

# Online Appendix for: “Does the International Criminal Court Target the American Military?”

Daniel Krmaric  
Northwestern University  
[daniel.krmaric@northwestern.edu](mailto:daniel.krmaric@northwestern.edu)

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# Identifying the Universe of Potential ICC Investigations

This section provides additional information about how I created a sample of cases that approximates the universe of situations the ICC might plausibly investigate. As described in the main text, the ICC can prosecute individuals for three atrocity crimes: genocide, war crimes, and crimes against humanity. It therefore might seem natural to identify situations where these crimes occurred and then use those situations to create the sample of cases that the ICC might possibly investigate. However, as I pointed out in the main text, doing so is fraught with challenges.

In this section, I elaborate on this issue in more detail. First, I provide the technical legal definitions of genocide, crimes against humanity, and war crimes. Second, I discuss the challenges associated with applying these definitions to real-world cases. Third, I explain why it is preferable to use a more objective indicator to identify situations that the ICC might investigate: the killing of civilians. I also explain why I used the UCDP Georeferenced Event Dataset instead of other datasets that examine some form of violence against civilians. Fourth, I illustrate why it is important to include all states with civilian killings, not just those that ratified the ICC's Rome Statute, in the sample. Fifth, I show that rare events bias does not drive the results even though ICC investigations happen relatively infrequently.

## *Legal Definitions*

Genocide, crimes against humanity, and war crimes are defined in Articles 6, 7, and 8 of the Rome Statute of the ICC, which are reproduced below.

### **Article 6: Genocide**

For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

### **Article 7: Crimes against humanity**

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;

- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

#### **Article 8: War crimes**

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, “war crimes” means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Willful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Willfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread,

long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
  - (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;
  - (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (iii) Taking of hostages;
  - (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (v) Pillaging a town or place, even when taken by assault;
  - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
  - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;
  - (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;
  - (xiii) Employing poison or poisoned weapons;
  - (xiv) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
  - (xv) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.
- (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

### *Challenges with the Legal Definitions*

As the previous section makes clear, the legal definitions of genocide, crimes against humanity, and war crimes are extremely complicated. Beyond the general confusion over these terms, scholars have identified a number of specific challenges associated with attempting to identify real-world cases of these crimes.

Genocide's definition has arguably received the most attention (e.g., Power 2003; Shaw 2015). Determining whether a specific case meets the legal definition of genocide is difficult because doing so requires making assumptions about the goals and ambitions of the perpetrators of the violence. In particular, genocide requires that acts of violence are committed with the "intent to destroy" a targeted group. Hence, coding genocide requires a tough judgment call on the motives of the perpetrators (e.g., was the killing meant to destroy the targeted group or merely meant to coerce it?). Furthermore, an act does not qualify as genocide if the targeted group is political in nature (i.e., only "national, ethnical, racial or religious" groups are included). This means that mass violence against the political opponents of an incumbent regime—some of the worst violence in recent history—does not meet the legal definition of genocide.

The legal definition of war crimes continues to vex researchers as well. Even today, leading legal scholars debate seemingly basic questions about the nature of war crimes. For example, in an article aptly titled "What is a War Crime?" Hathaway, Strauch, Walton, and Weinberg open their *Yale Journal of International Law* article with the following paragraph: "What is a war crime? The question appears to have a simple answer: a war crime is a violation of the law of war. But do all violations of the law of war qualify as war crimes? And are all war crimes violations of the law of war? These questions are not new. In 1942, Hersch Lauterpacht, a leading international lawyer who assisted the prosecution of the Nazis for war crimes at the International Military Tribunal (IMT) in Nuremberg, wrote a memo in which he asked, 'Is there a definition of war crimes?' More than seven decades later, the answer to his question remains unsettled" (Hathaway et al. 2019, 54).

