| **Topic** |
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Resolved: The United States should accede to the Rome Statute of the International Criminal Court.

PF Topic Overview

The Rome Statute of the International Criminal Court (ICC) sets out the Court's jurisdiction over genocide, crimes against humanity, war crimes and – as of an amendment in 2010 – the crime of aggression. As of now, 125 countries are States Parties to the Rome Statute of the International Criminal Court.

Founded in 1998 after nearly a century of major-power wars and conflicts, the ICC was designed to hold individuals accountable for genocide, war crimes, and other serious international crimes. The United States has declined to join or recognize the jurisdiction of the ICC in the 25 years since its founding.

Additional resources:

<https://www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court#:~:text=Adopted%20at%20the%20Rome%20Conference,2010%20%E2%80%93%20the%20crime%20of%20aggression>.

<https://www.cfr.org/article/international-criminal-court-and-justice-vs-democracy-problem>

| Affirmative |
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We stand in affirmation of the resolution: The United States should accede to the Rome Statute of the International Criminal Court.

*Definitions*

accede: become a member of a community or organization (Oxford Languages)

Rome Statute: The Rome Statute of the International Criminal Court is the international treaty that founded the Court. The Statute sets out the Court's jurisdiction over genocide, crimes against humanity, war crimes and – as of an amendment in 2010 – the crime of aggression. (ICC, <https://www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court>)

**Framework**

**Cost-benefit analysis**

The framing for today’s round ought to be cost benefit analysis. If we demonstrate that the United States acceding to the Rome Statute of the ICC provides more good than harm, we should win the round.

**Contention 1: The ICC Needs U.S. Backing**

**The ICC is not legitimized by the U.S.**

**NPR 2022**

NPR, Michel Martin of NPR and John Bellinger III, a former legal adviser for the National Security Council, April 16 2022, <https://www.npr.org/2022/04/16/1093212495/the-u-s-does-not-recognize-the-jurisdiction-of-the-international-criminal-court>

President Biden used the word genocide to describe atrocities committed by Russia in Ukraine. The president had also previously called Russian President Vladimir Putin a war criminal and said evidence should be gathered to put Putin on trial. Now, you might be asking, how or where does such a trial take place? There is a legal body specifically set up to prosecute cases of genocide, war crimes and other serious international crimes. It's the International Criminal Court, or ICC. But… The U.S. does not recognize the jurisdiction of this legal body.

Critics say that this is already hurting U.S. moral authority by not being a member.

It is unfortunate that the United States is not a party to the International Criminal Court. We should be.

**U.S. International Leadership**

**Foreign Policy 2023**

Foreign Policy, Yevgeny Vindman, a former colonel in the U.S. Army JAG Corps who served as deputy legal advisor on the White House National Security Council from 2018 to 2020, April 11, 2023, <https://foreignpolicy.com/2023/04/11/russia-putin-ukraine-war-icc-united-states-crimes-arrest-warrant/>

Since World War II, the United States has helped build, reinforce, and lead an international order in which countries play by predictable rules. Conflicts, at least between major powers, are resolved through negotiation and consensus instead of force. This system of postwar institutions provides a bedrock of stability that has allowed for a climate of relative peace among global powers and economic prosperity for the American public… Supporting institutions of justice and accountability—even those that could potentially hold the United States accountable—would be a much-needed investment in the long-term viability of the U.S.-led international system for generations to come.

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As is the case of any international treaty, support for the ICC undoubtedly involves a certain sacrifice of sovereignty in pursuit of stability, deterrence, and peace. But even sharp criticisms and great concerns about joining the ICC should not dissuade the United States from entering into a treaty that will support the international rule of law.

**Con 2: The War in Ukraine**

**Less Opposition to the ICC In Light of Ukraine**

**Opino Juris 2022**

Opino Juris (associated with the International Commission of Jurists), Dr Caleb H Wheeler, a Lecturer in Law at Cardiff University, August 12 2022

The war in Ukraine has at least temporarily broken down some of the pre-existing opposition to the ICC. On 15 March [2022], the US 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… The resolution was sponsored by Senator Lindsey Graham, a self-described ‘conservative problem-solver’. Several weeks later, the House of Representatives passed a bill with overwhelming bi-partisan support that directed the President to report on efforts the United States was making to collect, analyse and preserve evidence of Russian crimes committed in Ukraine for use in any future domestic, foreign or international proceedings. While it did not refer directly to the International Criminal Court, one of the bills’ co-sponsors, Representative Ilhan Omar stated in a Press Release that the Bill would help support proceedings at the ICC.

