barack **Obama** undertook a similar **action** late in his administration to protect waters **from drilling with no end date**, **Trump attempted to reverse it — without success**. Courts found that the Outer Continental Shelf Lands Act allows a president to protect waters **indefinitely**, and doesn't include **any provision for removing that protection**.

Kevin Book of Clearview Energy Partners says this doesn't mean the Trump administration can't undo these protections. "The administration, having done this once before, will probably look to a congressional pathway as a means of resolution," he says. A filibuster-proof budget reconciliation bill could be a path for reopening these acres to oil development. That would be attractive not just as a way to follow through on Trump's campaign promises to "drill, baby, drill," but also for the budgetary benefits: offshore oil lease auctions make money for the federal government. Book says with Republicans in Congress promising a reconciliation bill this summer, these protections — or some of them — might be rolled back as early as this year.

Arctic drilling cancellations thump. Even if protections are temporary, flipflopping drilling policy means there's no business confidence that their projects won't be cancelled

Bustillo 23 [Ximena Bustillo, multi-platform reporter at NPR and graduate of Boise State University, 9-5-2023, "Biden ends drilling in ANWR, sparking criticism, as Willow Project moves forward", NPR, <https://www.npr.org/2023/09/06/1197945859/anwr-alaska-drilling-oil-gas-leases-environment-energy-climate-change>]/Kanke

The Biden administration is canceling the only seven oil and gas leases in the Arctic National Wildlife Refuge in Alaska. The leases were originally issued by the Trump administration over the protests of environmentalists and some Alaska Native groups who argue the region should be protected as a critical wildlife habitat. In January 2021, nine leases covering more than 430,000 acres were issued by the Trump administration; the Biden administration has already canceled and refunded two of the leases at the request of the leaseholders. The Alaska Industrial Development and Export Authority, a state-owned economic development corporation, owned the remaining seven leases — this action applies to those tracts. "With today's action no one will have rights to drill oil in one of the most sensitive landscapes on Earth," said Interior Secretary Deb Haaland during a call with reporters announcing the move. Responses from Capitol Hill have been critical. The move drew quick pushback from Alaska's two Republican senators, who originally voted for the 2017 Tax Cut and Jobs Act, the law that required Trump to hold the oil and gas lease sale. Speaking to reporters in the Capitol, Sen. Dan Sullivan accused Biden of not following the law. "They just yanked those leases," Sullivan said. "But now we're going to get ready for the next lease sale. Give me a break. Who the hell in their right mind would invest money in a lease sale when they just watched the first lease sale get yanked?" The administration is required to hold at least one more lease sale in ANWR. Senior administration officials said they "intend to comply with the law" in regards to that mandate which requires another lease sale by December 2024. The original sale, held during the last weeks of the Trump Administration, drew unexpectedly little industry interest. Major oil companies did not participate, and the state of Alaska was the largest bidder. Sen. Lisa Murkowski told reporters on the Hill she wants to put pressure on Biden to reverse his decision but cautioned that it's "incredible to think that people are going to trust this administration on anything related to oil in Alaska." Haaland said the environmental reviews done under the Trump administration to allow the lease sales were "fundamentally flawed and based on a number of fundamental legal deficiencies." According to a Biden White House release, this includes failure to adequately analyze a reasonable range of alternatives and properly quantify downstream greenhouse gas emissions, as well as failure to properly interpret the 2017 tax law. The administration said Wednesday's announcement "does not impact valid existing rights" from developing leases. Environmental groups cheer, with caution. The refuge, commonly referred to as ANWR, is a habitat for wildlife, including grizzly and polar bears, caribou and hundreds of thousands of migratory birds. It has been the center of an ongoing political and legal battle related to drilling for decades. Wednesday's announcement was largely applauded by environmental protection groups. The White House also announced new protections for millions of acres across Alaska's North Slope and in the Arctic Ocean. Over 13 million acres in the National Petroleum Reserve-Alaska (NPR-A), a vast swath of land on Alaska's North Slope, will be off limits to oil and gas drilling, following up on a proposal earlier this year. While the new regulations will block new oil and gas leases in the protected areas, they will not block the development of existing leases in the NPR-A, including ConocoPhillips' controversial Willow Project. Alaska oil drilling projects have been top of mind for both the administration and voters this year. The latest announcement comes several months after Biden approved the Willow project, the biggest new oil development in Alaska in decades, resulting in blowback to the administration. While climate and environmental advocacy organizations largely praised the recent changes, some also called for additional action from the administration — particularly to block future projects. "We can't stop here if we are going to address the climate crisis in the Arctic," said Mike Scott, Sierra Club's National Oil and Gas Campaign Manager in a statement. "The climate goals President Biden has set are necessary and ambitious, and massive oil and gas projects like Willow only put us further from achieving them." Oceana's Acting Campaign Director Michael Messmer in a statement he wants Biden to halt offshore drilling "by issuing a Five-Year Plan with no new leases." Others, like Earthjustice Alaska Attorney Jeremy Lieb, called on the Interior Department to conduct a full review of the climate impacts of potential fossil-fuel development in the Western Arctic. Senior administration officials said they have no updated timeline on the other lease sale required by the 2017 law in 2024. Most recently, Elise Joshi, a climate activist with the group Gen Z for Change, interrupted White House Press Secretary Karine Jean Pierre to confront the administration specifically with concerns about the Willow project. But the administration insisted the new protections are separate from decisions about the Willow project. "These are two entirely different processes," a senior administration official said on Wednesday. Its approval has raised concerns from other young voters, who see climate as a more important electoral issue than their older counterparts.

Arctic drilling is too expensive

Leber 23 [Rebecca Leber, Former Senior Reporter for Vox, 09-08-2023, "The oil industry's cynical gamble on Arctic drilling", Vox, <https://www.vox.com/climate/23863150/biden-arctic-drilling-big-oil/>]/Kankee

But these advantages also run up against major barriers that make oil development in the Arctic uniquely difficult — challenges that have far more to do with the environment there than environmental regulations. The industry aims to squeeze as much as possible out of the cheapest oil reserves it has: areas that will produce a lot of oil for less cost. The Arctic has oil, but it doesn't come cheaply. Companies have to contend with frozen roads, remote areas, and transporting specialized rigs before even unearthing any oil. Even in a world without environmental regulations, it simply costs more for oil companies to drill there, ranking the risks of the Arctic right alongside the risks of deep-water drilling and operating in politically unstable countries. Because of the expense, these are also long-term investments, from which companies plan to benefit over the course of 30 to 40 years. This introduces a lot more uncertainty because of the many factors that can affect oil prices in that time. The Willow Project faces these disadvantages and more. Willow still faces legal challenges from environmentalists, but the costs of drilling have also gotten worse in other ways — ironically, because of climate change. One example: ConocoPhillips has had to contend with melting permafrost at the sites it intends to drill, which the company will try to neutralize by installing giant chilling devices in the ground. For Arctic drilling to make sense economically, a company has to bank on prices at the pump remaining high and that consumer demand will still be there for decades to come. That's in spite of expectations that EV sales will cut into demand for gasoline, with EVs on track to become half of global car sales by 2035. Just to break even, the oil would likely need to sell somewhere between \$63 and \$84 per barrel, based on an analysis from the World Wildlife Fund — higher than what energy analysts expect in a world reducing its reliance on oil. "They're betting that we're not going to be able to stick within the confines of the Paris agreement," Wight said. "Arctic oil is a fundamental bet on the future and what will and will not happen with the energy transition." A closer look at ConocoPhillips' gambit Given the financial risks, many major players have pulled out of the Arctic region entirely. Royal Dutch Shell has left a door open to still explore in the Arctic but made a splash in 2015 by announcing it would abandon the region, citing the expense of its \$7 billion on a failed attempt in the Chukchi Sea between Alaska and Russia. BP sold its holdings in Alaska to the smaller Hilcorp Energy in 2020. Meanwhile, some banks, including JPMorgan Chase, have said they will stop funding loans to oil companies for Arctic development. Even when the Trump administration offered up ANWR land on a platter with a lease sale late into its term, few companies bothered to show. "Basically no major oil companies came to bid at that lease sale," said Miller. "For years we had been saying that this is an area that was too special, too fragile, to develop, but also that it didn't make sense economically. And that's exactly what the results showed." Chevron and Hilcorp have abandoned the ANWR tract they acquired under Trump, entirely voluntarily. For much of the 2010s, companies had soured on developing expensive oil prospects. Prices have climbed again in the past few years, however, as a result of embargoes on Russian oil and the petering out of shale oil development (and as a global commodity, oil is much more than the Exxons and BPs of the world; 55 percent of global oil is supplied by state-owned oil companies, like in Saudi Arabia and Russia). "There are some companies now that are making bets again on expensive oil," said Clark Williams-Derry, an energy finance analyst at the nonprofit Institute for Energy Economics and Financial Analysis. "They're basically investing in big capital projects that have a longer lifespan that pencil out when oil prices are higher, \$70, \$80, or \$90 a barrel, but probably wouldn't survive in a world where oil prices can fall to \$40 at any moment." Oil companies are betting "the world will fry"

AT: Deep Sea Mining

No royalties impact – they’re tiny

Amadi and Monsier 24 [Emma Amadi, Investment Analyst on the Food and Land Use team at Planet Tracker with a bachelor’s degree in Geography from Sussex University and a master’s in Environmental Technology from Imperial College London, and François Mosnier, Head of Ocean Programme at Planet Tracker with a MBA from ESSEC, 2024, “Race to the Bottom,” Planet Tracker, <https://planet-tracker.org/wp-content/uploads/2024/11/Race-to-the-Bottom.pdf>]/Kanke

Countries would receive minimal financial benefits from deep sea mining. **Deep sea mining taxes would probably provide insignificant financial benefits to countries.**^{3 4} This analysis estimates that the current 169 ISA Member States could receive on average US \$42,000 - \$7.35 million each annually from deep sea mining Corporate income tax and royalties, a **trivial amount** in comparison to the size of all but a few national economies. The race to the bottom for corporate income tax According to the UN Convention on the Law of the Sea (UNCLOS),⁵ companies can only submit an application for deep sea mining in international waters if they are sponsored by a State. In theory, this means deep sea mining companies could face corporate income tax through these sponsorship agreements. This report reveals that countries could theoretically earn up to US \$6.25 million per year each in corporate income tax (at a 25% rate), an insignificant contribution to government revenues. However, there is a strong chance that sponsoring States will not levy any corporate income tax on deep sea mining companies. Sponsorship agreements already exist that include no corporate income tax altogether.¹ Deep sea mining companies are also unlikely to generate profits, resulting in little to no tax revenues.⁶ This situation highlights that sponsoring States have very little bargaining power when negotiating taxes because they do not own the deep sea mineral resources and contractors can easily seek sponsorship from any ISA Member State.⁷ Countries could receive little to no money from royalties. Currently any company engaged in deep sea mining in international waters would be required to make payments to the ISA, which must share these benefits with Member States. The ISA is supposed to develop rules for the “equitable sharing of financial and other economic benefits” from deep sea mining in international waters.³ This analysis estimates that **each ISA Member State on average could receive** US \$42,000 - \$**1.1 million per year from deep sea mining royalties**, again an **insignificant contribution to government coffers**. While the ISA could receive on average up to US \$270 million per year from royalties, there are on average US \$80 million of deductions from these funds that could be required each year.² **This includes covering the ISA’s administrative costs (US \$13 million per year) and payments to an economic assistance fund for developing states negatively impacted by deep sea mining (25% of the funds value).** However, **the ISA is entitled to make unlimited further deductions before royalties are distributed which could significantly reduce the amount of money available for countries.** In summary, **deep sea mining would generate little to no royalties and taxes for countries**, on top of causing large-scale environmental damage. Call to action

AT: Intelligence Gathering DA

No intelligence disad – freedom of the seas allows it

Kraska 22 [James Kraska, Charles H. Stockton Professor of International Maritime Law and Chair at the Stockton Center for International Law at the U.S. Naval War College and Visiting Professor of Law and John Harvey Gregory Lecturer on World Organization at Harvard Law School, 2022, “Intelligence Collection and the International Law of the Sea,” International Law Studies, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3023&context=ils>]/Kankee

III. THE HIGH SEAS The international law of the sea does not prohibit the collection of national security or military intelligence on or from the high seas. Surface warships, submarines, and naval aircraft, both manned and unmanned, are outfitted with a range of active and passive intelligence collection systems. The high seas are open to all States, whether coastal or landlocked. Flag States enjoy “freedom of the high seas” under the conditions in UNCLOS and other rules of international law.⁶ These freedoms include freedom of navigation and freedom of overflight.⁷ Freedom of the high seas also includes the freedom to lay submarine cables and pipelines, construct artificial islands and other installations, the freedom of fishing, freedom of scientific research, and other unspecified freedoms, denoted by the qualifier that these examples are “inter alia” in Article 87, UNCLOS, concerning a list of activities within the scope of freedom of the high seas. A. Intelligence Collection as a High Seas Freedom Intelligence operations and activities are logically and reasonably within this broad ambit of freedom of the seas. This interpretation is supported by State practice, including reports of numerous intelligence operations and the design, equipping, and manning of specially designed ships, submarines, and aircraft for the purpose. China, for example, operates a large fleet of intelligence collection vessels, including the Type 815 Dongdiao-class auxiliary general intelligence ship Neptune, which is an electromagnetic reconnaissance vessel able to detect signals intelligence of warships.⁸ Since freedom of the seas is a wide remit, the only qualifications on the right of sovereign States in the international system to collect intelligence from the high seas are those that are specific to the international law of the sea, as reflected in UNCLOS. This approach incorporates the Lotus Principle, based on the famous 1927 case at the Permanent Court of Arbitration, which held that sovereign States are not subordinate to any external authority and therefore may act in any way they choose so long as they do not contravene an explicit prohibition of international law. As the Lotus tribunal held, “all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.”⁹ This article begins with (and sets aside) the conventional view that international law generally does not prohibit intelligence gathering that is not tantamount to an “armed attack” or “armed aggression” proscribed in Article 2(4) of the Charter of the United Nations. Returning to the focus of the law of the sea, however, the article sidesteps the issue of whether international law prohibits intelligence collection more generally and finds that there is nothing in the law of the sea precluding intelligence operations on the high seas. Intelligence collection from the high seas (like all naval operations) must comply with two other requirements besides the proscription against the use of force in Article 2(4). These are that naval operations must exercise due regard for other users of the oceans and that such activities must be “peaceful” or for “peaceful purposes,” itself merely a reference back to the UN Charter. The same rules that apply to the high seas also apply by extrapolation in the EEZ and on the continental shelf. Article 58 of UNCLOS states that the legal regime governing the high seas and freedom of the seas applies mutatis mutandis to the EEZ. Similarly, the rights of the coastal State over the continental shelf do not affect “the legal status of the superjacent waters or of the air space above those waters.”¹⁰ Consequently, while the EEZ and continental shelf are not “high seas” per se or “international waters” (a term not in UNCLOS), they are subject to the exact same legal regime concerning military and intelligence operations, which lie beyond the limited coastal State competence over the living and non-living resources in those areas. B. Due Regard

AT: Consult NATO CP

Consultation is normal means

Honkanen 02 [Karoliina Honkanen, NATO researcher who obtained a Master of Social Sciences/International Relations at the University of Helsinki, 09-2002, "The Influence of Small States on NATO Decision-Making", Swedish Defense Research Agency, <https://www.foi.se/rest-api/report/FOI-R--0548--SE>]/Kanke

*note: do not read with consultation bad given that it implies the aff hurts the alliance

Small states in particular tend to regard the veto right as the last resort when vital national interests are at stake. Moreover, the use of veto does not benefit the role of a "loyal ally", adopted by many of NATO's small states. For example, Norway – which supported limited enlargement in the first round – noted before the Madrid Summit that it would not prevent a more extensive enlargement round (which would also include Romania and Slovenia). According to the then Norwegian Prime Minister, Norway is not a "veto country".¹⁶ Decision-making by consensus necessitates extensive and regular consultations at several levels. The member states need to be aware of the policies and intentions of each other as well as of the considerations behind them. Close consultations may prevent misunderstandings and enable faster decisions. Consultation in NATO is made easier by common cooperation procedures and the location of all national delegations in the same facilities. The influence of a small state in NATO depends to a large degree on how effectively it uses the consultation mechanism, since the representatives of small states very seldom present their own initiatives in the NAC without prior consultations. Key assets are an ability to build coalitions, gather support of like-minded countries and persuade those who disagree. In addition to the formal decision-making structure, consultations are conducted in informal channels. NATO's informal decision-making structure has even been partly institutionalized. Since the 1960s, the permanent representatives have had lunch together every week, the day before the formal NAC meeting. Consensus-building also takes place in negotiations in the aisles of NATO HQ as well as in semi-formal and confidential negotiations among a few member countries in the Secretary General's office. However, consultation entails several possible problems. According to Sean Kay, these are things such as an unwillingness to share sensitive information on national security even with close Allies; use of consultation norms to promote national (not common Alliance) interests; circumvention of consultation when rapid decisions are needed: a delay or even block in the consultation process due to procedures of national bureaucracies; a decrease in the Alliance's cohesion due to information flows which can highlight the differences among the Allies. Consultations in NATO have not proceeded without problems. In fact, there have been several internal crises in the Alliance, which have created a need to reform the consultation norms.²¹ Worthy of note is the fact that smaller states have been active in the development of consultation norms through their representation in important working groups: the report by the "three wise men" of 1956²² and the Harmel report²³ of 1967. The latter was based on a joint draft by two small states (Denmark and Norway).²⁴ According to American historian Lawrence Kaplan, the Harmel report succeeded in improving consultation norms within the Alliance and in increasing the role of smaller states in the Alliance's decision-making.²⁵ NATO's enlargement since the Cold War has raised questions about the validity of the Alliance's decision-making rule in the future. The worry has been that an enlarged NATO would not be able to reach a consensus, as the number of different ideas and regional interests in the Alliance increases.²⁶ However, the experience of the first enlargement round did not confirm this: the NAC has been able to function "at 19". The latest members, as well as the future new members, have a strong motivation to prove that they are not a burden but an asset to the Alliance. Moreover, they are very "Atlanticist" states, likely to follow the US lead.