Similarly, legal scholars continually debate how to apply the definition of crimes against humanity to real-world cases, as evidence by the title of a recent *Harvard International Law Journal* article: "What Counts as a Crime Against Humanity?" (Neuman 2019). Indeed, the definition of crimes against humanity is complex because it is the broadest category of international crime. Unlike genocide, there is not a specific list of potential target groups (crimes against humanity can occur against any civilian population, including political groups). Moreover, unlike war crimes, crimes against humanity can occur during times of peace as well as times of war.

### *Using Civilian Killings to Create the Sample*

Given the challenges associated with identifying real-world cases of genocide, crimes against humanity, and war crimes, I use a more objective indicator to identify situations that the ICC might potentially investigate: the killing of civilians. As explained in the main text, this approach has several advantages. To start, the killing of a substantial number of noncombatants allows the ICC to make a strong case that at least one of the three crimes occurred. Moreover, the ICC openly acknowledges that it uses information about the number of civilians killed when selecting investigations.



There are many datasets that address at least some aspect of violence against civilians. Of the many options, I examine cases of “one-sided violence” (Eck and Hultman 2007) in the Uppsala Conflict Data Program’s (UCDP) Georeferenced Event Dataset (Sundberg and Melander 2013). A one-sided violence event occurs whenever any organized actor, such as a government or rebel group, directly and deliberately kills at least 25 civilians in a given year. For my purposes, the UCDP dataset has several advantages over alternative datasets.<sup>1</sup>

First, it includes *both state and rebel group violence against civilians*, making it possible to capture the universe of cases the ICC could conceivably investigate. Most other datasets of civilian killings focus on only one actor, typically the state (e.g., Downes 2008; Harff 2003; Marshall, Gurr, and Harff 2014; Ulfelder and Valentino 2008; Uzonyi et al. 2021; Valentino 2004). While this sort of approach is appropriate for many research questions, it is problematic in the context of my project because focusing on only one actor risks missing situations where the ICC could open investigations.<sup>2</sup>

Second, it is a *georeferenced dataset*. It therefore is possible to match the location of violent events with ICC investigations and US deployments.<sup>3</sup> This is especially important in the context of actor-based datasets since some actors commit violence in multiple countries (e.g., transnational rebel or terrorist groups). For example, UCDP’s standard one-sided violence dataset is not geocoded (Eck and Hultman 2007). As a result, the authors warn that it should not be used for any analyses with a geographic component because it simply lists every country where the violent actor is responsible for any deaths. By contrast, the georeferenced version of the UCDP dataset provides the distribution and magnitude of violence for each country.

Third, it codes the *precise number of civilians killed*. Many other datasets of violence against civilians only code (a) a dummy variable for whether a civilian killing event (however defined) occurred or (b) a wide range capturing the upper and lower bounds of the death toll. While one can fairly quibble with UCDP’s somewhat arbitrary threshold of 25 civilian deaths (or, for that matter, any other threshold) needed to qualify as a one-sided violence event, the precise death tolls make it possible to control in the statistical models for the gravity of violence in each country. This allows me to differentiate between cases that barely met threshold and those that greatly exceeded it.

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<sup>1</sup> Given my research question, only datasets with global coverage are appropriate. While there are some excellent datasets that focus on only one country or one region, using them here is not feasible.

<sup>2</sup> For my purposes, it should not matter which actor employs violence against civilians. If arguments about anti-American bias are correct, the ICC could use any actor’s violence as an excuse to open investigations in locations that might ensnare the American military. Conversely, if arguments about pro-American bias are correct, the ICC should avoid investigations in countries where the US military is present regardless of which side perpetrated the violence.

<sup>3</sup> To be clear, I construct my sample using the location of the violence. The ICC can also open investigations based on the nationality of the perpetrator. That is, the nationals of ICC ratifiers who commit atrocities anywhere are subject to the Court’s jurisdiction. Focusing on ratifiers who commit violence anywhere might be relevant for studies that explore other aspects of ICC investigations, but it is less relevant in the context of my research question about the relationship between the ICC and the US (a non-ratifier).