Following the Russian invasion of Ukraine, Biden very quickly engaged with the idea that Russian President Vladimir Putin was committing crimes for which he should be put on trial. Biden declared Putin a ‘war criminal’ within a month of the start of the invasion. He reiterated that claim several weeks later and also declared the need to gather evidence to be used during a ‘war crimes’ trial. He followed that statement with a declaration that Putin was committing a genocide in Ukraine, and that it would be up to international lawyers to work out whether Putin’s actions legally qualified as genocide. Despite using the terminology of the ICC when calling for Putin’s prosecution, Biden and his administration have been much more hesitant about turning to the ICC as a venue for that trial. 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.

**Now Is Key–Russia In Ukraine**

**Lieber Institute 2023**

Lieber Institute, David Scheffer, he was the U.S. Ambassador at Large for War Crimes Issues (1997-2001) and led the U.S. delegation to U.N. talks to establish the International Criminal Court, July 17 2023, <https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/>

Retired senior officials of the U.S. Government, particularly having held legal positions, have reversed their own positions and believe the United States should abandon the archaic immunity interpretation. Granted, the Russian invasion of Ukraine has proven to be an inflection point on the issue. At some stage the hypocrisy of the matter must be acknowledged. It simply is implausible to keep arguing the immunity interpretation with a straight face when the criminal assault against Ukraine and its people is so blatant, so widespread, so deadly, so destructive, and so persistent and while the U.S. Congress and the Biden Administration have evolved to support efforts, such as the ICC investigations, to hold Russian officials accountable under international criminal law.

**Con 3: Norms of International Law**

**The Immunity Interpretation Is Over**

**Lieber Institute 2023**

Lieber Institute, David Scheffer, he was the U.S. Ambassador at Large for War Crimes Issues (1997-2001) and led the U.S. delegation to U.N. talks to establish the International Criminal Court, July 17 2023, <https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/>

There is longstanding American policy that while the United States remains a non-party State to the Rome Statute, the ICC has no jurisdiction over U.S. nationals for actions undertaken even on the territory of a State Party of the Rome Statute. The same standard would apply to any other non-party State (like Russia) and its nationals acting on State Party territory (or territory of a non-party State—like Ukraine—that has fallen under the jurisdiction of the ICC voluntarily or because of a UN Security Council mandate). [Termed] the “immunity interpretation,” which makes it difficult for the United States to fully embrace the ICC’s investigations of Russian suspects for atrocity crimes (war crimes, crimes against humanity, genocide) committed in Ukraine.

The immunity interpretation, however, is archaic, counter-productive, and largely rejected worldwide.

Whatever the merits of the immunity interpretation 25 years ago, it has been overtaken by the march of customary international law combining both state practice and opinio juris, by judicial decisions, by persuasive scholarly work, by a renewed recognition of fundamental principles of criminal law and of sovereign decision-making, and frankly by common sense.

**The U.S. Should Abide By International Norms**

**Opino Juris 2022**

Opino Juris (associated with the International Commission of Jurists), Dr Caleb H Wheeler, a Lecturer in Law at Cardiff University, August 12 2022, <https://opiniojuris.org/2022/08/12/should-the-icc-allow-the-united-states-to-become-a-state-party/>

In a recent statement by Linda Thomas-Greenfield, the US Ambassador to the United Nations, [w]hen asked about trying Putin at the ICC, she responded that it remained available as an option and that the United States has always been supportive of the Court taking action ‘when action is required.’ Implicit in this statement is the idea that holding Americans accountable is never required.

The problem with this approach is that the United States’ understanding of when action is required differs from that of the Court. The ICC was founded on the principle of ending the impunity of individuals committing genocide, war crimes, crimes against humanity and the crime of aggression regardless of their official position or national affiliation. From the Court’s perspective, action is required when it can help achieve that purpose.

**Extensions**

**U.S. Hypocrisy**

**Brookings, 2024**

Kelebogile Zvobgo, Brookings, December 20 2024, <https://www.brookings.edu/articles/bidens-icc-hypocrisy-undermines-international-law/>

When International Criminal Court (ICC) judges issued arrest warrants for Israeli Prime Minister Benjamin Netanyahu and his former defense minister, Yoav Gallant, last month, U.S. President Joe Biden said the decision was “outrageous” and declared that “We will always stand with Israel.”

What explains Biden’s stance? The evidence suggests that he is engaging in hypocrisy, opposing the ICC because it is scrutinizing the actions of a U.S. ally. Biden (like his predecessors) has supported the ICC—when doing so has served U.S. interests. This uneven approach undermines international law.