Consultation escalates internal alliance issues

Honkanen 02 [Karoliina Honkanen, NATO researcher who obtained a Master of Social Sciences/International Relations at the University of Helsinki, 09-2002, "The Influence of Small States on NATO Decision-Making", Swedish Defense Research Agency, <https://www.foi.se/rest-api/report/FOI-R--0548--SE/Kankee>

*note: do not read with consultation bad given that it implies the aff hurts the alliance

Small states in particular tend to regard the veto right as the last resort when vital national interests are at stake. Moreover, the use of veto does not befit the role of a "loyal ally", adopted by many of NATO's small states. For example, Norway – which supported limited enlargement in the first round – noted before the Madrid Summit that it would not prevent a more extensive enlargement round (which would also include Romania and Slovenia). According to the then Norwegian Prime Minister, Norway is not a "veto country".¹⁶ Decision-making by consensus necessitates extensive and regular consultations at several levels. The member states need to be aware of the policies and intentions of each other as well as of the considerations behind them. Close consultations may prevent misunderstandings and enable faster decisions. Consultation in NATO is made easier by common cooperation procedures and the location of all national delegations in the same facilities. The influence of a small state in NATO depends to a large degree on how effectively it uses the consultation mechanism, since the representatives of small states very seldom present their own initiatives in the NAC without prior consultations. Key assets are an ability to build coalitions, gather support of like-minded countries and persuade those who disagree. In addition to the formal decision-making structure, consultations are conducted in informal channels. NATO's informal decision-making structure has even been partly institutionalized. Since the 1960s, the permanent representatives have had lunch together every week, the day before the formal NAC meeting. Consensus-building also takes place in negotiations in the aisles of NATO HQ as well as in semi-formal and confidential negotiations among a few member countries in the Secretary General's office. However, **consultation entails** several possible **problems**. According to Sean Kay, **these are things such as an unwillingness to share sensitive information on national security even with close Allies; use of consultation norms to promote national (not common Alliance) interests; circumvention of consultation when rapid decisions are needed; a delay or even block in the consultation process due to procedures of national bureaucracies; a decrease in the Alliance's cohesion due to information flows which can highlight the differences among the Allies.** Consultations in NATO have not proceeded without **problems**. In fact, **there have been several internal crises in the Alliance**, which have created a need to reform the consultation norms.²¹ Worthy of note is the fact that smaller states have been active in the development of consultation norms through their representation in important working groups: the report by the "three wise men" of 1956²² and the Harmel report²³ of 1967. The latter was based on a joint draft by two small states (Denmark and Norway).²⁴ According to American historian Lawrence Kaplan, the Harmel report succeeded in improving consultation norms within the Alliance and in increasing the role of smaller states in the Alliance's decision-making.²⁵ NATO's enlargement since the Cold War has raised questions about the validity of the Alliance's decision-making rule in the future. The worry has been that an enlarged NATO would not be able to reach a consensus, as the number of different ideas and regional interests in the Alliance increases.²⁶ However, the experience of the first enlargement round did not confirm this: the NAC has been able to function "at 19". The latest members, as well as the future new members, have a strong motivation to prove that they not a burden but an asset to the Alliance. Moreover, they are very "Atlanticist" states, likely to follow the US lead.

Negative (UNCLOS)

AT: DSM Good

DSM fails – companies are not profitable

Khan 23 [Yusuf Khan, Yusuf joined the Journal from Argus Media, where he priced and reported on the European metals market, and graduate of Cardiff University in Wales, 05-03-2023, "Shipping Giant Maersk Drops Deep Sea Mining Investment", Wall Street Journal, <https://www.wsj.com/articles/shipping-giant-maersk-drops-deep-sea-mining-investment-c226df39/>]/Kanke

Shipping company A.P. Moller-Maersk is selling its stake in deep-sea mining firm The Metals Company, even as the legal process to allow seabed mining approaches its final stages. Maersk told The Wall Street Journal that it now holds an interest of less than 2.3% in TMC and is in the process of selling all of its shares. The shipping company held more than 9% of TMC in 2021, according to data from FactSet and has been an investor in the company since 2017. TMC is one of the biggest proponents of deep-sea mining and is the most active company within the space, being the first to complete pilot testing. In June 2021, the company along with the Republic of Nauru set in motion talks for deep sea mining to be legalized when it applied to the UN-backed International Seabed Authority to mine in the Pacific Ocean. It triggered a rule that required the ISA to establish a code that would allow mining of deep-sea resources by July 2023, even if, as is expected, no code will have been agreed upon. The practice has garnered attention because of the potential to harvest battery metals such as cobalt and nickel from rocks on the seafloor. Seabed mining raises the prospect of additional supplies to alleviate expected shortfalls while proponents also argue it could mitigate concerns from other sources, such as humanitarian issues with cobalt mining in the Congo and environmental issues with nickel mining in Indonesia. Maersk said it entered into a contract with TMC five years ago, under which it would provide shipping services to the company. Maersk said direct payment from TMC wasn't possible at the time and so payment for the contract was provided in the form of shares that it is in the process of selling. TMC said in 2022 that Maersk didn't have a vessel suitable for TMC's mining operations, so the miner instead signed a contract with engineering firm Allseas Group. "We remain good friends [with Maersk] and grateful for their important contribution in getting this industry moving in the right direction," TMC Chief Executive Gerard Barron said. In March, Lockheed Martin sold UK Seabed Resources, which holds the licenses for two seabed exploration contracts in the Pacific Ocean. Norway's Loke Marine Minerals purchased UKSR for an undisclosed fee. TMC and other deep-sea mining firms have come under fire over worries that the practice will harm the seabed environment. TMC had previously said it aimed to start seabed mining in the second half of this year but is now willing to wait until a mining code has been finalized, which is also the Republic of Nauru's official position. TMC's stock, listed through a SPAC on the Nasdaq exchange, has lost more than 90% of its value since going public in 2021. It currently trades at roughly 82 cents. In December of last year, the company received a delisting notice from Nasdaq after it had traded below \$1 for more than 30 days. The notice was removed in February after the stock traded above \$1 for 10 days, but a fresh one was issued in April for the same reason as in December. The ISA and member states previously met in March of this year and failed to come to an agreement as to what the terms of seabed mining should be and how it should be regulated, with worries over royalty-payment splits and environmental harm of key concern. The next meeting has been set for late July with another scheduled for October.

Deep sea mining destroys the economy and is too expensive

Mining.com 24 [Mining.com Editor, 3-7-2024, "Deep-sea mining could cost \$500bn in lost value — study", Mining.com, <https://www.mining.com/deep-sea-mining-could-cost-500-billion-in-lost-value-study-says/>]/Kankee

Mining the seafloor for key minerals and metals could negatively impact the industry, resulting in \$500 billion of lost value and causing damages to the world's biodiversity estimated to be up to 25 times greater than land-based mining, a new report published Thursday shows. The quest for substitutes for fossil fuels has increased the need for metals used in the batteries that power electric vehicles (EVs) and in green-energy applications. Minerals and metals such as cobalt, nickel, copper and manganese can be found in potato-sized nodules on the ocean floor. Reserves are estimated to be worth anywhere from \$8 trillion to more than \$16 trillion and they are in areas where companies, including deep-sea mining pioneer The Metals Company (NASDAQ: TMC), plan to target. Sign Up for the Battery Metals Digest According to the report, entitled "How to lose half a trillion" by non-profit Planet Tracker, extracting metals from the seafloor could cost the mining industry \$30 to \$132 billion in value destruction. François Mosnier, head of Oceans and report lead author at Planet Tracker, told MINING.COM this estimate is the result of adding the combined value loss the activity would cause for both ocean floor and terrestrial miners. "For the deep sea mining sector, focusing only on polymetallic nodules in international waters, the cost would reach \$35 billion-\$49 billion of value destruction," Mosnier said. "This amount was computed based on the estimated invested capital in the sector in 2043 (\$115 billion), the industry's estimated return on invested capital (-2%) and the industry's weighted average cost of capital (WACC) and long-term growth (3%)." Put simply, the deep-sea mining industry would not beat the cost of the capital it requires to exist, he said. "Before factoring in any environmental impacts, the economics already appear unconvincing," Mosnier said. "High operating expenditures mean that returns will be negative for investors in deep sea mining, which will also destroy value in other sectors, such as terrestrial mining and fishing." On top of that, major global banks such as Credit Suisse, Lloyds, NatWest, and Standard Chartered, Dutch bank ABN Amro, and Spanish group Banco Bilbao Vizcaya Argentaria, have all introduced policies that rule out funding deep-sea exploration and extraction. The report highlights the positive financial impact of respecting nature as sectors dependent on preserving intact ecosystems have outperformed those exploiting resources threefold over the last three decades. It also urges investors to focus on nature preservation rather than resource extraction a repeats its call for a moratorium on deep-sea mining. Ready to start

The US can mine in the EEZ instead of the deep sea - the EEZ doesn't require UNCLOS

Lu 23 [Christina Lu, energy and environment reporter at Foreign Policy, 11-20-2023, "China Aims to Corner the Undersea Mineral Market, Too", Foreign Policy,

<https://foreignpolicy.com/2023/11/20/china-deep-sea-mining-critical-mineral-energy-transition-isa/>]/Kankee

Hungry for more critical minerals to power the energy transition, a slew of countries and companies are desperate to start mining the seafloor for a potential cache of metals—including cobalt, nickel, copper, and manganese—that will be critical to the scramble to build ever more batteries. Lying thousands of feet underwater are an estimated billions of dry tons of polymetallic nodules, which are potato-shaped formations packed with critical minerals. The appeal in those little chunks of rock is just how rich they seem to be, with ore concentrations potentially much, much higher than many mainstream veins on land. But **tapping those resources in the high seas, the waters that lie beyond nations' exclusive economic zones, has long been off limits**—until now, potentially. International negotiations are now underway to craft a mining rulebook for the high seas, and China doesn't want to be left out of the race. Eager to maintain its command of the world's critical mineral supply chains, experts say that Beijing is positioning itself for success in the prospective industry by ramping up investment and shaping negotiations, even though it doesn't appear to be in a rush to begin mining. "If the train leaves the station, they want to be in the front of the train, helping to drive the train," said Duncan Currie, an advisor at the High Seas Alliance, a conservation group. "They don't necessarily want the train to leave the station anytime soon, but they're aware that regulations are being negotiated. Who knows what the future will bring." At the center of the debate is the International Seabed Authority (ISA), the body charged with drawing up a mining code that includes a long list of regulatory, environmental, and financial provisions. Those pressures have only intensified since July, when the ISA missed a key deadline that one country, Nauru, triggered in order to expedite the regulatory process. Past that deadline, countries can now submit applications for mining licenses even without an official rulebook in place. **The United States, which never ratified the U.N. Convention on the Law of the Sea and is not a member of the ISA, can't take part in the high-seas land grab.** But **Washington isn't entirely out of the game. Thanks to its extensive Pacific territories, it has ample exclusive economic zones that it can tap however it chooses.** As ISA negotiations continue, Beijing wants to prevent potential deep-sea mining operations—and the resulting influx of critical minerals—from weakening its hold on the sector. After decades of targeted investment and research, Chinese companies dominate the production, processing, and refining of most critical minerals, including the rare earths that power F-35 fighter jets and wind turbines. China currently controls 71 percent of the world's graphite production, for example, and 90 percent of global rare earth ore processing. In recent months, Beijing has harnessed this advantage in its tech trade war with Washington, unleashing export curbs on graphite as well as gallium and germanium, two chipmaking inputs.

We don't need deep sea for rare earths

Heffernan 23 [Olive Heffernan, science journalist, 9-1-2023, "Deep-Sea Mining Could Begin Soon, Regulated or Not", Scientific American, <https://www.scientificamerican.com/article/deep-sea-mining-could-begin-soon-regulated-or-not/>]/Kankee

Prospectors contend that without deep-sea mining the world will run out of valuable metals for green technologies. According to the World Bank, we'll need more than three billion (nonmetric) tons of minerals and metals to deploy the wind, solar and geothermal power required to avoid two degrees C of global warming. Some estimates predict that the reserves of cobalt, used widely in rechargeable batteries, and of nickel, used in electric vehicle batteries and renewable energy storage, in the CCZ are significantly larger than the remaining reserves on land, although it's hard to gauge the real extent of resources in the abyss, especially those that are easily recoverable. Not everyone is convinced of an impending shortage—or that, in the event of one, deep-sea mining is the only solution. The Institute of Sustainable Futures says a global transition toward 100 percent renewable energy could be met with land-based reserves. "Urban mining"—recovering metals from our discarded computers, mobile phones, tablets and other electronics—could also be greatly scaled up. The world recycles less than 20 percent of its electronic waste, and safe disposal is a rapidly growing problem. Also, future demand for certain metals, such as cobalt and lithium, may not be as high as once anticipated; Tesla now uses cobalt-free batteries in half of its new cars. Manufacturers are exploring alternatives to lithium-based batteries, too. Smothered by Sediment

AT: Ocean Governance/SCS

UNCLOS doesn't solve ocean Governance - history proves

Pedrozo 11 [Raul Pedrozo, Howard S. Levie Professor of the Law of Armed Conflict and professor of International Law in the Stockton Center for International Law at the U.S. Naval War College, 10-2011, "A Response to Cartner's and Gold's Commentary on "Is it Time for the United States to Join the Law of the Sea Convention?""], Journal of Maritime Law & Commerce, https://docs.rwu.edu/cgi/viewcontent.cgi?article=1290&context=law_ma_jmlc]/Kanke

In theory, I agree with Messrs. Cartner and Gold that "customary law ... is not as good as conventional law" because customary law is subject to change and written words of a treaty should provide more certainty. However, I do question their follow-on conclusions that customary law is "certainly not as efficient in resolving disputes between sovereigns for maintaining global order" and that UNCLOS, "being nearly universal, takes away a great deal of the uncertainty in the application of customary law for all cases." Although I concur that UNCLOS was a great achievement and that the United States got much of what it wanted in the treaty text, like any other "framework" agreement, it is subject to widely varying interpretation or even misapplication by States Parties. As a result, UNCLOS has unfortunately not had a dispositive calming influence on dispute settlement or prevented the continued proliferation of excessive maritime claims. Today, excessive maritime claims continue to proliferate, particularly in the area of straight baselines and coastal state jurisdiction in the EEZ. Although the international community has witnessed a decline in the number of excessive territorial sea claims (only nine remain today), there are still three States Parties to the Convention that continue to claim a territorial sea in excess of 12 nm, even though UNCLOS Article 3 specifically and clearly limits the breadth of the territorial sea to 12 nm.²² In addition, over 40 nations restrict the right of innocent passage for warships in one way or another, even though efforts during The Third United Nations Conference on the Law of the Sea (UNCLOS III) to provide coastal states such authority failed to achieve majority support. Furthermore, the plain language of Article 17 specifically states "ships of all States ... enjoy the right of innocent passage." Although all of these illegal claims have been the subject of diplomatic protests or operational challenges by the United States, U.S. accession to UNCLOS will not cause these nations to rollback these excessive claims. A greater area of concern, however, is the use of straight baselines by over 80 nations, despite the fact that UNCLOS Article 5 provides that the normal baseline for measuring the breadth of the various maritime zones is the lowwater line. "Straight baselines may only be used in exceptional cases, as provided in Article 7, where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. Most of these nations' coastlines do not meet the geographic requirements of UNCLOS for establishing straight baselines. And most of these straight baselines enclose waters that are not interrelated to the land. Moreover, although UNCLOS does not specify a limit on the maximum length of a straight baseline, many nations draw baselines in excess of 50 nm. Most law of the sea experts would agree that, in order to meet the requirements of UNCLOS, straight baselines cannot exceed between 24 and 48 nm."⁵ The net result of these excessive baselines is that nations are claiming thousands of square nautical miles of territorial seas and EEZs that should remain high seas, and a significant amount of area as internal waters that should be territorial seas. These grossly excessive claims have a direct impact on freedom of navigation and freedom of access to littorals. It also has the effect of encroaching on neighboring states' EEZ and continental shelf claims and the resources therein, which makes dispute settlement more difficult, not easier. The ongoing disputes between China and the other claimants of the South China Sea islands or between China and Japan in the East China Sea provide perfect examples. Although these disputes have been lingering for decades, their intensity has been fueled (rather than tempered) since 1982 by the continental shelf and EEZ provisions of UNCLOS, which grant exclusive resource rights to the rightful owner. China's excessive straight baseline claims, resulting in illegally expansive EEZ claims, add fuel to the debate over resources in these areas.