Overall, there are plenty of other good datasets that examine some form of violence against civilians. But only one dataset—the UCDP Georeferenced Event Dataset—has all three of the aforementioned attributes. Therefore, I use this dataset to create the sample of cases for my study. Specifically, the study window begins in 2002, the first year of the ICC’s temporal jurisdiction. A country enters my sample after its first instance of one-sided violence, putting it “at risk” of an ICC investigation. The country exits the sample if and when the ICC opens an investigation (observations are right censored after 2020). Note that I include all countries with one-sided violence, not just those that ratified the ICC’s Rome Statute (I return to this issue in the next section of the Appendix).

There is a natural follow-up question: how well does my sample capture actual ICC investigations? If it does a poor job (i.e., if several ICC investigations fall outside the sample), it might call into question my decision to construct the sample using the cases of one-sided violence in the UCDP Georeferenced Event Dataset. Fortunately, my sample does a very good job capturing ICC investigations: all investigations but one (Georgia) are included. Georgia is not included in the main sample because it is a strange case: the violence occurred in the context of an international war (and the UCDP GED dataset codes the civilian deaths as unintended collateral damage rather than as one-sided violence). To confirm that this one unusual case does not drive the results, I re-estimated all the models with Georgia included in the sample (see Table A1). My results are consistent.

**Table A1: Georgia Included in the Sample.**

	1	2	3	4	5
US Military Presence	0.054 (0.640)	0.123 (0.650)	0.134 (0.698)	0.099 (0.701)	0.016 (0.635)
Rome Ratifier	1.307** (0.634)	0.987 (0.717)	1.003 (0.884)	1.106 (0.850)	1.202 (0.875)
Gravity of Violence	0.034** (0.013)	0.032** (0.013)	0.033** (0.013)	0.031** (0.013)	0.031** (0.013)
Rule of Law	-1.493 (1.503)	-0.812 (1.727)	-0.801 (1.732)	-0.889 (1.810)	-0.816 (1.907)
Africa		0.980 (0.775)	0.958 (1.010)	1.063 (1.089)	1.029 (1.081)
P5 Alliance			-0.058 (1.309)	-0.021 (1.302)	-0.108 (1.342)
Article 98				-0.312 (0.764)	-0.377 (0.704)
Bush					0.815 (1.124)
Obama					0.584 (0.824)
Time	-0.201 (0.383)	-0.208 (0.374)	-0.206 (0.396)	-0.183 (0.385)	-0.166 (0.414)
Time <sup>2</sup>	-0.006 (0.057)	-0.002 (0.055)	-0.002 (0.059)	-0.004 (0.059)	-0.001 (0.056)

Time <sup>3</sup>	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)
Constant	-3.959** (1.020)	-4.653** (1.121)	-4.645** (1.097)	-4.592** (1.125)	-5.297** (1.827)
<i>N</i>	720	720	720	720	720
<i>AIC</i>	116.60	116.84	118.84	120.69	124.28
<i>BIC</i>	153.24	158.06	164.63	171.06	183.81

Note: The dependent variable is ICC investigation onset. Standard errors clustered by country are in parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

### *Why Non-Ratifiers Are Included in the Sample*

I include all countries with one-sided violence, not just those that ratified the ICC’s Rome Statute, in my sample. I justified this decision in the main text, but it is worth elaborating on it in more detail here.

The main reason why non-ratifiers are included in the sample is straightforward: the ICC can and does investigate violence in countries that are not ICC state parties. Since the United Nations Security Council (UNSC) can refer situations to the Court that are not part of its standard jurisdiction, the ICC has a potentially global reach. As one scholar marveled, “A leader whose country has not signed onto the Rome Statute, and who is committing crimes entirely within his own borders, could still find himself in the Court’s crosshairs” (Bosco 2014, 55). Therefore, it is appropriate to think of ratification of the Rome Statute as a variable that captures the degree to which there are jurisdictional barriers that must be overcome before an investigation is opened (it is not a variable that precludes investigations).