**Justice Under the Law**

**Brookings, 2024**

Kelebogile Zvobgo, Brookings, December 20 2024, <https://www.brookings.edu/articles/bidens-icc-hypocrisy-undermines-international-law/>

Nonmember nationals are also subject to ICC jurisdiction if they are alleged to have committed atrocity crimes on the territory of a state that has accepted the court’s jurisdiction.

The State of Palestine acceded to the Rome Statute on January 2, 2015, about two years after being granted “nonmember observer state” status at the United Nations, accepting ICC jurisdiction from June 13, 2014, onward—a period covering the 2014 Israel-Gaza war. U.N. nonmember observer state status has allowed the Palestinian Authority (PA), which speaks for the Palestine Liberation Organization, the internationally recognized representative of the Palestinian people, to enter Palestine into international agreements at international organizations like the ICC.

So, for more than a decade, Palestinian nationals have been subject to the ICC’s jurisdiction—and so have Israeli nationals engaged in the Israeli-Palestinian conflict. This is how the court can investigate Netanyahu and Gallant (among others) as well as the Hamas militants responsible for the horrendous October 7, 2023, terrorist attack against Israel.

There is an ICC warrant for the arrest of Mohammed Deif, a top Hamas military leader. Israel claims to have killed him but the ICC prosecutor hasn’t been able to confirm his death. The prosecutor withdrew warrant requests for Yahya Sinwar (Hamas’ former leader in Gaza who was killed in October) and Ismail Haniyeh (Hamas’ former political bureau chairman who was killed in July).

Biden and Netanyahu have accused the court of drawing a false moral equivalence between Israel and Hamas. However, by issuing arrest warrants for leaders on both sides of the conflict, the case indicates the court is trying to render equal justice under the law. Israel has a right to defend itself in light of the unspeakable Hamas attacks, but it matters how it does so.

| Negative |
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We stand in firm negation of the resolution: The United States should accede to the Rome Statute of the International Criminal Court.

*Definitions*

accede: become a member of a community or organization (Oxford Languages)

Rome Statute: The Rome Statute of the International Criminal Court is the international treaty that founded the Court. The Statute sets out the Court's jurisdiction over genocide, crimes against humanity, war crimes and – as of an amendment in 2010 – the crime of aggression. (ICC, <https://www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court>)

**Framework**

**Cost-benefit analysis**

The framing for today’s round ought to be cost benefit analysis. If we demonstrate that the United States acceding to the Rome Statute of the ICC creates more harm than good, we should win the round.

**Con 1: The ICC Lacks Legitimacy**

**An Illegitimate Focus on Africa & A Biased Veto Power**

**Cambridge 2021**

Cambridge Undergraduate Law Review, <https://www.culawreview.org/roundtable-1/roundtable-discussion-the-promises-and-problems-of-the-international-criminal-court>

Since the inception of the ICC, critics have challenged its legitimacy as a global, unbiased institution for two main reasons. First, the ICC has an apparent focus on the African continent, which has spurred not only criticism but also actual withdrawal from the Rome Statute. Second, there is a perceived Western hegemony over ICC proceedings that arises from the UN Security Council’s referrals.

For the last two decades, the ICC has repeatedly come under fire for primarily prosecuting Africans and turning a blind eye to atrocities that take place outside of Africa. Of the thirteen situations currently under investigation, ten are focused on African countries. [1] Leaders of these countries have condemned this apparent bias for subjecting them to excessive persecution. For example, Burundi, which withdrew from the Rome Statute in 2017, accused the Court of being “a political instrument and weapon used by the West to enslave other States.”

The authority of the UNSC [United Nation Security Council] to issue referrals has come under significant attack as three of its five permanent members--Russia, China and the U.S.--have not signed the Rome Statute. As council states, however, they possess veto powers and thus have the power to decide when the Court may investigate despite not submitting to the ICC’s jurisdiction themselves.

Ultimately, the ICC’s referral system leaves too much room for exploitation and abuse by states. The ability of three states to have such significant control over a third of the ICC’s referral systems when they are not themselves party to the Rome Statute undermines the legitimacy of the Court and its purported impartiality.

**ICC Is Positioned Above Rather Than Alongside**

**Just Security 2020**

Brian Cox, Just Security, June 24 2020, <https://www.justsecurity.org/71015/the-icc-wants-justice-but-has-no-mandate/>

The primary concern that prompted the United States to vote against the text of the Rome Statute during multilateral treaty negotiations more than 20 years ago was that the tribunal could stand above, rather than alongside, sovereign governments. As U.S. delegate Bill Richardson remarked during negotiations in Rome, “We are not here to create a Court that exists to sit in judgement on national systems or second-guess each action and intervene if it disagrees.” From the American perspective, the goal for the negotiations was to create a forum to adjudicate serious violations of international law where no State had the capacity to do so.