AT: Illegal Fishing

UNCLOS can't solve illegal fishing – no enforcement/awareness

Pedrozo 22 [Raul (Pete) Pedrozo, Howard S. Levie Professor of the Law of Armed Conflict at the Stockton Center for International Law at the U.S. Naval War College and Principal Deputy Staff Judge Advocate, U.S. Indo-Pacific Command, 2022, “Reflecting on UNCLOS Forty Years Later: What Worked, What Failed,” International Law Studies, <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=3033&context=ils>]/Kanke

H. Fisheries Jurisdiction Given that nearly 90 percent of living marine resources are harvested within two hundred nautical miles of the coast, UNCLOS placed most living marine resources under the jurisdiction of coastal States. This grant of management authority was heralded by the coastal States as a boon to their economic growth and food security. Article 56 grants coastal States sovereign rights for the purpose of exploring and exploiting, conserving, and managing living resources within the EEZ.³⁶⁰ This authority includes the right to determine the allowable catch of all living resources in the EEZ, based on the best scientific evidence available, to ensure that these resources are not endangered by over-exploitation.³⁶¹ A coastal State is required to promote the objective of optimum utilization of the living resources in the EEZ. If the coastal State does not have the capacity to harvest the entire allowable catch, it shall give other States access to the surplus.³⁶² Special rules apply to the conservation and management of straddling fish stocks (Article 63), highly migratory species (Article 64), marine mammals (Article 65), anadromous stocks (Article 66), and catadromous species (Article 67). To ensure compliance with its fishery laws, a coastal State is authorized to take a broad range of enforcement measures, to include boardings, inspections, vessel position reporting, embarked observers, and arrests and fines.³⁶³ Despite these broad authorities, coastal States have failed to adequately conserve and manage living resources within their EEZs because they lack the necessary maritime domain awareness and maritime law enforcement capacity and capabilities. The U.N. Food and Agriculture Organization assesses that marine fish stocks have steadily declined since the mid-1970s. According to the Organization's 2020 State of the World Fisheries report, “the proportion of fish stocks that are within biologically sustainable levels decreased from 90 percent in 1974 to 65.8 percent in 2017 . . . , with 59.6 percent classified as being maximally sustainably fished stocks.”³⁶⁴ The “percentage of stocks fished at biologically unsustainable levels increased from 20 percent in 1974 to 34.2 percent in 2017.”³⁶⁵ Illegal, unreported, and unregulated (IUU) fishing exacerbates the depletion of fish stocks and further threatens the sustainability of coastal State fisheries and fragile ecosystems.³⁶⁶ The value of global fish production in 2018 was estimated at \$401 billion,³⁶⁷ but 20 percent of global fish catch results from IUU fishing resulting in billions of dollars in lost revenue every year.³⁶⁸ Rather than create the controversial International Seabed Authority to regulate futuristic mining of deep seabed minerals, UNCLOS III would have been better off creating an organization similar to the International Seabed Authority to regulate world fisheries beyond the territorial sea. I. Environmental Protection

UNCLOS not key – other fishing legislation/treaties solve

CLALS ND [American University Center for Latin American & Latino Studies, multidisciplinary center covering America, the Caribbean, and Latino communities, No Date, “The Scope of IUU Fishing-Related Legislation,” Center for Latin American & Latino Studies, <https://www.american.edu/centers/latin-american-latino-studies/upload/legislation.pdf>]/Kankee

Country Membership in International Treaties One of the primary methods of **building international cooperation** on the issue of IUU fishing **has been through** the adoption of **multilateral international treaties** related to the issue. Currently, there **are numerous international treaties**, as well as non-binding agreements, that relate in part or in their entirety to this topic. The most prominent treaty specific to IUU fishing is the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (**PSMA**). This treaty entered into force in June 2016 as the first binding international agreement to target IUU fishing and now includes more than 70 parties.³⁰ The PSMA mandates that fishing vessels request permission to dock at another country's ports and provide information to the port about their fishing operations, and allows for permission to dock to be denied if a vessel is determined to have been engaging in IUU fishing. Of the nine countries covered by this report, only Argentina, Jamaica, and Suriname are not parties to the PSMA. Argentina is not a party to the PSMA due to its ongoing territorial dispute with the United Kingdom over the Falkland Islands and other South Atlantic islands under British control, though members of the Argentine legislature have called for Argentina to ratify the treaty.³¹ Jamaica and Suriname have engaged with the FAO and the U.S. in recent years about building monitoring, control, and surveillance (MCS) capacity with the eventual goal of joining the PSMA.³² Chile and Uruguay were two of the PSMA's first ratifiers, having ratified the treaty in 2012 and 2013 respectively.³³ Costa Rica (2015), Panama (2016), and Guyana (2016) were next to join the treaty, with Ecuador becoming the most recent party with its 2019 accession.³⁴ Another relevant treaty is the UN Convention on the Law of the Sea (UNCLOS). UNCLOS opened for signature in 1982, entered into force in 1994, and is regarded as the “constitution of the ocean.”³⁵ Although the concept of IUU fishing did not exist when UNCLOS was created, the treaty remains valuable in discussions of the phenomenon because it expanded the rights of coastal states over a 200 nautical mile Exclusive Economic Zone (EEZ) and extended the breadth of the territorial sea to 12 nautical miles. ³⁶ UNCLOS also featured a provision that mandated the coastal state to make available surplus permissible catch by way of fishing access agreements with different countries.³⁷ Finally, Part XII of UNCLOS pertains to the conservation of the marine environment while Article 287 establishes the International Tribunal on the Law of the Sea (ITLOS), which at times hears cases that relate to the issue of IUU fishing.³⁸ Every one of the countries covered by this report is a party to UNCLOS, as are 159 other countries, but not the United States.³⁹ The U.S. has not ratified UNCLOS because of disagreement over its provisions on deep seabed mining and private technology transfers.⁴⁰ The 1993 Convention on Biological Diversity is relevant to IUU fishing because of its Strategic Plan for Biodiversity, adopted in 2010. Biodiversity Target 6 of the Strategic Plan states that by 2020, all fish and invertebrate stocks should be managed and sustained sustainably and legally to avoid overfishing.⁴¹ Every one of the nine countries covered by this report is a party to this agreement. The only UN member state not party to the agreement is the United States (which has signed the treaty but not ratified it). Other relevant major international treaties that touch upon IUU fishing include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**), the Convention on Migratory Species (**CMS**) and its Memorandum on Sharks (**CMS Sharks**), the **FAO** Compliance Agreement, the UN Agreement for the Implementation of UNCLOS Provisions on Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (**UNFSA**), and the International Convention on the Regulation of Whaling (**ICRW**). The most successful of these, in terms of its wide acceptance throughout the region, is CITES, which every one of the nine countries in this report has ratified.⁴² The region's record with the CMS protocols is more mixed, with Guyana, Jamaica, and Suriname not participating, and Argentina, Panama, and Uruguay joining, but as non-parties to the Sharks protocol.⁴³ The state of the UNFSA in the region is complex, as most of the nine countries have signed the agreement but have yet to fully ratify and implement it.⁴⁴ Finally, there is work to be done to institutionalize the ICRW and the FAO Compliance Agreement, as only two and three countries respectively have signed onto those treaties.⁴⁵ The nine countries covered by this report are also engaged in non-legally binding regional and multilateral agreements related to IUU fishing. One such example is the Network for the Exchange of Information and Shared Experiences between Latin American and Caribbean Countries to Prevent, Deter, and Eliminate IUU Fishing (**NEINE**). This is a body of Latin American and Caribbean member-states who seek to facilitate and coordinate regional information sharing on IUU fishing concerns. Chile, Costa Rica, Ecuador, Panama, and Uruguay are all members of this body, alongside Colombia, the Dominican Republic, Guatemala, Peru, Spain, and the U.S.⁴⁶ A second example is the 2018 International Declaration on Transnational Organized Crime in the Global Fishing Industry (hereafter **Copenhagen Declaration**). The Copenhagen Declaration specifies that IUU fishing and transnational organized crime constitutes a threat to sustainable use of marine resources and all of the nine countries covered in this report except Argentina have signed the Declaration.⁴⁷ Bilateral Fishing Agreements, Including with Non-Compliant Actors

AT: UNCLOS Environmental Lawsuits

UNCLOS lawsuits can't solve climate change – no climate applicability

McCreath 20 [Millicent McCreath, Scientia PhD candidate at UNSW Law and former Research Associate with the Oceans Law and Policy Programme at the National University of Singapore Centre for International Law, 11-06-2020, “The Potential for UNCLOS Climate Change Litigation to Achieve Effective Mitigation Outcomes,” Cambridge University Press, <https://scihub.se/https://www.cambridge.org/core/books/abs/climate-change-litigation-in-the-asia-pacific/potential-for-unclos-climate-change-litigation-to-achieve-effective-mitigation-outcomes/BEE6257E415B4682ABBD1E91E708C74D>]/Kankee

Both articles 207 (land-based sources) and 212 (from or through the atmosphere) provide that states must adopt laws and regulations to prevent, reduce and control pollution from the relevant source, ‘taking into account internationally agreed rules, standards and recommended practices and procedures’.²⁴ States must also ‘take other measures as may be necessary to prevent, reduce and control such pollution’, as well as endeavour to establish through the competent international organisation or diplomatic conference global rules and standards.²⁵ They must also enforce their laws adopted accordingly, and must adopt laws and take other measures necessary to implement international rules adopted by the competent international organisation or diplomatic conference. ²⁶ However, UNCLOS environmental obligations have been recognised by courts and tribunals to be obligations of due diligence,²⁷ meaning that states are not obliged to eliminate all forms of pollution absolutely. Further, article 193 provides that ‘states have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment’. UNCLOS therefore specifically provides for a balancing between a state’s right to exploit its natural resources, and its duty to protect and preserve the marine environment. In determining what action is required to satisfy the UNCLOS Part XII obligations in the context of climate change, science and particularly the work of the IPCC will be crucial. 5.1.3 Interpreting UNCLOS in Light of the UNFCCC Regime and the Paris Agreement Many of the Part XII obligations are broad and vague, perhaps because they were written in order to be able to adapt to future circumstances and new sources of pollution.²⁸ Courts and tribunals have therefore found that the content of these obligations is informed by other applicable rules of international law, including principles of international environmental law such as the precautionary approach and the no-harm rule ²⁹ The provisions of UNCLOS are to be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose. ³⁰ To be taken into account are ‘any relevant rules of international law applicable in the relations between the parties’.³¹ In interpreting the UNCLOS provisions in the climate change mitigation context, the UNFCCC and Paris Agreement would be the most relevant rules of international law. With 197 and 189 parties, respectively, ³² the memberships of the UNFCCC and the Paris Agreement encompass essentially all parties to UNCLOS.³³ When considering whether a treaty should be interpreted in an evolutionary or static manner, the intentions of the parties are relevant.³⁴ By defining ‘pollution of the marine environment’ so that it would be able to encompass future forms of pollution, and by including frequent references to other international rules and standards, it would seem clear that the parties intended that Part XII of UNCLOS would be interpreted in an evolutionary manner. ³⁵ As stated previously, the parties intended to conclude a treaty that would stand the test of time.³⁶ Further, the ICJ found in the Dispute Regarding Navigational and Related Rights that where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is “of continuing duration”, the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.³⁷ Most of the terms in the relevant Part XII provisions are highly general. Particularly in the environmental context, the ICJ in the *Gabčíkovo-Nagymaros Case* found that new norms of international environmental law are relevant in the interpretation of general environmental provisions in treaties. ³⁸ Pursuant to article 293 of UNCLOS, an UNCLOS court or tribunal may apply other rules of international law that are not incompatible with it, and it would seem that the parties expected other rules of international law to be relevant when interpreting UNCLOS. Therefore, in determining where the balance between resource exploitation and environmental protection is to be found, reference can be had, alongside scientific research and the conclusions of the IPCC, to the UNFCCC system including the Paris Agreement, ³⁹ which represents a legal consensus by a vast majority of states on the action necessary to mitigate climate change. Where the obligations discussed above refer to rules and standards adopted by the competent international organization or diplomatic conference, they can be taken to refer to the UNFCCC and the Paris Agreement, to the extent that they are relevant to the protection of the ocean. ⁴⁰ The content of these agreements can inform the interpretation of the UNCLOS due diligence ocean protection obligations. Authors have previously concluded that breach of the UNCLOS Part XII climate change obligations could be found by reference to non-compliance with the Kyoto Protocol. ⁴¹ According to Tim Stephens, because the Kyoto Protocol’s emission reduction targets were not adequate to prevent serious and irreversible damage to the marine environment, ‘it is difficult to see how States can meet their overriding obligation under Article 192 . . . by satisfying the modest requirements of the Kyoto Protocol’.⁴² Despite this, he concluded that due to the difficulty of identifying emission reduction requirements without such a global agreement, ultimately the UNFCCC and its implementing agreements ‘remain the

primary means to drive mitigation policy that will protect the oceans'.⁴³ The Paris Agreement, the successor to the Kyoto Protocol, operates underneath the UNFCCC and has as one of its stated aims the enhanced implementation of the UNFCCC. The objective of the UNFCCC is the stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner. ⁴⁴ Relevantly in the oceans context, under article 4 of the UNFCCC, parties commit to 'promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems'.⁴⁵

The Paris Agreement does not specifically refer to the ocean, except in the preamble. Unlike the Kyoto Protocol, which set binding emission reductions targets, the Paris Agreement takes a bottom-up approach, with state parties free to decide on their own NDCs towards the overall temperature goal of the Agreement. This means that finding a 'breach' of the Paris Agreement, unless a state has not adopted an NDC at all, is not as clear as it would have been under the Kyoto Protocol. Under article 4(2) of the Paris Agreement, parties have individual and binding obligations to prepare, communicate and maintain NDCs, as well as to take domestic measures in furtherance of their NDC. While states have discretion to determine their own contribution, an NDC must be 'ambitious'. ⁴⁶ However, these obligations are obligations of conduct, not of result, and while there is a good faith expectation that parties will achieve their NDC, the Agreement does not go so far as to require them to do so. ⁴⁷ Further, by not specifying which GHG emissions must be reduced, a state may choose to meet its targets by reducing GHGs other than CO₂. CO₂ emissions are the cause of ocean acidification, which, as discussed earlier in this chapter, is one of the primary climate change-related threats facing the ocean. ⁴⁸ In theory, though perhaps unlikely in practice, a state can therefore be in compliance with the Paris Agreement while taking no steps to prevent ocean acidification. The UNCLOS provisions clearly require at least some action to be taken to prevent, reduce and control marine pollution from all sources,⁴⁹ and therefore they cannot be read exclusively through the prism of the Paris Agreement. It is also important to note that the Paris Agreement is guided by an overall temperature goal; however, scientific knowledge is lacking on how global surface temperatures affect the oceans.⁵⁰ The IPCC is currently in the process of producing a special report on climate change and the oceans and cryosphere to fill the numerous knowledge gaps related to climate change and the oceans.⁵¹ Without scientific research, it is therefore difficult to determine just how relevant the Paris Agreement is to the protection of the oceans. The Paris Agreement is undoubtedly a significant international climate change instrument; however, it almost completely ignores the oceans. When it comes to the ocean, the Paris Agreement clearly does not 'cover the field' on climate change mitigation. Applying the Paris Agreement in the interpretation of UNCLOS, considering the minimal attention it pays to the protection and preservation of the ocean, it is clear that the mere adoption of an NDC will not constitute 'all necessary measures' under article 194 of UNCLOS, unless the NDC includes ambitious measures targeted at mitigating the effects of climate change on the ocean. To find that the UNCLOS climate change mitigation obligations are met merely by the adoption of an NDC, no matter whether or not it is achieved, and whether or not it targets the ocean, would remove all substance from the Part XII obligations. Although the Paris Agreement is relevant when interpreting the Part XII obligations, it does not erase them. Article 311(3) of UNCLOS provides that state parties may conclude subsequent agreements modifying the operation of UNCLOS as between themselves, provided that the subsequent agreement does not affect the application of the basic principles of the convention. The protection and preservation of the marine environment is an essential part of UNCLOS, as recognised in the preamble. It can arguably be considered one of its 'basic principle[s]'. If so, the Paris Agreement may only modify the operation of the Part XII obligations relevant to climate change mitigation to the extent that the overall goal of preservation and protection of the marine environment is maintained. The lack of attention paid to the ocean in the negotiation of the Paris Agreement demonstrates that, in any case, the parties did not intend that it would modify the operation of UNCLOS.