Furthermore, if I were to exclude non-ratifiers from the sample, then I would have to omit five of the ICC’s investigations from the analysis.<sup>4</sup> Two of these investigations, Sudan and Libya, were the result of high-profile UNSC referrals. Two more, the Ivory Coast and Ukraine, were made possible because governments accepted the ICC’s jurisdiction under so-called Article 12(3) declarations (a legal mechanism that gives the ICC jurisdiction on an ad hoc basis) even though they had not ratified the Rome Statute. The fifth investigation, Myanmar/Bangladesh, occurred because the ICC took a new and somewhat controversial approach to interpreting its rules of territorial jurisdiction. The investigation concerns Myanmar’s violence against the Rohingya population. Myanmar is not an ICC state party, but the Court asserted that it has jurisdiction because Bangladesh (where many Rohingya have fled) is a state party. The ICC’s logic was that it could open an investigation into Myanmar’s “clearance operations” because at least part of the

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<sup>4</sup> It is also worth pointing out that excluding non-ratifiers would have important implications for the sample size. My sample currently has 59 different countries and a total of 711 country years in the statistical analysis. Excluding non-ratifiers would restrict the statistical analysis to only 28 countries and 280 country years. In other words, this approach would eliminate over 60% of the observations that were included in the analysis in Table 1.

crimes occurred as the Rohingya crossed the border into Bangladesh.<sup>5</sup> Overall, these examples show how (a) the ICC unambiguously has the authority to investigate non-state parties via referrals and Article 12(3) declarations and (b) the ICC is willing to “stretch” its jurisdiction in creative ways to investigate crimes in non-state parties.

To be clear, including non-ratifiers in the sample does not mean that I ignore the issue of Rome Statute ratification. To the contrary, I control for it in the statistical analysis. As mentioned above, this is an appropriate control variable because it captures the extent to which there may be jurisdictional barriers to an ICC investigation in a particular country. In the results in Table 1, the Rome Statute ratification variable is always positive, suggesting that ICC investigations are somewhat more likely in state parties (as one would expect given that the ICC automatically has jurisdiction in those countries). However, even if we use the .10 level for statistical significance, the ratification variable is insignificant in four of the five models. The general lack of statistically significant results for this variable further demonstrates the importance of including non-ratifiers in the sample.

A related issue concerns the role of the UNSC in referring situations involving non-ratifiers to the ICC. Simply put, ICC investigations stemming from UNSC referrals may be different. UNSC referrals suggest that there is major power support for an investigation, so the opening of an investigation might reflect the preferences of the “P5” members of the UNSC as much as ICC decision-making. Furthermore, cases involving UNSC referrals may be unique because the very fact that a UNSC referral occurred means that the US chose not to use its veto power to block ICC jurisdiction. On top of that, there have been relatively few ICC investigations, so the two investigations stemming from UNSC referrals (Sudan and Libya) might carry great weight in the statistical analysis.

One might be tempted to argue that investigations stemming from UNSC referrals are so unique that they ought to be excluded from the analysis. There is some merit to this point, but it is less compelling upon closer examination. Most notably, the ICC still has agency after a UNSC referral: the Court can decide not to open an investigation even if the UNSC initiates a referral. Therefore, a better strategy is to keep UNSC referrals in the analysis and try to control for dynamics associated with the UNSC. In fact, I already did this to some degree by controlling for whether each country has an alliance with a member of the P5. As mentioned in the paper, the idea behind this control variable is that the P5 can shield their allies from at least some ICC investigations by vetoing referrals. Nonetheless, it is possible that unique dynamics may be at play in the Sudan and Libya cases. To ensure that these cases do not drive or distort my results, I re-estimated the models after excluding Sudan and Libya from the sample. My results are unchanged when using this alternative sample that excludes cases linked to UNSC referrals (see Table A2).

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<sup>5</sup> To be clear, I code Myanmar as the target of the investigation.