While the creation of the Court represents a truly monumental achievement in the development of international criminal law, as an institution it has been the target of substantial criticism. Among the most pernicious criticisms, one that constitutes an existential threat to the legitimacy of the ICC is that the tribunal fosters an anti-Africa bias. As an institution that relies on the continuing cooperation of States that have ratified the Rome Statute, even the appearance that the ICC unfairly targets any one State – let alone an entire continent – can inflict irreparable damage to the Court’s legitimacy.

**Con 2: The ICC Lacks Efficacy**

The U.S. should not accede to the ICC, giving it more credibility, because it is weak and ineffective.

**Ineffective Proceedings**

**Cambridge 2021**

Cambridge Undergraduate Law Review, <https://www.culawreview.org/roundtable-1/roundtable-discussion-the-promises-and-problems-of-the-international-criminal-court>

When it comes to the initiation and execution of proceedings before the ICC, there are recurring practical issues that hinder the Court’s mission in two ways: by delaying the administration of justice and by preventing the very chance of seeing justice done in the first place.

ICC proceedings are patently slow-moving. Investigations can span years, if not decades; for instance, proceedings in Uganda that began in 2004 have still not concluded.

Beyond these administrative failings, the ICC’s reliance on the cooperation of member states to enforce warrants and surrender fugitives is arguably an even greater threat to the organization’s efficacy. Although such cooperation has often been forthcoming, any Court that must rely on the acquiescence of a third party to bring proceedings cannot truly be considered an effective judicial body. As individual states may simply ignore a warrant or request from the ICC, they have the potential to substantially interfere in the effective administration of justice… Indeed, any effective judicial action by the ICC is heavily limited by administrative and procedural barriers.

**Noncompliance with Arrest Warrants**

**Wong 2019**

Frankie Wong for Access Accountability, <https://accessaccountability.org/index.php/2019/09/26/criticisms-and-shortcomings-of-the-icc/#:~:text=The%20ICC%20itself%20lacks%20the,to%20oblige%20States%20to%20cooperate>.

The ICC itself lacks the institutional resources to ensure that the defendants actually show up in Court as it has no police force of its own and has no reliably effective means to oblige States to cooperate. An illuminating example of this is the ICC’s request to arrest and surrender Sudan’s President Omar Al-Bashir for the commitment of the crimes under Article 5. The arrest warrant, first issued in 2009, was ignored by 19 different countries, 9 of which are signatories of the Rome Statute.

**Con 3: The ICC Supersedes Democracy**

**ICC Denies Amnesty & Transitions of Power**

**Abrams, 2024**

Elliot Abrams writing for the Council on Foreign Relations, July 9 2024, <https://www.cfr.org/article/international-criminal-court-and-justice-vs-democracy-problem>

The Court has made protecting human rights and democracy more difficult. Amnesties are a frequent part of transitions to democracy and can help persuade dictators to leave power, but the court’s insistence on prosecutions can eviscerate amnesties—and take the decision out of the hands of the voters seeking a democratic transition.

Here is the problem when the court indicts a head of state who seized power undemocratically: it significantly reduces the possibility of negotiating that individual or similarly situated individuals out of power.

In the 1990s the United States supported the evolution of South Africa away from the apartheid regime and toward democracy. It is important to recall how Nelson Mandela, who was elected president of South Africa in 1994, dealt with the crimes of the regime he replaced: by seeking reconciliation, not revenge. He appointed the previous president, F.W. de Klerk, as deputy president and met with others who had been high officials of the apartheid government. He established the Truth and Reconciliation Commission, which investigated crimes committed under apartheid—but offered amnesty rather than punishment to those who admitted what they had done. The goal was national reconciliation rather than punishment—or what has been called restorative justice rather than retributive justice.

Uruguay presents a different model for a transition to democracy. Negotiations between the military junta and representatives of the democratic political parties resulted in the Naval Club Pact in 1984—leading to free elections in 1985 and the end of the dictatorship. The pact included a blanket amnesty for human rights violations that occurred under the junta. By my count, virtually every negotiated transition from dictatorship to democracy has included some form of transitional justice and very often included some form of amnesty.