5.2 Making the Case

Even successful lawsuits can't solve climate change

McCreath 20 [Millicent McCreath, Scientia PhD candidate at UNSW Law and former Research Associate with the Oceans Law and Policy Programme at the National University of Singapore Centre for International Law, 11-06-2020, "The Potential for UNCLOS Climate Change Litigation to Achieve Effective Mitigation Outcomes," Cambridge University Press, <https://sci-hub.se/https://www.cambridge.org/core/books/abs/climate-change-litigation-in-the-asia-pacific/potential-for-unclos-climate-change-litigation-to-achieve-effective-mitigation-outcomes/BEE6257E415B4682ABBD1E91E708C74D>]/Kankee

At the most basic level, it can be said that states in general comply with their international obligations, including the judgments of international courts and tribunals.¹⁰¹ High-profile cases of non-compliance such as that of China and its non-recognition and to some extent non-compliance with the award in the South China Sea Arbitration could potentially contribute to ensuring compliance of states wishing to be seen as responsible international actors. States such as Australia that made strong public statements condemning China's actions regarding that case may be less likely to reject or ignore the judgment in an UNCLOS climate change case. ¹⁰² The difficulty is, however, that even if the UNCLOS court or tribunal is able to find a breach of an UNCLOS climate change obligation, it may not decide or may not be able to decide what mitigation action those obligations require.¹⁰³ A finding that a state is not meeting its UNCLOS climate change obligations would require that state to do more to mitigate climate change, but it is unlikely that the court or tribunal would prescribe the precise action to be taken. Nonetheless, by clarifying to some extent the climate change mitigation action required by UNCLOS, or even what action is deemed inadequate, the judgment may encourage other states to amend their climate change policies to comply with its findings. Although a finding from an UNCLOS court or tribunal on the responsibility of states parties to mitigate climate change has the potential to advance the climate change mitigation agenda, it also comes with risks. Even if the court or tribunal was able to make a finding specifically describing the respondent state's obligations to mitigate climate change under UNCLOS, there is a risk that the obligation defined by the court may be weaker than anticipated. It may be a more prudent strategy to ask the court or tribunal to find that the respondent has breached its obligations under UNCLOS to mitigate climate change, but not to request a finding on the specific action that is required. The indirect outcomes of an UNCLOS climate change case may also be effective in triggering global mitigation efforts. The potential for climate change litigation in general to put pressure on key emitters and governments and to draw attention to the need for climate change mitigation is recognised. ¹⁰⁴ Many of the states most affected by climate change are developing states without a great deal of international political power. Interstate litigation, particularly in the case of compulsory binding proceedings, can equalise the power imbalance between a politically weak applicant and a politically strong respondent. Interstate cases such as those under UNCLOS are often high profile and receive a great deal of media attention, particularly if they relate to a controversial issue such as climate change. The South China Sea Arbitration between the Philippines and China continues to feature heavily in the global media over two years after the award on the merits was delivered. ¹⁰⁵ An UNCLOS climate change case could give a voice and a platform to a small developing island state or a state with a large low-lying coastal population. It could also help increase the global demand for climate change action and could contribute to the strengthening of states' climate change policies and NDCs. The threat of international litigation could also force states to increase their mitigation action so as to avoid having to defend an UNCLOS case of their own. As stated by Burns, 'the spectre of litigation may help to deepen the commitment of States to confront the most pressing environmental issue of our generation'.¹⁰⁶

5.4 Conclusions Climate change is having increasingly severe impacts on the marine environment in a variety of different ways. UNCLOS regulates all forms of pollution of the marine environment, including causes and effects of climate change. The 168 parties to UNCLOS are subject to binding obligations to take all measures necessary to prevent, reduce and control such pollution from climate change. What sets UNCLOS apart in the context of global climate change treaties is its compulsory binding dispute settlement procedure. This presents an opportunity for a disproportionately affected state to bring interstate proceedings against a major polluter to enforce its compliance with its UNCLOS climate change obligations. There are several procedural and substantive hurdles that will have to be crossed in order to achieve a successful and useful outcome; however, they would not appear to be insurmountable. Although an UNCLOS climate change case has the potential to trigger effective mitigation outcomes, it will not on its own be able to keep global temperatures below a 1.5–2°C rise. While a court or tribunal may find the respondent in breach of its obligations, due to the due diligence nature of the UNCLOS environmental obligations, and the difficulty of applying the bottom-up Paris Agreement obligations in the UNCLOS context, it is difficult to imagine the judgment prescribing the exact standard of required conduct. However, a finding from an international court or tribunal that a certain major polluter is in breach of its international obligations due to its failure to take sufficient climate change mitigation action could lead to beneficial direct and indirect outcomes. Considering that states generally comply with their international obligations, a state subject to an adverse judgment may be likely to amend its policies to

comply with its obligations as described by the court or tribunal. Indirectly, the case would generate a great deal of media attention, increasing public awareness of the need to take climate change action. It may also encourage other states to improve their policies in order to avoid defending a case of their own.

UNCLOS ocean protections fail – squo proves

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Nonetheless, of critical importance to the United States and other seagoing nations, the provisions of UNCLOS “regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.”³⁷⁸ The only requirement is that States shall ensure, “by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable,” with UNCLOS.³⁷⁹ Despite this elaborate framework, **UNCLOS has failed** in its objective **to protect** and preserve **the marine environment**. **The world’s oceans are more polluted today than ever before**. According to the U.S. National Oceanic and Atmospheric Administration, “billions of pounds of trash and other pollutants enter the ocean” each year because of littering, poor waste management practices, storm water discharge, or natural events such as tsunamis and hurricanes.³⁸⁰ Some of the debris ends up on the beach, some sinks to the ocean floor, some is eaten by fish and marine animals mistaking it for food, and some collects in ocean gyres formed by rotating ocean currents. Ingestion of plastics or entanglement in derelict fishing gear can result in the death of marine species. Contaminants, such as heavy metals and microplastics, can also accumulate in seafood, making it harmful for human consumption. In this regard, over one-third of shellfish-growing waters in the United States are negatively affected by coastal pollution.³⁸¹ Oil and chemical spills also continue to impact the wellbeing of the oceans. Over 80 percent of pollutants, however, come from land-based activities that result in runoff. Nonpoint sources of pollution can include septic tanks, storm water discharge, vehicles, farms, livestock ranchers, fertilizer from yards, and timber harvest areas. Excessive amounts of nitrogen and phosphorus in a body of water, for example, can trigger algal blooms—an overgrowth of algae. These harmful algal blooms, known as red tides, can produce toxic effects that harm marine life. Excess nutrients in the water can also cause dead zones (hypoxia). As algae sinks and decomposes, the decomposition process reduces the level of oxygen in the water causing marine species to die or leave the area.³⁸² In short, **while the Convention may have raised awareness of the adverse effects of marine pollution**, human activities continue to threaten the health of the world’s oceans and **UNCLOS has done little to curb that threat**. Despite the obligation imposed on States parties to protect and preserve the marine environment, **more than 50 percent of land-based plastic-waste leakage originates from just five parties to the Convention**—China, Indonesia, the Philippines, Thailand, and Vietnam.³⁸³ Concerted **action by these five States alone**, imposed through compulsory dispute settlement, **could reduce global leakage** of plastic waste **into the ocean by 45 percent by 2025**.³⁸⁴ J. Declarations and Statements

AT: Arctic

No Arctic war or Chinese takeover

Buchanan 20 [Elizabeth Buchanan, Australian polar geopolitics expert, PhD in Russian Arctic Strategy from the Australian University, 11-5-2020, "Why the Arctic is Not the 'Next' South China Sea", War on the Rocks, <https://warontherocks.com/2020/11/why-the-arctic-is-not-the-next-south-china-sea/>]/Kankee

The Same, but Different Both the South China Sea and Arctic are home to increasing great-power naval posturing, featuring active great powers intent on making maritime claims inconsistent with UNCLOS and asserting exceptional jurisdictional rights. The unwillingness of the United States to ratify UNCLOS — while claiming that the portions of UNCLOS related to maritime claims have status and power as customary international law — makes the legal and institutional picture murkier. Yet the extent to which the South China Sea and the Arctic are comparable as “contested commons” is limited. First, there are crucial geographical differences. Although the Arctic is the world’s smallest ocean, it is still five times larger than the South China Sea, and home to delineated maritime spaces and functioning rules of the game in the region. The portion of the Central Arctic Ocean outside of claimed territorial waters and exclusive economic zones is roughly the size of the Mediterranean Sea. Despite popular connotations of “new Cold Wars” and clashes in the Arctic, the region is home to long-standing maritime agreements, many treaties (including on search and rescue, and oil spill responses) negotiated between and among Arctic states, and is governed by the consensus-based Arctic Council. It is a zone in which the renewed tensions between Russia and the West are largely absent, and remains a region of international cooperation and coordination. Five Arctic Ocean coastal states have exclusive economic zones which extend out into various seas (the Greenland, Norwegian, Barents, Kara, Laptev, East Siberian, Chukchi, and Beaufort Seas) above the Arctic Circle, which in turn form the Arctic Ocean. China has anointed itself as a “near-Arctic State,” viewing the Central Arctic Ocean as a global commons. In contrast to the relative harmony and cooperation in the Arctic, the South China Sea is a hotbed of disagreement and competition. Encompassing over 3 million square kilometers, the South China Sea is subject to a range of overlapping claims over land features and jurisdictions, including sovereignty over islands and rocks, control of low-lying features such as reefs and shoals, the classification of land features, control of resources, and freedom of navigation. Contests over exclusive economic zones abound. Furthermore, China claims “sovereign rights” within the nine-dash line (approximately 90 percent of the South China Sea), a claim which was quashed by the ruling of 2016 South China Sea Arbitral Tribunal. Beijing has rejected and largely ignored that ruling. Sovereignty disputes concern the ownership of the hundreds of features dotting the sea, including islands, rocks, reefs, submerged shoals, and low-lying elevations, some or all of which are claimed by China, Taiwan, Philippines, Vietnam, and Malaysia. Sovereignty of these land features and their classification — as islands, rocks, or low-lying elevations — affect the rights to maritime resources, such as oil, gas, and fish. The above five states, plus Brunei and Indonesia, claim exclusive economic zones and continental shelf in the South China Sea beyond their mainland and archipelagic baselines. Under international law, these maritime zones entitle states to limited sovereign rights (i.e., to resources), rather than full sovereignty. Strategic competition at sea has been at least partly driven by China’s rising naval militarization. The South China Sea is considered a “near sea” and its geographic proximity to the mainland is central to the China’s strategic imagination and threat perception. In addition to conventional concerns about territorial defense, the South China Sea is also important for China because of its nationalist claims to all of the tiny land features, and its desire to exploit resources such as oil, gas, and fish. This has also contributed to the growing militarization of the South China Sea. In addition, six of China’s 10 largest ports can only be reached via this body of water. These geographical differences render it too simplistic to extrapolate the geopolitics of the South China Sea to the Arctic. This is further illustrated by drilling down into the differences in the strategic trajectories in terms of the balance of power and international legal norms. Balance of Power Beginning in 2014, China engaged in rapid, large-scale militarization and artificial island-building in the South China Sea, raising alarm about its capacities and willingness to restrict navigation and exert sea control of this localized area. Despite pledging not to militarize the islands, China took advantage of the geographic isolation and limited surveillance of these remote features to build three large, mid-ocean airfields suitable for military aircraft in 2016. While some other claimant states also engaged in artificial island-building and militarization activities, China played a substantial role in militarizing the South China Sea, for example in emplacing anti-ship missiles and long-range surface-to-air missiles on artificial islands, contesting the transit of warships, and using maritime paramilitary forces for surveillance and intimidation of non-Chinese vessels. These activities have precipitated new concerns about China’s intentions, including whether it wants to push the United States out of the first island chain. These actions have precipitated concerns that China aims to revise and supplant or ignore maritime rules, with follow-on consequences for regional order more generally. They directly challenge U.S. naval supremacy in the region. China’s actions threaten U.S. interests in freedom of navigation and undermine the global maritime order, which has enabled the U.S. Navy to project power and enforce free transit for decades. By contrast, in the Arctic, balance-of-power realities and great-power politics are not new. The region is no stranger to geopolitical competition — it was a crucial battleground during the Cold War, as it is the shortest distance for missiles to fly between the United States and Soviet Union. Further, the Arctic represented a key flank for NATO and strategically critical sea line of communication for wartime replenishment between Europe and North America. Since the

Cold War, regional cooperation and U.S.-Russian ties have remained somewhat siloed from tensions beyond the Arctic. While new players and prizes have emerged in the Arctic “great game,” regional cooperation remains. Of course, the preexisting U.S.-Russian power balance in the Arctic is an important consideration when adding Beijing to the Arctic power mix. U.S. Arctic policy in recent years has been revived as part of a broader focus on renewed great-power competition. Under the Trump administration, there has been a litany of Arctic updates — the Department of Defense, Air Force, and Coast Guard have all tabled new arctic strategies. Increasingly, China is employing geoeconomics, rather than rapid militarization as seen in the South China Sea, to tilt the balance of power in the Arctic. Beijing uses campaigns targeted toward the Nordic states and within the resource sector to increase influence, legitimacy, and engagement in the Arctic region. Chinese economic engagement in Greenland’s resource sector, as well as its growing (albeit ever so slightly) economic ties in Iceland and Norway, are illustrative of China’s efforts to expand its role in the Arctic economy. Much of China’s foreign investment in Arctic energy ventures is targeted at the Russian Arctic zone — particularly the liquefied natural gas projects on the Yamal Peninsula. However, Kremlin awareness of the potential debt-trap diplomacy Beijing undertakes has resulted in a unified Russian policy to curtail majority ownership by China of any Russian Arctic ventures. Efforts in the South China Sea to increase cooperation — such as code of conduct negotiations between China and the Association of Southeast Asian Nations, or joint development plans — are failing to develop robust cooperative mechanisms for the management or resolution of maritime and territorial disputes. In contrast, Washington’s balance-of-power considerations for the Arctic region tend to overstate the conflictual nature of the region — which, unlike its Cold War predecessor, is an environment characterized by international cooperation. The U.S. interests are also different across the maritime theaters: In the South China Sea, the America’s primary interest has traditionally been cast as freedom of navigation and maintaining the capacity to maneuver within the first island chain, although recent diplomatic efforts have seen the United States provide more public support for the maritime rights of Southeast Asian claimant states. In the Arctic, U.S. interests are primarily territorial, as it is one of five Arctic Ocean coastal states. The Arctic is also a region through which Washington shares a border with Russia in the Bering Strait. Additionally, there are vast resource interests in the Alaskan Arctic sector, an indigenous population, and strategic basing interests for power projection into the North Atlantic, Arctic, and Pacific Oceans. Hydrocarbon (oil and natural gas) resource exploitation is a clear driver of the South China Sea and Arctic “great games.” The Arctic is often touted, as per the U.S. Geological Survey, to hold an estimated 30 percent of the world’s remaining gas and 13% of its untapped oil reserves. Of course, the majority of these estimates fall within zones of the Arctic which are not disputed, clearly within delineated territories. On the high seas of the Arctic Ocean, Chinese activity remains focused on scientific and research priorities, at least for now. China is party to the Central Arctic Ocean Fisheries Agreement, and while it is legally allowed to exploit the Central Arctic Ocean region, Beijing has continued to abide by the fisheries ban. In the South China Sea, on the other hand, China has been aggressively attempting to deny Southeast Asian claimant states their legal entitlements to maritime resources under UNCLOS. One of the contemporary challenges posed in the South China Sea are the so-called “gray zone tactics” employed by China’s paranaul forces to assert its claims to disputed land features and adjacent waters. Described as a “cabbage strategy,” China’s maritime coast guard, fishing fleets, and maritime militia form layers of pressure that constitute its first line of maritime defense. China’s proximity to the South China Sea allows it to use its growing number of maritime assets to implement its gray zone tactics to advance its claims. In contrast, China’s naval capabilities are not yet advanced enough to project power in the more distant and complex Arctic high seas environment. International Legal Norms Distorting international legal norms is a central element of China’s South China Sea approach. Although it has engaged in a “lawfare” strategy to support its territorial and maritime interests in the South China Sea, many of its pseudo-legal arguments are inconsistent with UNCLOS. Possibly the highest profile are Beijing’s claims to “historic rights” inside the nine-dash line, which would give China sovereignty over land features as well as sovereign rights to fishing, navigation, and exploration and exploitation of resources. This argument was rejected by an Arbitral Tribunal instituted under UNCLOS in 2016, which Beijing has refused to acknowledge as binding or legitimate. The second ambit claim is China’s Four Sha (four sands) strategy, which involves constructing straight archipelagic baselines around the island groups of the Pratas Islands, Paracel Islands, Spratly Islands, and Macclesfield Bank. Here, Beijing lawyers and academics have developed a new legal theory that the Four Sha are China’s historical territorial waters and part of its exclusive economic zone and continental shelf, even though the offshore archipelagos do not conform with standards for drawing straight archipelagic baselines set out in Article 47 of UNCLOS, which states that the ratio of the area of the water to the area of the land must be between one to one and nine to one. In these South China Sea island groups, the water area is too large to meet these requirements. Nevertheless, the Four Sha theory indicates a desire to claim internal waters within such baselines, which, if successful, would entitle China to full sovereignty over the area rather than the limited sovereign rights afforded in other maritime zones such as the exclusive economic zone or continental shelf. The third concerning element of China’s lawfare strategy is the use of domestic law to justify double standards in implementing principles of freedom of navigation. For example, the U.S. interpretation that innocent passage includes warships without prior notification is not universally shared. Some legal scholars argue that the assertion of greater security rights at sea is a sign of creeping jurisdiction by coastal states. For example, Beijing asserts its right to regulate foreign military activities in its claimed exclusive economic zone, contrary to widespread understandings of UNCLOS provisions. Beijing has presented the South China Sea as a sui generis area subject to Chinese domestic law, rather than international law, which constitutes a form of jurisdictional exceptionalism. Yet in the Arctic Ocean, Beijing has continued to adhere to the agreed international legal architecture, despite its increased footprint and interest in the region. Like the South China Sea, the international shipping routes emerging from the melting Arctic zone are eyed by Beijing as a key component of the Polar Silk Road aspect of their Belt and Road Initiative. For now, China looks to use the most viable Asia-to-Europe shipping passage — the Northeast Passage. A large section of the Northeast Passage is Russia’s Northern Sea Route, an international waterway defined by Russian law. In the Northern Sea Route, Russia has somewhat mimicked China’s jurisdictional exceptionalism in the South China Sea. Russia argues that the Northern Sea Route constitutes “straits used for internal navigation,” and is thus not subject to all UNCLOS rights like innocent passage. Russia’s application of UNCLOS Article 234 (commonly known as the ice law) stipulates that states can enhance their sovereignty and