**Table A2: Sudan and Libya (UNSC Referrals) Excluded from the Sample.**

	1	2	3	4	5
US Military Presence	0.189 (0.800)	0.237 (0.808)	0.499 (0.815)	0.556 (0.873)	0.236 (0.812)
Rome Ratifier	1.888** (0.794)	1.599* (0.880)	2.358* (1.288)	2.304* (1.328)	2.457** (1.110)
Gravity of Violence	0.027* (0.014)	0.024 (0.015)	0.027** (0.013)	0.028** (0.013)	0.024** (0.012)
Rule of Law	-2.407 (1.759)	-1.803 (2.089)	-1.474 (2.137)	-1.414 (2.024)	-1.301 (2.303)
Africa		0.916 (0.973)	0.112 (1.279)	0.024 (1.291)	0.130 (1.277)
P5 Alliance			-2.114 (1.466)	-2.175 (1.395)	-2.153 (1.350)
Article 98				0.237 (1.030)	0.037 (0.965)
Bush					1.381 (1.510)
Obama					0.173 (1.192)
Time	-0.170 (0.346)	-0.176 (0.344)	-0.090 (0.371)	-0.107 (0.400)	0.032 (0.377)
Time <sup>2</sup>	-0.009 (0.056)	-0.006 (0.054)	-0.023 (0.060)	-0.022 (0.062)	-0.022 (0.062)
Time <sup>3</sup>	0.001 (0.002)	0.001 (0.002)	0.002 (0.002)	0.002 (0.002)	0.002 (0.003)
Constant	-4.553** (0.734)	-5.161** (1.153)	-5.193** (1.175)	-5.269** (1.154)	-6.383** (2.045)
<i>N</i>	706	706	706	706	706
<i>AIC</i>	90.84	91.76	90.71	92.66	95.69
<i>BIC</i>	127.32	132.79	136.31	142.81	154.96

Note: The dependent variable is ICC investigation onset. Standard errors clustered by country are in parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

### *The Possibility of Rare Events Bias*

A final concern related to the sample of cases is rare events bias. Given that ICC investigations happen relatively infrequently, I re-estimate the models from Table 1 in the main text using penalized maximum likelihood regression (Firth 1993) to account for the possibility of rare events bias. Consistent with my main results, the relationship between ICC investigations and the presence of the American military in a country is statistically insignificant in every model (see Table A3). In fact, the  $p$ -values for the US military presence variable are remarkably similar to those in Table 1 (and are never less than .88). Hence, the results are not due to rare events bias.

**Table A3: Rare Events Models.**

	1	2	3	4	5
US Military Presence	-0.057 (0.659)	0.020 (0.660)	0.097 (0.675)	0.000 (0.672)	-0.043 (0.683)
Rome Ratifier	1.193* (0.642)	0.807 (0.675)	0.860 (0.709)	1.039 (0.776)	1.079 (0.787)
Gravity of Violence	0.035** (0.013)	0.033** (0.013)	0.033** (0.013)	0.030** (0.013)	0.028** (0.014)
Rule of Law	-2.061 (1.549)	-1.374 (1.652)	-1.304 (1.628)	-1.401 (1.656)	-1.348 (1.670)
Africa		1.066 (0.782)	0.956 (0.828)	1.112 (0.870)	1.100 (0.863)
P5 Alliance			-0.229 (0.897)	-0.142 (0.892)	-0.166 (0.897)
Article 98				-0.545 (0.794)	-0.603 (0.796)
Bush					0.347 (1.320)
Obama					0.114 (1.078)
Time	-0.316 (0.433)	-0.322 (0.435)	-0.321 (0.436)	-0.278 (0.436)	-0.235 (0.454)
Time <sup>2</sup>	0.003 (0.062)	0.009 (0.062)	0.008 (0.062)	0.005 (0.062)	0.005 (0.062)
Time <sup>3</sup>	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)
Constant	-3.281** (0.855)	-3.987** (1.048)	-3.915** (1.061)	-3.776** (1.056)	-3.982** (1.550)
<i>N</i>	711	711	711	711	711
<i>AIC</i>	65.98	65.05	66.51	67.31	70.50
<i>BIC</i>	102.51	106.15	112.17	117.55	129.86

Note: The dependent variable is ICC investigation onset. Standard errors are in parentheses.