Negotiations about a transition to democracy are conducted by top officials of the outgoing regime, who will be especially interested in their own scalps. When there is a negotiation with a head of state about his departure from power, he will be weighing the pressures to leave office against his own fate if he agrees. A key part of that negotiation is often—and this was certainly the case for Marcos and Duvalier—being able to assure the man in power that he will not be executed or spend the rest of his life in prison.

That is an unjust outcome, allowing those who organize coups and violate human rights to escape punishment. But it is also a necessary ingredient to ending dictatorship and transitioning to democracy in many cases. When extending the years covered by the amnesty in South Africa, Nelson Mandela said in 1996 that “this is one of the most difficult decisions I have had to take. Much pain and suffering has been wrought on families, communities, and the nation as a whole by acts of the nature for which amnesty is to be requested and possibly granted. But I have decided to take this decision, because on balance I am persuaded that it will further consolidate nation-building and reconciliation in a manner that is all-inclusive.”

Who is to make that decision—to prioritize restorative justice over retributive, or to grant amnesty in the hope of national reconciliation? At first glance the answer seems easy: the government and people of the country in question. But then comes the International Criminal Court. It is not bound by amnesties. The court states [PDF] clearly that “amnesty cannot be used as a defense before the ICC. As such, it cannot bar the court from exercising its jurisdiction.”

Consider then a discussion with a dictator like Marcos or Duvalier, as officials of the U.S. government or other governments try to persuade him to leave. In the 1980s, we were able to say, “Just go.” Take the money and run. Leave the country and leave power now, and no one will come after you. Such individuals may see escape as a good option at that point. And in other cases, an amnesty will be part of their negotiations with those will follow them in power.

But that discussion changes when the individual knows he will forever be vulnerable to ICC prosecution. Then he may wish to hang on and fight on. And he will know that no amnesty agreement can save him, nor can a desire on the part of the new democratic government to favor reconciliation. Instead, the International Criminal Court will make its own decision on all those questions and may pursue him for the rest of his life. Better to hang on to power, he may conclude.

It is in this sense that the very existence of the International Criminal Court may do harm to democracy and human rights.

**The ICC Supplants Democratic Governance**

**Morris, 2022**

Madeline Morris, Professor of Law, Duke University, 2022, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1060&context=faculty_scholarship>

What is ultimately at stake, beneath the heated controversy concerning ICC jurisdiction over non-party nationals, is a tension embodied in the Rome Treaty between the human rights embodied in humanitarian law (rights to freedom from genocide, war crims, and crimes against humanity) and the human right to democratic governance.

The ICC Treaty, insofar as it provides for jurisdiction over non-party nationals, displaces the state as the conduit of democratic representation, and provides no alternative mechanism for democratic governance. Advocates of ICC jurisdiction over non-party nationals might be tempted to suggest that the solution to this democratic dilemma is for all states to become parties to the ICC treaty and, consequently, to participate in the Assembly of States Parties. But this suggestion would not address the fundamental, underlying problem of consent… A system based on the consent of the governed requires that consent be meaningful, that is, that it be optional, that there be the alternative of not consenting.

**Extensions**

**Discriminatory Selection By the ICC**

**Taku 2016**

Charles A. Taku, British Parliament, <https://committees.parliament.uk/writtenevidence/9087/pdf/>

African countries have accused the Court of being selective in the cases brought before the Court. Even in situations referred by the State Parties, the ICC has been criticised for its discriminatory selective process. The investigation and prosecution of one side only in Africa, ICC Situations have not been justified or warranted. I had the opportunity to write in some detail on this matter. I conceded that there are governments and perpetrators in Africa who were riding on the disaffection of the African Union and many people in the continent to attempt to escape from being held accountable at the ICC for atrocity crimes committed in the continent. However, there is overwhelming evidence that the Prosecutor of the ICC has discriminatorily and selectively targeted Africa in the last two decades of the ICC jurisdictional mandate. In all ICC Africa Situations, no matter how activated, the Prosecutor has targeted only one side, often the vanquished and insulated the other, often the victors from investigation and prosecution.

African conflicts and the crimes committed during the conflicts are not necessarily committed by Africans only. The weapons supplied for the perpetration of the crimes are supplied by state and non-state actors who trade the said weapons for African minerals and other natural resources. I named them “arms for minerals merchants of death”. The ICC Prosecutor has failed to investigate and prosecute these category of perpetrators; yet they are the catalysts for a majority of conflicts and crimes on the African continent. Again I cautioned that this discriminatory policy, “far from eradicating the culture of impunity that have fomented conflict and international criminality in Africa, the judicial institution put in place to administer international justice has laid the foundation on which the very laws and values they sought to protect are invoked to perpetuate impunity and strengthen the hand of tyranny.