control over an exclusive economic zone if the area is subject to ice coverage or grounds for intensified environmental management. Moscow has long applied this entirely legal approach and developed deeper jurisdictional exceptionalism in recent years. Russia has crafted domestic laws and implemented strategies for the management of the Northern Sea Route. Examples include laws requiring Russian pilotage of all vessels transiting through the Northern Sea Route, toll fees, and prior warning or indication of plans to use the route. The United States makes its own tantalizing jurisdictional exceptionalism effort by refusing to ratify UNCLOS while expecting others to conform to it. In a broad sense, the three great powers across these maritime regions — the United States, China, and Russia — appeal to jurisdictional exceptionalism, but such great-power privileges are applied inconsistently according to geography and interests. Such exceptionalism has worrying implications for the capacities of global governance regimes to enforce global standards that apply to all states. China defends its jurisdictional exceptionalism in the South China Sea, yet is slowly starting to reject Russia's application of the same exceptionalism and historical argument for its Arctic exclusive economic zone. This is particularly the case for the Northern Sea Route. Beijing is increasingly opting not to refer to the Northern Sea Route at all, speaking merely in terms of the Northeast Passage. While double standards are nothing new in international politics, it is interesting to witness the ways in which states pick and choose, manipulate, and artfully interpret international law to fit agendas. It's Geography, Stupid There are clear indicators of Chinese revisionism at sea extending beyond the South China Sea into the Arctic. Both regions are a portent for how agreed-upon international rules are applied in divergent ways across different settings toward diverse strategic outcomes. Lumping the Arctic and South China Sea into one basket as theaters hosting Chinese maritime revisionism, as if the exact same strategy is unleashed in all maritime strategy, clouds the reality of the two regions' distinct strategic environments. A constant across both flashpoints is the significant role that geography plays. Geographical proximity has allowed China to use the nine-dash line to justify an extension of its land boundaries out to sea. This is a form of mapped territorialization which is now even implicating popular culture and media. This is possible in large part due to the proximity of the South China Sea to mainland China. Russia has also used geographical proximity to bolster domestic narratives of Arctic greatness and to justify its Northern Sea Route exceptionalism. China's 2018 Arctic Strategy flagged Beijing's "near-Arctic" identity and has cemented Beijing's strategic interest in the region, yet it is unlikely that a mapped territorialization will result in the Arctic. Beijing's lack of proximity to the Arctic is somewhat a revenge of geography that not only curtails China's ability to legitimize itself amongst Arctic-rim powers, but is also a constraining factor for any domestic public relations agenda in China. China's Four Sha strategy is based on an assumption of sovereign ownership of contested land features in the South China Sea. Russia, too, bases its extended continental shelf claim on contested features of the Arctic. This claim is currently under consideration at the Commission on the Limits of the Continental Shelf. The underwater ridge which Russia argues is an extension of the Siberian continental shelf extends up to the North Pole along the Arctic Ocean seabed. This ridge is also claimed by Denmark (by way of Greenland) and Canada. The three states will likely deliberate between themselves any extended exclusive economic zone claims, given that the commission is unable to award territory and merely rules on the scientific evidence presented. Contested land features are a hallmark of the current overlapping claims to the North Pole, but there is no avenue for China to tap into this particular contest of land features in the Arctic. There is, however, the potential for China to claim ice floes in the high seas region of the Arctic Ocean — perhaps to even fortify or build its own floating feature in this region, climate change allowing. In reality, this is unlikely due to the sheer operational challenges, none the least periods of 24-hour darkness, and a harsh operational environment which makes no commercial sense nor provides any limited strategic pay-off to repeating its South China Sea approach in the Arctic. Overall, the South China Sea and the Arctic are very different maritime regions with distinct geopolitical characteristics. China is clearly borrowing from the great-power exceptionalism playbook in the South China Sea. Yet while Beijing has articulated a clear strategic interest in the Arctic, a replication of its South China Sea play book in the Arctic is highly unlikely. Maritime exceptionalism in approaches to UNCLOS are localized and interest-based according to geography, rather than generalized and values-based seeking wholesale revision of the "rules-based international order." This has implications for understanding challenges to multilateral governance of the global commons, particularly for how states seeking to preserve norm-based standards should calibrate their policies according to specific geographical regions, rather than relying upon a generic appeal to a "rules-based order."

UNCLOS fails – the treaty wasn’t designed climate change land changes and states don’t require UNCLOS

Postler 20 [Ashley Postler, BA in Political Science from UMich, MA candidate in Security Studies from Georgetown, 02-24-2020, "UNCLOS in the Arctic: A Treaty for Warmer Waters", Georgetown Security Studies Review, <https://georgetownsecuritystudiesreview.org/2020/02/24/unclos-in-the-arctic-a-treaty-for-warmer-waters/>]/Kanke

Climate change also complicates how extended continental shelves are determined in the Arctic, a task currently the responsibility of the geology, geophysics, and hydrography experts comprising the Commission on the Limits of the Continental Shelf (CLCS).[ix] Claims submitted to the CLCS must be supported by scientific and technical data, which is more complicated in the Arctic as ice coverage makes it difficult to conduct these studies.[x] To date, all of the A5—with the exception of the U.S.—and Iceland have made their submissions to the CLCS. Norway and Iceland have already received their recommendations from the Commission and for the most part settled their respective maritime boundary delimitations with adjacent coastal states. However, Russia’s (2015),[xi] Canada’s (2019), and Denmark’s (2014) claims overlap around the center of the Arctic Ocean by an area of 54,850 square nautical miles.[xii] In the future, continuing reduction in ice coverage will provide opportunities to revisit claims already settled and potentially alter agreed-upon delineations. Although maritime boundary delimitations made on the basis of CLCS recommendations are considered binding under UNCLOS, the introduction of new data made discoverable by retreating Arctic ice could prompt the region’s coastal states to eschew this stipulation.

There are also concerns about the usefulness of CLCS, and the underlying tenets of UNCLOS, to serve as a mechanism for resolving extended continental shelf disputes should they arise. Although UNCLOS has established procedures for peacefully settling legitimate overlapping claims,[xiii] it has generally been left to the relevant states to delimitate, amongst themselves, their maritime boundaries on the basis of recommended continental shelf delineations. While the 2008 Ilulissat Declaration did affirm the A5’s commitment to abide by the principles of the law of the sea in resolving their overlapping claims in the Arctic, much has happened in the decade since that could signal the fraying of this commitment. Notably, Russia’s annexation of Crimea, along with an Arctic military buildup that far surpasses that of its regional neighbors, has sparked concerns about how the state might react to an unfavorable recommendation from CLCS on its recently (re)submitted claim. After all, a state does not have to be a party to UNCLOS to exercise sovereign rights to explore or exploit the resources in its continental shelf up to, or in some cases beyond, 200M.[xiv] Furthermore, states are free to exercise these rights in their continental shelves without submitting claims to the CLCS.[xv] Therefore, while any state can choose to go through the CLCS process for clarifying or disputing recommendations, it can also take various forms of action outside this channel, including militarily, which would only intensify the geopolitical tensions coming to the fore in the Arctic.[xvi] Whatever the propensity for conflict in the Arctic, the region is poised to test crucial UNCLOS provisions that were not even structured with the Arctic in mind.[xvii] If the Convention was ill-equipped to sort out the issues in a more consistently-frozen circumpolar north when it was conceptualized, it is even more underprepared now to address an Arctic environment in the throes of rapid, profound, and fluctuating climatic transformation. UNCLOS makes more sense for the world’s waters that are not in a constant state of change.

UNCLOS not key to Arctic law – members violate and non-members like the US abide by it

Tingstad 23 [Abbie Tingstad, Arctic Research Professor, Center for Arctic Study and Policy, U.S. Coast Guard Academy, 12-19-2023, "The US Is Taking an Important, but Imperfect Step in Initiating Extended Continental Shelf Claims – What Are the Implications for the Arctic?", Wilson Center, <https://www.wilsoncenter.org/article/us-taking-important-imperfect-step-initiating-extended-continental-shelf-claims-what-are>]/Kanke

US neighbors Canada and Russia, and other Arctic nations have made ECS claims in the high north through UNCLOS, as they have at lower latitudes. Numerous states including France (closely behind the U.S. in EEZ size) and China have submitted claims to the UN to extend continental shelves around their EEZs as well. Although the US abides by UNCLOS in practice, not formally ratifying it has raised questions about the extent to which the nation can or cannot formally make ECS claims or dispute those of others. What are the implications of the US ECS announcement? On the one hand, **asserting ECS claims, even without ratifying UNCLOS, is important for US communication of its national interests** in places such as the Arctic, home to vast energy, mineral, and fish resources. Misinformed claims of impending “resource wars” in media and elsewhere have created narratives against the grain of historical cooperation in that far northern region. **Signaling US intent** with regard to the ECS in the region **could** help **reinforce the reality that the vast majority of existing and potential Arctic resources are** or could be **under the legal jurisdiction of the eight Arctic states, removing a potential source of dispute or competition**. On the other hand, lacking UNCLOS accession, US allies and adversaries alike may perceive the announcement as circumvention of the rules and norms of international maritime governance and decision-making. This could cause some issues for cooperation in the Arctic, for example, where UNCLOS is a central tenet of governance, considering that much of the region consists of the Arctic Ocean. Yet **the US has demonstrated** for years that **it can abide by UNCLOS without ratifying** it, and even **nations that have** fully **ratified UNCLOS**, such as **China and Russia, have challenged its interpretation**. Ratifying the Convention thus doesn’t guarantee smooth sailing, though many would argue that it does provide both symbolic and some tangible benefits in international negotiations. The US is in a difficult spot considering that its lead diplomats are not the ones charged with ratifying the Convention. In a world of hard choices, today’s announcement provides a choppy way forward.

No Arctic war – Arctic Council solves

Madden 24 [Mia Madden, research assistant at Brown University, 5-12-2024, "On Thin Ice? The Delicate Geopolitics of the Arctic and the South China Sea", Brown Political Review, <http://web.archive.org/web/20240615103650/https://brownpoliticalreview.org/2024/05/on-thin-ice/>]/Kankee

The South China Sea is another geopolitically significant region, where multinational competition over access to resources, strategic positions, and trade routes has ballooned into a more overt, hostile conflict. Since the 1970s, China, Brunei, Indonesia, the Philippines, and Malaysia, among other countries, have made competing claims over islands and zones in the South China Sea. As in the Arctic, significant untapped oil and gas reserves have been discovered in the South China Sea's floor. The region also serves as a vital passage for maritime navigation. But beyond these general similarities, comparisons between the Arctic and the South China Sea are excessively simplistic. The Arctic's main governing body is the Arctic Council, an intergovernmental organization consisting of eight member states (the eight Arctic countries) and thirteen observing states, including China, Germany, and India. Since the end of the Cold War, the Council has resolved disputes in the region by publishing agreements and establishing norms for environmental sustainability. The Council is consensus-based and relies on cooperation between all members. It has been applauded for its success as a forum for Arctic states and Native peoples to address shared concerns, relying on science, deliberation, and trust. The Arctic Council has even been uplifted as a model for other regions in need of cooperative governance solutions. The South China Sea, on the other hand, does not have a unified governance structure. Recent efforts to resolve territorial disputes have come from the intergovernmental Association of Southeast Asian Nations (ASEAN). ASEAN has 10 member states—Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam—and aims to be a cooperative platform for addressing regional economic and security issues. Although it has experienced some success in fostering the economic integration of its members, the Association has struggled to respond cohesively to China's territorial claims. ASEAN's slow-moving attempts to create a South China Sea Code of Conduct have granted China ample time to bolster its military presence and consolidate its operations in the contested waters—making the dynamics of military involvement in the South China Sea far different from in the Arctic. Although Russia and China have made assertions of their interests in the Arctic, they have both been relatively civil. In the South China Sea, conversely, China has established a much stronger military presence. Even as the Arctic warms up to increased activity, military concerns are less pressing. Canadian Inuit military leaders point to the unforgiving conditions of the Arctic and the general lack of preparedness of Arctic countries for polar conflict as reasons to doubt any outbreaks, at least in the short term. Under the UN Convention on the Law of the Sea, countries have jurisdiction over all living and nonliving resources within the 370-kilometer exclusive economic zone (EEZ) off their coasts. Contested EEZs are central to the conflict in both the Arctic and South China Sea. However, the types of EEZ disputes are different between the two regions. Much of the Arctic's natural gas reserves lie beyond the EEZ of any singular country. As a result, nations who desire the resources of the Arctic must try to expand these zones. Russia has made three attempts to expand its EEZ, first in 2001 and most recently in 2021, claiming that its continental shelf covers up to 70 percent of the Arctic. These proposals have not been approved by the UN, and Russia has yet to overstep its boundaries. China has successfully established a far more advantageous EEZ in the South China Sea, asserting its sovereignty over almost the entire waters. China's nine-dash line, first mapped in 1946, extends its EEZ by over 1,000 kilometers in some places and cuts through the EEZs of Vietnam, the Philippines, Malaysia, Brunei, and Indonesia. In 2016, the United Nations determined that the nine-dash line was baseless and that much of the region should be under the control of the Philippines. China has rejected the UN decision and continues to make exploitative advances. Should EEZ disputes arise in the Arctic, they will concern whether or not countries can expand into international waters rather than the overlap in existing EEZs. China has made efforts to establish itself in the Arctic, claiming to be a "near-Arctic" state and referring to the Arctic as the "Polar Silk Road." In 2018, it published the Arctic Policy white paper outlining plans to become influential in the region. China's motives for seeking such influence have explicitly concerned resource extraction and access to shipping routes. Despite these assertions, China has no territorial claims in the Arctic, as it does in the South China Sea. Connecting China's current interests in the Arctic with future sovereignty claims is a stretch. The Arctic and the South China Sea further differ in the relative accessibility of their resources. Although the Arctic is becoming easier to exploit, extracting resources from the region is still extremely difficult. Harsh conditions and relative remoteness pose significant challenges to building the proper infrastructure for extraction. Moreover, this infrastructure would be expensive and difficult to execute at the scale necessary to render projects worthwhile. China, among other nations, has made technological advances with its nonpolar deep-sea mining equipment in recent years, making extraction projects in the South China Sea much more feasible than those in the Arctic. The Arctic also remains geographically isolated from major centers of global economic activity, which continue to gravitate toward Asia. Nonetheless, political failures in the South China Sea can serve as warnings of what can happen in a geopolitically desirable region. Although the Arctic Council has been successfully cooperative in the past, the war in Ukraine has shifted the relationship between Russia and other member nations, halting any meaningful advancement of the Council's work. Since Russia invaded

Ukraine two years ago, both Finland and Sweden have joined NATO, changing the Arctic dynamic from five NATO countries, two neutral countries, and Russia to seven NATO countries and a lonely Russia. Russian leaders have said that their attempts to expand the country's EEZ further into the Arctic are designed not just to leverage untapped oil and gas resources but also to push back against "the expansion of NATO and the aggressive policy of the collective West towards Russia." Further, in February 2024, Russia suspended its annual payments to the Council and announced that it might consider leaving the group. The fragile dynamics between members and their evolving motives have caused uncertainty about the Arctic Council's authority—or lack thereof. Without the Council, Arctic relationships could start to deteriorate in ways that mirror those of states in the South China Sea. Arctic states should take this setback as an opportunity to reinforce their cooperative relationships and continue to develop agreements that promote a peaceful polar future. As the ice melts, Arctic states are likely to maintain their cooperative relations and continue to develop agreements that promote a peaceful future for the region.