\*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

## Measuring America's Foreign Military Presence

As described in the main text, I determine whether the US has a military presence in each country using Vine's (2019) dataset that tracks the location of every American military installation around the globe. Specifically, Vine's dataset includes every known American base (larger, more permanent installations that often resemble cities) and lily pad (smaller, more temporary installations that house limited numbers of forces). Using this dataset, I create a dummy variable that equals 1 for states that have a US military installation on their territory. According to Vine's data, there are 78 countries or dependencies that have an American military presence on their territory.

The advantage of Vine’s dataset is that it makes use of both government and non-government sources. This approach is preferable to relying exclusively on the Department of Defense’s notoriously incomplete reporting on its foreign military facilities (such as its “base structure” reports). Indeed, the Pentagon refuses to acknowledge the presence of hundreds of American military installations that are publicly known and widely verified.<sup>6</sup> It is a telling sign of the poor quality of the Department of Defense data that some government-funded reports on America’s foreign military presence choose to use Vine’s dataset instead of the Pentagon’s own list of bases.<sup>7</sup>

Despite its advantages, there is one downside to Vine’s dataset: it is not an annual time-series dataset. Rather, it provides snapshots of America’s foreign military installations at only a few discrete points in time (1939, 1945, 1989, 2015, and 2019). I use the 2015 snapshot because it falls closest to the middle of my study’s time frame. Hence, my main US military presence variable codes whether a county had a US military installation on its territory in 2015. While annual data would be preferable, there is little reason to think that using the 2015 snapshot of America’s foreign military installations is problematic. As scholars of US military deployments note, physical bases are “relatively fixed and immobile” (Allen, Flynn, and Martinez Machain 2021, 3). On top of that, it often takes the US many years to build a base, negotiate a Status of Forces Agreement with the host nation, and staff the base. Thus, even if Vine’s dataset had annual observations, my US military presence variable should change very slowly. While the number of troops at each military installation may vary considerably over time, whether or not a given country has any US military installations on its territory is relatively static.

For these reasons, Vine’s data on America’s foreign military installations is, in my view, the best available indicator of US military presence. Nonetheless, I employ an alternative measure to ensure that my results are robust to different ways of measuring the presence of the American military in a given country.

The alternative measure shifts the focus from American military installations to American troops themselves. Specifically, I use Allen, Flynn, and Martinez Machain’s (2021) dataset that codes the number of active-duty American troops deployed in each country for every year between 1950 and 2020. A major advantage of this dataset is, of course, its time-series cross-sectional structure. However, this dataset has some drawbacks as well. The original source for the numbers of American troops deployed in each country is the Defense Manpower Data Center (part of the Department of Defense). As described above, the Pentagon’s reporting on its overseas military presence is often incomplete and, at times, rather dubious. Additionally, as Allen, Flynn, and Martinez Machain (2021) describe, the Pentagon’s standards for reporting troop levels are not consistent over time. Finally, the numbers only include active-duty troops that are publicly assigned to a host country. This means that special forces, reservists, and National Guard deployments are often not captured in the data. For these reasons, the precise numbers of troops should be interpreted with a healthy dose of caution. Despite this, the Allen, Flynn, and Martinez

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<sup>6</sup> Nick Turse, “The Pentagon Won’t Acknowledge Hundreds of Military Bases,” *The Nation*, November 6, 2019.

<sup>7</sup> See, for example, O’Mahony et al. (2018).

Machain (2021) dataset is very useful for determining which countries do and do not have an American military presence. I therefore use their dataset to create a dummy variable indicating whether countries have any American troops deployed on their territory in a given year. The results, shown in Table A4, are consistent with those reported in the main text: the relationship between ICC investigations and US military presence is always statistically insignificant.<sup>8</sup>

**Table A4:** Alternative Measure of US Military Presence (Troop Deployments).

	1	2	3	4	5
US Military Presence	0.174 (1.313)	0.351 (1.360)	0.352 (1.367)	0.639 (1.692)	0.604 (1.739)
Rome Ratifier	1.263* (0.752)	0.851 (0.871)	0.922 (1.014)	1.155 (0.965)	1.225 (1.013)
Gravity of Violence	0.036** (0.013)	0.034** (0.013)	0.034** (0.013)	0.032** (0.012)	0.031** (0.013)
Rule of Law	-2.436 (1.702)	-1.707 (1.991)	-1.642 (2.058)	-1.984 (2.278)	-1.936 (2.418)
Africa		1.285 (0.915)	1.192 (1.128)	1.452 (1.255)	1.406 (1.266)
P5 Alliance			-0.270 (1.426)	-0.197 (1.432)	-0.270 (1.543)
Article 98				-0.731 (0.974)	-0.758 (0.925)
Bush					0.637 (1.311)
Obama					0.292 (0.904)
Time	-0.313 (0.399)	-0.333 (0.390)	-0.330 (0.408)	-0.279 (0.397)	-0.244 (0.446)
Time <sup>2</sup>	0.000 (0.061)	0.007 (0.058)	0.006 (0.062)	0.003 (0.061)	0.004 (0.059)
Time <sup>3</sup>	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)
Constant	-3.669** (1.270)	-4.681** (1.589)	-4.624** (1.611)	-4.756** (1.817)	-5.267** (2.137)
<i>N</i>	711	711	711	711	711
<i>AIC</i>	105.26	104.76	106.68	108.00	111.77
<i>BIC</i>	141.79	145.86	152.34	158.23	171.14

Note: The dependent variable is ICC investigation onset. Standard errors clustered by country are in parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

It is also worth pointing out that the American military variables used in my analysis capture whether US troops are present in a country but not whether US forces themselves engaged in abuses. This is not a problem because, as documented in my paper, a persistent concern of

<sup>8</sup> To be clear, these are the underlying regression models for the average marginal effects reported in the right panel of Figure 1 in the main text.



American policymakers has been that US troops deployed abroad would unfairly get dragged into politicized ICC investigations *even when they were not responsible for atrocity crimes*. For example, see the quote in my paper from US Ambassador to the UN Bill Richardson at the Rome Conference about the risk of American soldiers being targeted with “politicized proceedings” for simply “doing their jobs.” Nevertheless, the likelihood of the US military being implicated in atrocity crimes probably is higher in some cases (particularly those linked to the War on Terror) than in others. To account for this possibility, I add a control variable for states that participated in America’s irregular rendition program (Cordell 2019). This variable usefully serves as a proxy for the extent to which US forces in some countries were tied to relatively more dubious activities as part of the War on Terror. In these models, my conclusions remain unchanged (see Table A5).