No Arctic resource wars

Bellamy 21 [Jackson Bellamy, North American and Arctic Defence and Security Network (NAADSN) Graduate Fellow, 03-16-2021, “Understanding the Recent History of Energy Security in the Arctic” NAADSN, https://www.naadsn.ca/wp-content/uploads/2021/03/Bellamy-policy-brief_Breaking-Through_Dolata-chapter.pdf]/Kankee

Dolata goes on to suggest that the preoccupation with energy security in the Arctic in international politics was a result of the re-emergence of global geopolitical concerns over energy security in the mid-2000s, which coincided with very tangible impacts of climate change in the Arctic providing access to potential fossil fuel deposits and trade routes. In a historical discussion of events between 2006 and 2009, she shows how international organizations such as the G8, EU and NATO focused on energy security. Energy supply disruptions to Europe from Russia prompted countries and organizations such as the G8 and EU to adopt energy security as an important geopolitical issue. NATO legitimized its involvement in matters of energy security in recognition of the vulnerability of its member states due to increasing reliance on imported energy. New NATO members in Central and Eastern Europe were especially worried about supply disruptions in the mid-2000s because of a significant reliance on energy imported from Russia. NATO later softened its involvement in energy security to include only energy infrastructure security amid concerns that a hard stance would antagonize Russia, whose behaviour was often linked to energy insecurity, and to avoid militarization of the issue. Dolata argues that between the years 2006 and 2009 energy was an important geopolitical and strategic topic in international politics, beyond the conventional scope of institutional frameworks such as the Organisation for Economic Co-operation and Development (OECD) and the International Energy Agency (IEA). This focus on energy security was also closely tied to the discourse on climate change at the time. The Arctic became a natural area of focus in this discussion because of both the dramatic effects of climate change in the region, which was linked to the burning of fossil fuels, and as a new source of energy resources. Non-Arctic European states and the U.S. drove the energy security agenda at this time as net importers of energy over concerns of security of supply which coincided with decreasing ice cover in the Arctic and favourable reports of fossil fuel reserves in the region.

Referring to well-established literature on resources and conflict, Dolata explains how once energy security discourses were inscribed to the Arctic from the outside, **energy** resources were considered drivers of **conflict**. But she cautions that this conflict **narrative does not apply well to the Arctic**. Although commentators warned that resource conflict could happen in the Arctic, **Arctic states seem committed to resolving conflicts through existing international frameworks**. For example, **the five Arctic littoral states reaffirmed their co-operative relationship in the Arctic Ocean and committed to resolving disputes surrounding extended continental shelf claims through existing international frameworks** under the Ilulissat Declaration in 2008. More importantly, **most fossil fuel resources are already located within Arctic littoral countries' EEZs in which they have exclusive rights to exploit these resources**. Therefore, **energy security is not a driver of conflict in the Arctic**, contrary to what some rhetoric has suggested. Dolata further questions the usefulness of the Arctic energy security paradigm by noting that it mostly focuses on supply security and is mainly driven by countries that are net importers of fossil fuels. Three of the five Arctic littoral states Canada, Russia and Norway are major oil producers and net exporters of fossil fuels. The U.S. is also a major oil producer but was a net importer prior to 2010. According to Dolata, **the reason why Arctic oil producers such as Canada and Norway were engaging in international discussions on energy security at the time was that they hoped to secure demand for their energy. The energy security trope was used by both countries for political and trade purposes**, and **their Arctic policies were not really about energy issues in the region**. For Canada, this is simply because its energy production is centered in the Alberta oilsands and not in the Arctic, and even though there is fossil fuel development in the Barents Sea, and this is portrayed as important for EU energy security, **energy issues are a relatively insignificant part of Norwegian Arctic policy**. Evidently, these countries engage in energy security discussions in response to external pressures and not on their own accord. Conclusion Dolata's chapter concludes that **the energy security concept does not apply well to the Arctic for a variety of reasons and does not represent the interests and needs of those living in the region**. She asserts that energy security cannot be understood from within the Arctic region in the same way that it is understood in a global geopolitical context and highlights the need to **stop applying the wrong concepts when examining Arctic issues**, not least because it is not necessarily used by Northerners and Indigenous actors in the Arctic region. Rather, she says **energy development in the Arctic must be understood through the lens of environmental, economic, and human security, otherwise referred to as soft security**.

Russia won't leave UNCLOS – threats are bluster and its self-defeating

Cooper and Chuffart 18 [Aaron M. Cooper, PhD Research Fellow at Stavanger University and expert in international law, and Romain Chuffart, President and Managing Director at TAI and the Nansen Professor in Arctic Studies at the University of Akureyri, 7-16-2018, "More Political Theatrics as Russia wants to Denunciate UNCLOS in the Arctic – Leave the Performances for the Bolshoi", Arctic Institute - Center for Circumpolar Security Studies, <https://www.thearcticinstitute.org/more-political-theatrics-russia-wants-denunciate-unclos-arctic-leave-performances-bolshoi/>]/Kankee

After the US Arctic continental shelf's gambit to test the limits of the United Nations Convention on the Law of the Sea (UNCLOS), there is more "drama" in ocean governance. In the grand theatre of International Law, Russia stands above all in its penchant for bold declarations and dramatic gestures, with no signs of changing its political tact – the curtains have risen on its latest. On Monday March 18, Chairman for the Russian Parliament Committee for the Development of the Far East and Arctic, Nikolai Kharitonov, told the Russian Government News website, Izvestia, that once again it is considering leaving UNCLOS, specifically it is "denunciating the convention in the Arctic" citing concerns over NATO activity in the region. Given that the provisions of UNCLOS largely reflect customary international law, Russia would still need to fulfil its obligations as a state, so questions are raised over what the material effect would be over such a move, if any. Or rather, is this yet another diplomatic pirouette from the Kremlin? This is another statement in what has been a history of long statements. Since the end of the Second World War, Russia has long relied on projections of power and brash rhetoric to maintain some semblance of influence as a disruptive force in the international sphere. As a state, it has struggled to integrate itself back into the international order. While during the Cold War, the USSR had to compete with the US economic powerhouse, as well as the emergent European Coal and Steel Community (which would eventually become the European Union), the situation changed drastically in the 1990s. In the post-Soviet period, Russia, as the former leader of the USSR, faced massive economic difficulties. At the beginning of the 1990s, Russia's GDP was a mere USD 5.77 thousand, GDP per capita was USD 2.7 thousand and GDP growth in real terms was 4.4 percent, so it opted to use its position as a resource economy to better effect. Nowadays, even though Russia has managed to become a leading petroleum producer, post-communist economic transformation is still a struggle, and Russia is choosing to act as a disruptive force. As a state party to UNCLOS, Russia, of course, has the right to withdraw, which would be in accordance with Article 317 of the convention. However, the implications of such a decision warrant thorough consideration. UNCLOS stands as a cornerstone in the codification of customary international law, having been formally ratified in 1982. It is often described as the legal "constitution for the oceans and seas," providing an extensive framework for the governance of marine jurisdiction and territory, navigational rights, environmental protection, and includes provisions for dispute resolution. Notably, the frozen waters of the Arctic region were initially excluded from explicit mention within the convention. This gap was subsequently addressed through UNCLOS Article 234, following closed-doors negotiations by Canada, the United States, and the USSR during the Third United Nations Conference on the Law of the Sea (1973 – 1982). As a result, in conjunction with various regional agreements, a comprehensive governance system for Arctic waters has been established, under which all parties, including Russia, have largely complied with and met their obligations. Despite Mr. Kharitonov's position as Chairman of the State Duma Committee for the Development of the Far East and the Arctic, his statements betray a limited understanding of UNCLOS and international law more broadly. The article in Izvestia suggests that Russia could withdraw from UNCLOS specifically "in the Arctic," with Kharitonov's declarations echoing elements of the obsolete USSR sector theory. However, in the realm of international law, UNCLOS cannot be selectively applied or withdrawn from in specific geographic regions; a complete withdrawal from the convention would be required. Even then, Russia would remain obligated to adhere to the provisions of UNCLOS that embody customary international law and would not "affect the duty of any State Party to fulfil any obligation embodied in this Convention to which it would be subject under international law independently of [UNCLOS]" (Article 317(3)). Therefore, the primary consequence of withdrawal would be Russia's inability to make use of the compulsory dispute resolution mechanisms provided by the convention, including the International Tribunal for the Law of the Sea (ITLOS). If we are to take such rhetoric and potential security threats at face value, they need to be replaced in the current discursive narratives about international law in Russia. In this case, Mr. Kharitonov's statement appears to be emblematic of a broader performative contradiction that juxtaposes the concept of a rules-based international order against established international law. This dichotomy is highlighted by Russia's objections to what it describes as "rules no one has agreed on," which seems to conflate the rhetoric employed by some Western nations regarding the rules-based order with the concrete international norms and agreements that the USSR and the Russian Federation, as its successor state, have historically participated in negotiating, developing, and to which it has formally consented. This conflation not only muddles the dialogue between the norms of international law and the principles of a rules-based order but also underscores a strategic manoeuvring in international relations discourse, where Russia positions itself against what it perceives as unilaterally

imposed standards that lack universal consensus, despite its own historical role in shaping the legal framework it now critiques. For Russia, the Arctic region transcends mere geographical significance, acting as a pivotal political instrument that has historically moulded the national identity and continues to play a crucial role in its prospective fortunes. This intrinsic value underscores the importance of the Arctic and, by extension, the UNCLOS as a governing instrument therein. Given the strategic positioning of the Northern Sea Route (NSR), which traverses nearly the entire length of Russia's Arctic Exclusive Economic Zone (EEZ), Russia views the NSR as a viable maritime corridor offering an expedient alternative for cargo transit between Europe and Asia. Consequently, the advantages of withdrawing from UNCLOS appear ambiguous, as such an action could potentially undermine Russia's vested interests in maintaining its influence and operational control over this critical Arctic passage. As Russia develops and uses the NSR as geopolitical leverage, it would be best to leave international law to qualified lawyers and the performative theatrics for the Bolshoi.

The Arctic is economically useless – too expensive, dangerous, transport costs, environmental/native backlash, and Russia

Caldon 23 [Josh Caldon, adjunct professor at the Air University where he instructs courses in national security and veteran of the USAF with a PhD in Political Science from the University of Albany, 4-13-2023, "Why the US is Losing The Race for the Arctic and What to Do About It", Center for International Maritime Security, <https://cimsec.org/why-the-us-is-losing-the-race-for-the-arctic-and-what-to-do-about-it/>]/Kankee

Economics The US largely has a free-market economy with strong interest groups that challenge its willingness to expand its commercial footprint in the Arctic. This has overwhelmingly kept it from attempting to control the Arctic like Russia has done and China is increasingly attempting to do. It is important to look at the times when American commercial interests have focused on the Arctic to understand America's overall lack of interest in this region. The three times the US has been economically drawn to the Arctic were to exploit temporarily scarce resources. This occurred with whale oil and seal skins during the 18th and 19th century, gold at the end of the 19th century, and oil during the mid-twentieth century. These intense periods of economic interest in the Arctic resulted in America's purchase of Alaska from Russia in 1867 and the development of Alaska in the decades afterwards. Notably, however, it is expensive and difficult to operate in the Arctic. As Canadian Arctic expert, Michael Byers highlights, even as the Arctic ice slowly melts, the region remains in complete darkness for half of the year and melting ice is dangerously unpredictable. The Arctic is also austere and quite far from the largest population centers of the world. As such, the intermittent economic demands for the region's natural resources have relatively quickly resulted in substitutes being found for these goods in less austere places. Subsequently, the only portions of Alaska that are significantly developed are in the sub-Arctic portion of the state, with the exception of the oil fields of Prudhoe Bay – which also appear to be winding down with the advent of fracking and renewable energy. Increasing environmental concerns (most of Alaska is situated in nationally owned wilderness preserves) and native groups' claims prohibitively increase the price of resource extraction from most of Arctic Alaska even further. Many Americans believe the region should be left to nature and to indigenous groups. The US also does not have a great need to develop the sea routes in the Arctic to improve its international trade. It has a transnational road and railway system and easy access to maritime trade routes which are connected through the recently enlarged Suez Canal. These circumstances mean that the US has very little motivation to establish sea routes through the largely uninhabited, relatively shallow, and dangerously unpredictable Arctic Ocean. Finally, Russia's aggression over the last two decades, and increasing pressure from environmentally-based NGOs, have pushed American-based companies even further away from Russia's Arctic. All told, since the US has only marginal economic incentives to pursue the Arctic, it has not felt the need to develop harbors, settlements, transport infrastructure, or icebreakers to increase its footprint in the region. As such, it has relatively little capability to "conquer the region," but also relatively little to defend in the region. This is not the case for Russia or China. Russia suffers from what Hill and Gaddy call the Siberian Curse. Its geography is not as economically favorable as America's, which has forced it to turn towards the Arctic to improve its economic circumstances. However, it has also traditionally operated a state-controlled economy that uses slave labor and nationally owned corporations to mask the economic, environmental and demographic costs of operating in the Arctic. Beginning with the czars, and accelerating under Russia's Soviet dictators, Russia forcibly sent millions of people to develop and "conquer the Arctic." This legacy continues today as Putin pushes and subsidizes Russia's economic ministries and state-controlled corporations to extract more resources from the Arctic and to expand the infrastructure of the Northern Sea Route (with the numerous powerful icebreakers needed to navigate this waterway) to transport these resources to distant markets. Unlike American corporations, Russia's economic pursuits in the Arctic are not concerned with environmental or indigenous considerations either. Furthermore, Russia's extreme sacrifices in the Arctic have made developing and controlling it symbolic for its people and leadership. As such, Russia has much more to defend materially and ideationally in the Arctic than the US does. Even with these factors pushing Russia to conquer the Arctic, Russia's regional ambitions have been challenged by fiscal, demographic, and environmental hurdles. Most recently, the war in Ukraine has forced it to curtail its ambitious Arctic railway and icebreaker projects and to mobilize and sacrifice a significant proportion of its Arctic troops for combat in Ukraine. Additionally, many of its Arctic cities have rapidly de-populated, and the Arctic melt has paradoxically threatened its existing Arctic infrastructure. Like Russia, China's companies are largely nationalized and it also does not have the environmental or indigenous concerns in the Arctic that the US does. It has spent the last two decades increasing its manufacturing sector and its international trade ties. This has increased its needs for natural resources and trade routes, resulting in its plans to establish a "Polar Silk Road," under its greater Belt and Road Initiative, in order to link the Arctic to China's greater network of international

trading posts and manufacturing centers. As Russia has lost access to Western markets and technology over the last two decades, it has increasingly turned towards an eager China to help it build out its Arctic economic footprint. As such, China also has more economic interests to defend in the Arctic than the US does. What Does This Mean for the US? The United States is not truly interested in competing for the Arctic. It has relatively less military, economic, or ideational interest in the region when compared to Russia or China. Its strategic plans for the region have become increasingly assertive in reaction to Russia's and China's efforts, but lack funding or prioritization. However, this lack of genuine interest carries some benefits for the US when considering the larger geopolitical context of the international system. America's lack of interest in the region has paradoxically pushed the other Arctic states to increase their security ties with the US and to take on more security responsibilities for the region. Similar to World War II, when Iceland and Denmark invited the US to help protect their territory from foreign adversaries, Russia's aggression pushed Sweden and Finland to formally petition to join the US-dominated NATO. The inclusion of these states into the organization means that half of the Arctic will soon be administered by NATO member states. Specifically, the Nordic states of Norway, Sweden and Finland have significant capabilities and economic stakes in the region that will make up for America's relative lack of willingness and ability to contain Russia's and China's ambitions in the region. These countries' capabilities will be further complemented by Denmark and Canada, and the other non-Arctic NATO states that have recently increased their defense spending to deal with Russian aggression. This collective defense in the Arctic will allow the US to better focus on domains like space, cyberspace, the Americas, and the Indo-Pacific, which are more important than the Arctic to America's most critical national interests. Economically speaking, the Arctic will likely remain a backwater for market-driven economies for the foreseeable future. The relatively high costs of extracting resources and transporting goods from the Arctic means the region is unlikely to become much more attractive for Western companies, even if the ice continues to retreat (which has slowed in recent years) and icebreakers improve, except in times when specific resources are in sharp demand or when there are long-term bottlenecks in other trade routes. The resources that Russia and China extract from the Arctic will contribute to the overall global supply of these resources and decrease their overall price for American consumers. As such, Americans will gain many of the benefits of Russia's and China's efforts in the Arctic while Russia and China absorb the costs. In the case of scarce rare-earth minerals that have spiked in demand and are monopolized by China, it appears Sweden may fill this void for the US with its own Arctic resources, even as companies search for substitutes for these critical resources. Overall, the US should not ignore the Arctic, and it should put to rest the notion that this region is a unique zone of peace in an otherwise quite turbulent world. That being said, Americans should also not deem that losing the "race for the Arctic" will critically threaten America's larger national interests. By not attempting to compete head-to-head with Russia or China to "conquer" the region, the US has incurred some advantages against these competitors. As the US has been reminded again in Iraq and Afghanistan, and through its observation of Russia's disastrous invasion of Ukraine, conquering territory comes with significant costs that can weaken the material strength and ideational attractiveness of a country. This, in turn, weakens a country's ability to secure its most significant national interests. The US should continue to diplomatically, militarily, and economically challenge Russia's and China's actions in the Arctic on humanitarian and environmental grounds, but it also should identify that China's and Russia's actions in the Arctic come with high economic and soft power costs that may relatively benefit the US. Doing so will allow the US to increase its ability to collectively defend its interests in the Arctic with its allies and to prioritize its attention and resources on domains that are more important to it than the Arctic.

Link turn – Arctic dialogue with Russia emboldens more aggressive actions and normalizes bad behavior

Greenwood 22 [Jeremy Greenwood, US Coast Guard Prevention Law Division Chief at the Office of Maritime and International Law and former Commanding Officer with a JD from Tulane University Law School and a BS in government/public policy from the US Coast Guard Academy, 1-31-2022, "Lessons from Ukraine for the Arctic: Russian "dialogue" isn't always what it seems", Brookings, <https://www.brookings.edu/articles/lessons-from-ukraine-for-the-arctic-russian-dialogue-isnt-always-what-it-seems/>]/Kanke

The highest and most recent call came from Russian Foreign Minister Sergey Lavrov himself at the May 2021 Arctic Council Ministerial in Reykjavik, who said: "It is important to extend the positive relations that we have within the Arctic Council to encompass the military sphere as well." While dialogue with one's strategic rivals (and enemies) remains a vital diplomatic tool, it is unclear that any new military security dialogue with Russia in the Arctic would advance the cause of peace or deconflict any military activity in the region. In fact, it is very possible that quite the opposite will occur, and Arctic tensions will only rise from the creation of a new Arctic security forum or by introducing Arctic military security within the Arctic Council. Russia's actions in the European security theater to date demonstrate that engagement only goes so far to limit its ambition or temper its militarism. Even if the Ukraine situation turns out to be a bluff, Russia has demonstrated a willingness to mobilize tens of thousands of troops and posture for an unthinkable war on the European continent. In this case, one quasi-superpower will have forced open a dialogue on "demands" that have been long-settled regarding European security, NATO membership, and the right of a sovereign Ukrainian nation to exist. This does not bode well for Arctic security in any form; military, economic, environmental, or otherwise. Let's remember that forums previously existed for the discussion of military security with Russia. The Arctic Chiefs of Defense Forum was suspended following Russia's unlawful annexation of Crimea in 2014. It's no wonder Russia wants the West to resume these dialogues, as it would signal a "return to normal" or simply a quiet understanding that Russia's means of international engagement are lawful. In the end, Russia goes it alone and tends to use "dialogue" as a method of normalizing otherwise unacceptable behavior or discussing matters on its terms to advance its interests. While it is true that all nations act in their own interests, Russia's use of dialogue tends to be regressive for the international community. As has happened in Ukraine and Georgia and throughout the post-Soviet space, Russia makes facts on the ground and then uses dialogue to normalize it. The value of an Arctic security dialogue is thin, especially when it comes from the Russians themselves. The argument that it could shape Russian behavior is thinner, and the idea that we could have an inadvertent clash in the Arctic without it must be rationally balanced against the fact that this has not happened, despite an entire Cold War with even higher militarization of the Arctic. Any dialogue that may be needed to de-escalate hypothetical tensions in the Arctic remains available to the Russians through a wide variety of pre-existing channels, including within the United Nations and NATO. To understand the risk, one needs to only think of the likely list of topics that an Arctic security dialogue would contain. Certainly, Russia would love nothing more than to have advance notice of all military exercises in the Arctic. Since their coastline occupies more than 50% of the Arctic, the Russians would likely jump at a legal requirement to pre-notify them of submarine deployments and surface naval actions, like the ones the American and British navies recently conducted in the Barents Sea. Such an arrangement would be detrimental to NATO and would not be an "even-exchange" for notification of Russian exercises. Russia would also likely push for so-called "buffer zones" near its borders, disproportionately impacting Norway, Sweden, and Finland. Surely, Moscow would love to discuss the U.S.-Canadian North American Aerospace Defense Command (NORAD) or the activities of allied forces on Greenland or Iceland. In the meantime, the Russians aren't actually interested in discussing these issues with NATO, or effectively utilizing the existing NATO-Russia Council, but are seeking a new Arctic forum where they believe that they would have an upper hand. This is not to say that the United States, its allies, and its Arctic partners should not engage Russia. The Arctic Council remains the premier forum for Arctic cooperation and Russia should continue to engage productively on "soft security" issues such as economic and environmental security. Combatting climate change through scientific study, reducing the risk of oil

pollution, and understanding the economic impacts of increased shipping are all vital to “Arctic security.” What is less vital to Arctic security is the discussion of settled principles of sovereign rights and the law of the sea.

No Russia Arctic conflict and UNCLOS fails to de-escalate

Werfelli 24 [Wissal Werfelli, Researcher and lecturer specializing in International Relations, 10-14-2024, "The Arctic: A Risk of Escalating Conflicts", TRENDS Research & Advisory, <https://trendsresearch.org/insight/the-arctic-a-risk-of-escalating-conflicts/>]/Kanke

There are also non-Arctic countries that have been granted observer status, such as Germany, the UK, the Netherlands, Poland, France, Spain, Italy, Japan, China, India, South Korea, Singapore, and Switzerland. This is in addition to many other international organizations such as the UN through some of its programs related to environment and development. European and Asian countries have shown their interests and responsibilities in a strategy document on the Arctic. The EU adopted an integrated policy on the Arctic zone in 2016 and is currently considering updating these guidelines. Asian states’ ongoing research agendas and scientific cooperation have made their engagement crucial for the development of Arctic knowledge. Japan and South Korea launched the construction of an icebreaker for scientific purposes, to be deployed in 2026. [27] There is no doubt that the war in Ukraine has made cooperation and diplomacy in the Arctic more

difficult. However, the U.S. can expect Russia to remain open to peaceful discussions. Even at the height of the Cold War, the Soviet Union cooperated with the West on Arctic issues, including initiatives such as the 1973

Convention on the Conservation of Polar Bears [28] and the 1987 Murmansk Initiative toward regional cooperation, recognizing the special responsibilities and special interests of the States of the Arctic Region in relation to the protection of the fauna and flora of the Arctic Region and recognizing that the polar bear is a significant resource of the Arctic Region that requires additional protection. To manage the escalating tensions in the Arctic, states must strike a balance between cooperation and strategic rivalry through bilateral and international diplomacy.

Important Arctic nations like the U.S. and Russia hold bilateral discussions to lower the likelihood of armed conflict, frequently concentrating on keeping lines of communication open about security-related issues. Despite the

modest progress made in these discussions, they are nonetheless crucial for defusing any confrontations considering the Arctic’s growing militarization. Security matters are noticeably missing from multilateral institutions like the Arctic Council, which offers all Arctic nations a diplomatic forum to debate environmental, economic, and indigenous issues. Despite the current high tensions and given the potential

for mutual destruction, Russia and NATO share an interest in maintaining peace in the Arctic region in addition to diplomatic frameworks that provide legal channels for settling competing claims to seabed resources, such as the United Nations Convention on the Law of the Sea (UNCLOS). [29] NATO’s attempts to coordinate security plans among its Arctic member states, strengthening regional

stability, are another example of multilateral diplomacy in action. Although these diplomatic efforts aid in the management of tensions, they frequently fail to address the more serious security threats brought on by military buildups and geopolitical rivalry in the Arctic. [30] Conclusion

With rivalry for resources, vital shipping lanes, and military supremacy driving war, the Arctic is quickly changing into a disputed geopolitical region. Global powers like China, the U.S., and Russia are vying for control of the region because of the melting ice, which has made it more accessible for economic exploitation. Territorial claims overlap when states bolster their military presence, raising the possibility of error or conflict. The Arctic runs the risk of turning into a hot spot for future hostilities in the absence of defined methods to handle these tensions.

There is an urgent need for more international collaboration to stop this escalation. Although the UNCLOS and the Arctic Council have facilitated communication, they are ill-equipped to handle the region’s growing security concerns.

Redoubled efforts should concentrate on broadening diplomatic channels to cover security and military matters, setting up a platform for Arctic countries to discuss weapons control and developing guidelines for military behavior.

The moment has come for Arctic countries to engage in formalized diplomatic discussion that covers military and security matters. Whether through a distinct treaty or the Arctic Council, a new global security

framework might offer a forum for controlling the military buildup, negotiating arms control measures, and defining

explicit rules of engagement to avoid unintentional conflicts. In addition to lowering the likelihood of violence, this would establish a crisis management system in the Arctic. International organizations must also mediate conflicts and make sure that competition in the Arctic doesn’t jeopardize indigenous rights or the sustainability of the environment. In the face of mounting global pressure, the Arctic can only continue to be a region of harmony, collaboration, and shared wealth via concerted effort.

Climate change thumps UNCLOS Arctic credibility

Goodman et al. 21 [Sherri Goodman, Chair of the Board at the Council on Strategic Risks, Secretary General of the International Military Council on Climate and Security, Senior Strategist and Advisory Board member at the Center for Climate and Security, and Senior Fellow at the Woodrow Wilson International Center's Polar Institute and Environmental Change and Security Program, Kate Guy, Research Fellow with the Center for Climate and Security pursuing a PhD in International Relations at the University of Oxford, Marisol Maddox, Senior Arctic Fellow at the Institute of Arctic Studies in the Dickey Center at Dartmouth, Vegard Valther Hansen, Senior Advisor at Norwegian Institute of International Affairs (NUPI), Ole Jacob Sending, Research Professor in the Research group for global order and diplomacy at NUPI with a doctorate from the University of Bergen, and Iselin Németh Winther, Arctic researcher with a MA in Political Science from the University of Oslo, 01-2021, "Climate Change and Security in the Arctic," Center for Climate and Security, https://climateandsecurity.org/wp-content/uploads/2021/01/Climate-Change-and-Security-in-the-Arctic_CCS_NUPI_January-2021-1.pdf]/Kanke

CLIMATE IMPACTS ON INSTITUTIONAL CAPABILITIES Climate change will challenge established economic models for key Arctic states, and will also constitute a stress-test on institutions tasked with promoting cooperation and security in the region. Globally, the rapid onset of the effects of climate change is likely to put multilateral institutions under new strains over the next decade. These realities could lead to a significant capability shortfall crucial for the provision of security in the Arctic and other regions, including the strengthening of diplomatic engagement and conflict reduction mechanisms. As geopolitical tensions grow, and climate effects intensify, the ability of states to collaborate and trust each other could further weaken. International law, guided by treaties such as the United Nations Convention for the Law of the Sea (**UNCLOS**), provides a stabilizing force in the Arctic, and Arctic nations continue to have common interests in this stability and the rule setting it provides. There is no legal vacuum in the Arctic. However, resolving international legal disputes in the Arctic can be a lengthy process—such as the process for resolving maritime boundary disputes—is in some ways evidence of the stability of the regime, as the requirement to provide evidentiary support for the claims and to have a thoroughly adjudicated process evinces the wheels of justice at work. A high emissions scenario may portend immense challenges to the legitimacy not only of states as they struggle to manage the demands of a world experiencing the destabilization of multiple complex systems. This may then challenge the legitimacy and the perception of higher order multilateral institutions (such as The International Tribunal for the Law of the Sea, an independent judicial body established by **UNCLOS**) to remain effective. If institutions tasked with providing global or regional stability in the Arctic fail to respond to the rate of change, they could likewise face increasing politicization and gridlock, as can be observed in many other global institutions such as the World Trade Organization. Shortfalls in the capabilities of the **NATO** alliance or the Arctic Council may undermine member countries' political and defense abilities. Growing political divisions within countries, particularly democracies, are beginning to threaten the consensus at the heart of multilateral security cooperation and international institutions. Grievances among affected populations, be they the vulnerable geographies of northern indigenous communities or the wealthy elites owning coastal properties, could be further mobilized by actors adversarial to Arctic stability. The implications of the Curbed and Uncurbed Warming Scenarios for the likely resilience of international governance are hard to assess given the uncertainties involved. Some analysts argue that climate change may unleash a perfect storm of intractable problems, destabilizing the foundations on which the modern state system is based. One report notes, for example, that "seemingly stable states can be overburdened by the combined pressures of climate change, population growth, urbanization, environmental degradation and rising socioeconomic inequalities."³⁰ The same stressors experienced by the state would influence the efficacy and legitimacy of multilateral institutions, which are key to a stable and conflict-free Arctic. We seek to assess the impact on institutions by providing a description of existing mandates and capabilities in light of the challenges that are likely to emerge with climate change. Moreover, the distributional and economic risks associated with our two scenarios depend on the future of global demand for oil and gas, new technological advances in carbon capture and storage and renewable energy, among many other factors. For distributional risks, we rely on the GeGaLo Index, which assesses likely geopolitical gains and losses associated with an energy transition, including "the changes in geopolitical power relative to the situation before the energy transition and specifically

related to energy resource access.”³¹ **GROWING STRESS ON ESTABLISHED ARCTIC INSTITUTIONS** In both warming scenarios, it is likely that the combined pressure of managing climate change effects and other security issues will increasingly stress the capabilities of the Arctic Council, NATO, the United Nations Security Council, and other relevant regional and security institutions. Since 1996, the Arctic Council has seen success as the premier intergovernmental forum to discuss Arctic issues. In no small part, this success can be attributed to how member states have deliberately sought to depoliticize issues and focus on technical cooperation.³² In either scenario, the Arctic Council is likely to have to expand its mandate or seek partnerships with other intergovernmental bodies to remain relevant and effective. Several challenges are likely to emerge, including negotiations of existing agreements and treaties on fisheries and biodiversity, marine protected areas, the development of economic zones, and the freedom of navigation, among others. In addition, increased commercial and military activity in the Arctic is likely to lead other organizations – notably NATO, the EU, and the Nordic Council – to become more engaged in pushing new agendas. This will complicate the development of new institutional arrangements, but may also lead to innovation in tools to address new challenges. Private regulatory arrangements are likely to increase in importance, given the importance of such mechanisms in climate governance.³³ In a high emissions, Uncurbed Warming Scenario, the competition and efforts to shift costs and political blame for the effects of climate change are likely to become much more intense. It is doubtful the rules and norms of existing arrangements will be able to withstand and channel such developments in a direction that reduces conflict. Rather, intense competition typically produces situations where states (mis)use established institutions to weaken their opponents and gain advantages at the expense of institutional rules.³⁴ This will likely apply to the Arctic Council and a myriad of other key bilateral and multilateral regulatory arrangements. To help manage these challenges, the eight Arctic nations would benefit from a venue for discussing hard security issues. Prior to Russia’s illegal annexation of the Crimean region of Ukraine in 2014, Moscow was engaged in the Arctic Security Forces Roundtable and the Arctic Chiefs of Defense—two fora for discussing hard security matters with the 7 other Arctic nations. Following 2014, Russia was barred from both groups, which has resulted in a lack of dialogue about regional military matters. This is increasingly problematic as military forces conduct more training, exercises and operations in the Arctic, raising the risk of a potential misunderstanding, miscommunication, accident, or spillover from another regional conflict.³⁵ In either a low or high emissions scenario, military presence in the region will continue to grow, so it would be useful to develop Track II dialogues as a step towards better communication and reducing risk. Additionally, high level dialogues among civilian leaders of Arctic defense ministries could become the basis for developing confidence building measures and early warning mechanisms. NATO will continue to be the primary security guarantor for Norway, and NATO’s efforts to adapt to climate change in the Arctic are already underway. A complicating factor is that NATO may not have the necessary political and diplomatic tools at its disposal to successfully manage climate change issues, particularly given the increase in civilian and commercial activity in the Arctic. The EU is arguably better positioned to shape the future trajectory of climate-related issues in the region because it has more non-military instruments to deploy. Even so, the development towards ever tighter military cooperation within the framework of the EU will be an issue in the Arctic. The increased investment in Nordic Defence Cooperation (NORDEFCO), as well as Sweden and Finland’s ever tighter partnership with NATO,³⁶ forms an integral part of the institutional framework of Norwegian security in the Arctic and provides a solid platform for addressing climate-related challenges. NORDEFCO’s future strength will likely be more greatly influenced by US and European Union political dynamics than by the different climate scenarios. However, given the overlap between Arctic Council and NORDEFCO members, and the tradition of cooperation within the Nordic region, NORDEFCO will likely emerge as an important platform for discussing shared security interests in the Arctic.³⁷ In the same vein, all Nordic states are members of the European Civil Protection Mechanism and the NATO Euro-Atlantic Disaster Response Coordination Centre (EADRCC), both of which could be strengthened in areas relevant to climate security such as civilian preparedness. **GEOPOLITICAL AND DISTRIBUTION EFFECTS OF CLIMATE CHANGE VARY BY SCENARIO**

More NATO Arctic involvement through the US risks escalation

Pincus 19 [Rebecca Pincus, assistant professor in the department of Strategic and Operational Research (SORD) at the U.S. Naval War College, 11-06-2019, "NATO North? Building a Role for NATO in the Arctic", War on the Rocks, <https://warontherocks.com/2019/11/nato-north-building-a-role-for-nato-in-the-arctic/>]/Kankee

NATO in the Arctic: Pros and Cons Given its role as the cornerstone of Euro-Atlantic security, it might seem natural to think that NATO involvement would stabilize the Arctic. While Russia understandably views NATO as a threat, the mechanism of collective defense and the structural process-based system built by NATO provide more predictability for Russia than ad hoc arrangements. NATO could therefore be seen as a stabilizing institution that might exert a beneficial influence on the Arctic region as it undergoes profound change. Some experts have, indeed, called for NATO to take on an expanded role in the Arctic, including bringing the Arctic into NATO's holistic security approach and conducting a joint threat assessment, or by conducting surveillance and disaster-response operations. However, two serious issues would complicate NATO's ability to provide stability and norms in the Arctic. First, NATO's involvement could dilute the influence of Arctic states. NATO is a large organization with a remit far larger than the Arctic region, and greater NATO involvement therefore risks drawing in outside states. This has traditionally been avoided by Arctic states, including both the United States and Russia. Arctic stability, and Arctic decision-making, may not benefit from the addition of the other 25 NATO states, especially those from eastern Europe, whose interests are quite different. Second, greater NATO involvement in the region could contribute to escalation and security-dilemma dynamics. NATO is, after all, a military alliance. As NATO increases its capabilities to act in the Arctic, its capacity for interoperability, and its regional familiarity — for example, through exercises like last year's TRIDENT JUNCTURE — it will signal that it is more of a threat to Russia. Russia is most likely to respond by stiffening its own military posture. Tit-for-tat dynamics could lead to escalation, especially in the case of accident or mishap. A Path Forward for NATO in the Arctic If we think of NATO as serving essentially two functions, it becomes easier to parse NATO's possible role in the Arctic. NATO is both a military-operational concept and a political-organizational concept. As a military alliance, NATO plans and exercises in order to achieve and maintain operational readiness. It also, however, structures and maintains political relationships by formalizing interaction among states, both inside and outside the alliance.

Russia cheats with international law and abuses it to increase Russia power

Dalziel 24 [Alexander Dalziel, senior fellow at the Macdonald-Laurier Institute in Ottawa who previously held positions at the Privy Council Office, Canada School of Public Service, Department of National Defence and Canada Border Services Agency, 03-04-2024, "Russia's Tough Talk on Arctic Sovereignty Must Be Taken Seriously", Geo Political Monitor, <https://www.geopoliticalmonitor.com/russias-tough-talk-on-arctic-sovereignty-must-be-taken-seriously/>]/Kanke

The updated Russian Arctic Strategy introduces ambiguity into this overall depiction. It has retained an earlier description of the other Arctic states as "challenges" (Russian: вызовы) and did not elevate them to threats (Russian: угрозы). While it did deprioritize the relations with the other Arctic states from the 2020 document and replace them with bilateral, case-by-case relations with any states, the retention of the "challenge" language is almost certainly not an oversight and optimistically might be seen to represent something of an underlying offer to the Arctic community in the case of improved relations, against the hyperbolic accusations of militarization and Anglo-Saxonism in the other strategies. (A workable hypothesis here is that Russia's long-term concerns in the Arctic include managing a potentially overreaching China, for which having Arctic partners would be decidedly beneficial for Moscow.) So, will Russia leave the resolution of any disputes over the continental shelves purely to international law? In the Foreign Policy Concept, Russia reaffirms the "special responsibility of the Arctic states" regarding the Law of the Sea, with a specific reference to maritime delimitation" and sustainable development. It clearly has not abandoned international law. But Putin and his regime see international law differently from the other (liberal and democratic) Arctic states. They import into their claims about international law the array of deeply cynical assumptions about how the world works, captured in the Foreign Policy Concept's acknowledgement of the "power factor" in current international relations; diplomacy, it contends, is of decreasing effectiveness. Cynicism, though, does not exclude sincerity. For Russia, international law is an instrument. The starting point from any consideration of the question in Copenhagen, Nuuk, Ottawa and Washington must be Russia's flagrant dismissal of international law by its invasion of Ukraine. Russia is not a country defined by its strict adherence to legality. Expressing this, the subordination of international law to the national interest is a theme running through the strategic documents. The Foreign Policy Concept declares that delimiting the continental shelf will be done in accordance with international law but "unconditionally" in line with its "national interests" and "sovereign rights;" the amended 2023 Arctic strategy added new language foregrounding national interests. In addition, doubts about the efficacy of international law pervade these documents. The Arctic Strategy and Maritime Doctrine both speak of a group of unspecified countries, presumably Arctic ones, seeking to revise international agreements along national legislative lines. These statements exhibit the leadership's tendency to use international law instrumentality and see it as malleable to the interests of the "great powers." They have culminated recently in talk (unlikely to be fulfilled) in Russia about leaving the Law of the Sea entirely. In short, international law is generated by centers of global power and smaller countries expressing their interests, and balancing them in accordance with power. What the Kremlin is offering when it talks of international law is a framework for discussing national interests, but justice here is not an equally accessible good, instead something that will be decided by the powerful. This is something for Canada and Denmark, in particular, to be attentive to in Arctic matters. As a consequence, preparedness should be made for a Russia acting superficially in line with international law but covertly seeking to advance its position. The likelihood that Russia will come to open blows over the Arctic is low, but the main threat is not open aggression. It is to the asymmetric "grey zone" of deniable "hybrid" tools that we should be looking. The strategic documents fully acknowledge the use of force in international affairs, below and above the threshold of open warfare. Notably, in the Foreign Policy Concept it asserts that Russia is the target of a hybrid warfare campaign conducted by the United States and its allies, and the National Security Strategy and Maritime Doctrine provide additional enabling language for asymmetric responses. Reciprocity is a premise of Russian international conduct. These statements provide a clear justification for its use of so-called hybrid or grey zone coercion to achieve policy ends. If it perceives its negotiating position has deteriorated, Russia will be ready to deploy a range of tools, likely to include deniable, coercive ones, below the threshold of open aggression to strengthen its bargaining position. The strategic documents make clear that Russia is already trying to shape the negotiation space in the Arctic Ocean. If Russia's relations with its Arctic neighbors remain on the same fraught footing that they are now — a near certainty with another six years of Putin about to start this spring — then it will agitate for maximalist outcomes in obtaining its "sovereign rights" in the Arctic Ocean. Russian claims are unlikely to extend past what they have stated they want. That does not mean that the coercive "grey zone" will not be an active front in maneuvering for a Russia-optimal settlement or that Canadian and Danish or (by extension) U.S.

interests are not at risk. These three countries need to think about this and start to act now. Acquiring the capabilities that will keep Russia honest at the negotiating table, like icebreakers, submarines, subsea sensors and patrol aircraft, and the infrastructure to support them, takes years. Negotiations in a decades-long time frame will be advanced by establishing a situational awareness that needs to start being built today. The timelines are long, and we can hope for a different Russia in the next decade or two. But hope, as is often quipped, is not a policy. Canadian, Danish, Greenlandic and U.S. leaders may well face in a decade's time in the Arctic the same aggressive, uncooperative, and bad faith Russia that we face today in Ukraine. Ensuring we are prepared for hardball hybrid behavior from Russia in the Arctic is a matter for today, so we can be ready tomorrow.

US can gain access without UNCLOS. At best, impact is nonunique

Groves 12 [Steven Groves, Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom at The Heritage Foundation, 05-14-2012, "U.S. Accession to U.N. Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources", Heritage Foundation, <https://www.heritage.org/report/us-accession-un-convention-the-law-the-sea-unnecessary-develop-oil-and-gas-resources>]/Kanke

Proponents of U.S. accession to the United Nations Convention on the Law of the Sea (UNCLOS) claim that unless the United States joins the convention, it will be unable to gain "international recognition" of the outer limits of the U.S. continental shelf beyond 200 nautical miles (nm), an area known as the "extended continental shelf" (ECS). For example, Senator Richard Lugar (R-IN), a long-time supporter of U.S. membership in the convention, maintains that accession is essential to establishing a valid claim to the U.S. ECS in the Arctic: "If the United States does not ratify this treaty, our ability to claim the vast extended Continental Shelf off Alaska will be seriously impeded." [1] Other supporters of the convention argue that international recognition of the U.S. ECS is absolutely conditional upon U.S. accession: "Countries must ratify the treaty for their claims to be internationally recognized." [2] They argue that without such recognition, the United States will be unable to develop hydrocarbon resources that lie beneath the ECS, including in such resource-rich areas as the Gulf of Mexico and the Arctic Ocean. However, these arguments lack basis in fact or law. The United States regularly demarcates the limits of its continental shelf and declares the extent of its maritime boundaries with presidential proclamations, acts of Congress, and bilateral treaties with neighboring countries. As a result of bilateral treaties between the United States and Mexico, the Department of the Interior's Bureau of Ocean Energy Management currently leases areas of the U.S. ECS in the Gulf of Mexico to American and foreign oil and gas companies for exploration and development. The United States may maintain jurisdiction and control over its ECS on a global basis, regardless of whether it ever accedes to UNCLOS, and it should take every action necessary to secure oil and gas resources located on its ECS in the Arctic Ocean, in the Gulf of Mexico, and throughout the world. The United States can accomplish this end while acting as a sovereign nation rather than by joining UNCLOS and seeking the approval of the Commission on the Limits of the Continental Shelf (CLCS), an international committee of geologists and hydrographers located at U.N. headquarters in New York City. The U.S. Extended Continental Shelf Since 2003, in an effort to define the outer limit of the U.S. continental shelf, the United States has collected bathymetric and seismic mapping data on the outer margins of its continental shelf in the Arctic Ocean, Gulf of Alaska, Gulf of Mexico, and Bering Sea; along the Atlantic and Pacific Coasts; and off the Northern Mariana Islands, Kingman Reef, Palmyra Atoll, Guam, and Hawaii. The U.S. Extended Continental Shelf Task Force, an interagency project, is conducting this data collection. [3] To date, the ECS Task Force has identified six areas that "likely" contain submerged continental shelf and qualify as ECS and nine areas that "possibly" qualify. The value of the hydrocarbon deposits lying beneath the U.S. ECS is difficult to estimate, but it is likely substantial. According to the ECS Task Force, "Given the size of the U.S. continental shelf, the resources we might find there may be worth many billions if not trillions of dollars." [4] "International Recognition" of the U.S. ECS Historical experience has repeatedly debunked the notion that achieving "international recognition" of U.S. maritime boundary and continental shelf claims requires UNCLOS membership. The United States has had no difficulty whatsoever in achieving recognition of such claims in the past. Since 1945, U.S. Presidents have issued proclamations and Congress has enacted laws on U.S. maritime claims and boundaries. None of these has been challenged by any nation, any group of nations, or the "international community" as a whole. 1945: Truman claims jurisdiction and control over the U.S. continental shelf and its resources and establishes a conservation zone for coastal fisheries. On September 28, 1945, President Harry S. Truman issued two proclamations, including the "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf," which states in part: Having concern for the urgency of conserving and prudently utilizing its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. [5]

AT: Undersea cables

No impact – lines break almost daily and redundancies solve

Dzieza 24 [Josh Dzieza, feature writer and investigations editor at The Verge educated at Pomona College, 4-16-2024, "The invisible seafaring industry that keeps the internet afloat", Verge, <https://www.theverge.com/c/24070570/internet-cables-undersea-deep-repair-ships>]/Kanke

*alternative title is the "The Cloud Under the Sea"

For the Ocean Link crew, this awareness was bound up in a still unfolding national tragedy. They knew that whenever they returned to land, they would have to care for their loved ones quickly, because they would soon be going back out to sea. For how long, no one knew. The world's emails, TikToks, classified memos, bank transfers, satellite surveillance, and FaceTime calls travel on cables that are about as thin as a garden hose. There are about 800,000 miles of these skinny tubes crisscrossing the Earth's oceans, representing nearly 600 different systems, according to the industry tracking organization TeleGeography. The cables are buried near shore, but for the vast majority of their length, they just sit amid the gray ooze and alien creatures of the ocean floor, the hair-thin strands of glass at their center glowing with lasers encoding the world's data. If, hypothetically, all these cables were to simultaneously break, modern civilization would cease to function. The financial system would immediately freeze. Currency trading would stop; stock exchanges would close. Banks and governments would be unable to move funds between countries because the Swift and US interbank systems both rely on submarine cables to settle over \$10 trillion in transactions each day. In large swaths of the world, people would discover their credit cards no longer worked and ATMs would dispense no cash. As US Federal Reserve staff director Steve Malphrus said at a 2009 cable security conference, "When communications networks go down, the financial services sector does not grind to a halt. It snaps to a halt." Corporations would lose the ability to coordinate overseas manufacturing and logistics. Seemingly local institutions would be paralyzed as outsourced accounting, personnel, and customer service departments went dark. Governments, which rely on the same cables as everyone else for the vast majority of their communications, would be largely cut off from their overseas outposts and each other. Satellites would not be able to pick up even half a percent of the traffic. Contemplating the prospect of a mass cable cut to the UK, then-MP Rishi Sunak concluded, "Short of nuclear or biological warfare, it is difficult to think of a threat that could be more justifiably described as existential." Fortunately, there is enough redundancy in the world's cables to make it nearly impossible for a well-connected country to be cut off, but cable breaks do happen. On average, they happen every other day, about 200 times a year. The reason websites continue to load, bank transfers go through, and civilization persists is because of the thousand or so people living aboard 20-some ships stationed around the world, who race to fix each cable as soon as it breaks. The industry responsible for this crucial work traces its origins back far beyond the internet, past even the telephone, to the early days of telegraphy. It's invisible, underappreciated, analog. Few people set out to join the profession, mostly because few people know it exists. Hirai's career path is characteristic in its circuitousness. Growing up in the 1960s in the industrial city of Yokosuka, just down the Miura Peninsula from the Ocean Link's port in Yokohama, he worked at his parents' fish market from the age of 12. A teenage love of American rock 'n' roll led to a desire to learn English, which led him to take a job at 18 as a switchboard operator at the telecom company KDDI as a means to practice. When he was 26, he transferred to a cable landing station in Okinawa because working on the beach would let him perfect his windsurfing. This was his introduction to cable maintenance and also where he met his wife. Six years later, his English proficiency got him called back to KDDI headquarters to help design Ocean Link for KCS, a KDDI subsidiary. Once it was built, he decided to go to sea with it, eventually becoming the ship's chief engineer. Others come to the field from merchant navies, marine construction, cable engineering, geology, optics, or other tangentially related disciplines. When Fumihide Kobayashi, the submersible operator — a tall and solidly built man from the mountain region of Nagano — joined KCS at the age of 20, he thought he would be working on ship maintenance, not working aboard a maintenance ship. He had never been on a boat before, but Hirai enticed him to stay with stories of all the whales and other marine creatures he would see on the remote ocean. Once people are in, they tend to stay. For some, it's the adventure — repairing cables in the churning currents of the Congo Canyon, enduring hull-denting North Atlantic storms. Others find a sense of purpose in maintaining the infrastructure on which society depends, even if most people's response when they hear about their job is, But isn't the internet all satellites by now? The sheer scale of the work can be thrilling, too. People will sometimes note that these are the largest construction projects humanity has ever built or sum up a decades-long resume by saying they've laid enough cable to circle the planet six times. KCS has around 80 employees, many of whom, like Hirai, have worked there for decades. Because the industry is small and careers long, it can seem like everyone knows one another. People often refer to it as a family. Shipboard life lends itself to a strong sense of camaraderie, with periods of collaboration under pressure followed by long stretches — en route to a worksite or waiting for storms to pass — without much to do but hang out. Kobayashi learned to fish off the side of the ship and attempted to improve the repetitive cuisine by serving his crewmates sashimi. (His favorite is squid, but his colleagues would prefer he use the squid to catch mackerel.) Hirai, an enthusiastic athlete, figured out how to string up a net on the Ocean Link's helideck and play tennis. Other times, he would join the crew for karaoke in the lounge, a wood-paneled room behind an anomalous stained-glass door containing massage chairs, a DVD library, and a bar. A self-described "walking jukebox," Hirai favored Simon & Garfunkel and Billy Joel, though he said the younger members of the fleet didn't go in for it as much. The world is in the midst of a cable boom, with multiple new transoceanic lines announced every year. But there is growing concern that the industry responsible for maintaining these cables is running perilously lean. There are 77 cable ships in the world, according to data supplied by SubTel Forum, but most are focused on

the more profitable work of laying new systems. Only 22 are designated for repair, and it's an aging and eclectic fleet. Often, maintenance is their second act. Some, like Alcatel's Ile de Molene, are converted tugs. Others, like Global Marine's Wave Sentinel, were once ferries. Global Marine recently told Data Centre Dynamics that it's trying to extend the life of its ships to 40 years, citing a lack of money. One out of 4 repair ships have already passed that milestone. The design life for bulk carriers and oil tankers, by contrast, is 20 years. "We're all happy to spend billions to build new cables, but we're not really thinking about how we're going to look after them," said Mike Constable, the former CEO of Huawei Marine Networks, who gave a presentation on the state of the maintenance fleet at an industry event in Singapore last year. "If you talk to the ship operators, they say it's not sustainable anymore." He pointed to a case last year when four of Vietnam's five subsea cables went down, slowing the internet to a crawl. The cables hadn't fallen victim to some catastrophic event. It was just the usual entropy of fishing, shipping, and technical failure. But with nearby ships already busy on other repairs, the cables didn't get fixed for six months. (One promptly broke again.) But perhaps a greater threat to the industry's long-term survival is that the people, like the ships, are getting old. In a profession learned almost entirely on the job, people take longer to train than ships to build.