**Table A5: Accounting for War on Terror Dynamics.**

	1	2	3	4	5
US Military Presence	-0.113 (0.706)	-0.017 (0.718)	0.031 (0.795)	-0.047 (0.805)	-0.140 (0.703)
Rome Ratifier	1.459** (0.740)	1.180 (0.935)	1.225 (0.981)	1.378 (0.980)	1.456 (0.945)
Gravity of Violence	0.038** (0.013)	0.037** (0.013)	0.037** (0.013)	0.035** (0.013)	0.033** (0.012)
Rule of Law	-2.319 (1.800)	-1.667 (2.128)	-1.621 (2.165)	-1.800 (2.337)	-1.787 (2.479)
Rendition Partner	0.493 (0.814)	0.756 (1.067)	0.736 (1.124)	0.646 (1.126)	0.619 (1.168)
Africa		1.340 (0.870)	1.255 (1.158)	1.395 (1.185)	1.354 (1.187)
P5 Alliance			-0.237 (1.561)	-0.150 (1.575)	-0.194 (1.657)
Article 98				-0.485 (0.777)	-0.544 (0.708)
Bush					0.667 (1.303)
Obama					0.293 (0.907)
Time	-0.326 (0.418)	-0.332 (0.405)	-0.328 (0.430)	-0.284 (0.418)	-0.243 (0.462)
Time <sup>2</sup>	0.002 (0.064)	0.008 (0.061)	0.007 (0.066)	0.004 (0.065)	0.005 (0.063)
Time <sup>3</sup>	0.001 (0.002)	0.001 (0.002)	0.001 (0.003)	0.001 (0.003)	0.001 (0.002)
Constant	-3.778** (0.983)	-4.865** (1.300)	-4.817** (1.320)	-4.689** (1.315)	-5.194** (1.656)
<i>N</i>	711	711	711	711	711
<i>AIC</i>	106.92	106.13	108.07	109.76	113.54
<i>BIC</i>	148.02	151.80	158.31	164.56	177.48

Note: The dependent variable is ICC investigation onset. Standard errors clustered by country are in parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

A final concern related to the independent variable of interest is that America’s overseas military presence is not randomly distributed around the world, which might introduce selection effects. It would be problematic, for example, if US forces are deployed to places that are disproportionately more/less likely to experience factors that also make ICC involvement more/less likely. Fortunately, we can empirically assess this concern. The variable most robustly linked to ICC investigations is the gravity of violence in a country. I therefore checked whether countries with an American military presence (using both definitions) tend to have disproportionately high or low levels of violence. In Table A6, I show that this is not the case. The gravity of violence in a country does not have a statistically significant correlation with US military installations (Model 1) or US troop deployments (Model 2). This suggests the US military does not end up in countries that have a disproportionately higher/lower underlying risk of ICC investigations, which assuages concerns about selection effects.

**Table A6: Gravity is Not Correlated with US Military Presence.**

	US Military Installation (1)	US Troop Deployment (2)
Gravity of Violence	0.008 (0.018)	-0.000 (0.016)
Constant	-0.077 (0.315)	2.368** (0.395)
<i>N</i>	711	711
<i>AIC</i>	987.64	420.22
<i>BIC</i>	996.77	429.35

Note: The dependent variable is US military presence. Standard errors clustered by country are in parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

## Defining “Negligible” Effects

Table 1 in the main text demonstrated that the relationship between ICC investigations and the presence of American troops in a country is statistically insignificant. These results are consistent with a finding of “no effect” for the US military presence variable, but they do not necessarily mean the data are *inconsistent with meaningful effects*. As research on negligible effects and equivalence testing illustrates,<sup>9</sup> a large confidence interval (perhaps due to a small sample size) could include both negligible effects and meaningful effects. To address this issue, I follow Rainey’s (2014) approach that calls for explicitly defining what counts as the smallest substantively meaningful effect (or,  $m$ ). Only if the estimated substantive effect and its 90%

<sup>9</sup> The logic underpinning Rainey’s (2014) “negligible effects” approach—which is the approach used in my paper—is very similar to the logic of “equivalence testing” approaches (e.g., Hartman and Hidalgo 2018). Both draw on the “two one-sided tests” approach in biostatistics.

confidence interval fall entirely within the range of  $-m$  to  $m$ , can one conclude that a variable's effect is negligible.<sup>10</sup>

Defining  $m$  is challenging. The choice of a value for  $m$  is unique to each particular piece of scholarship and inevitably is at least somewhat arbitrary. One option for defining  $m$  is to benchmark against the effect sizes for a particular variable in previously published studies on the topic. However, this is only possible in well-developed empirical literatures with some degree of consensus on what counts as a "meaningful" effect size. The literature on ICC investigations, which is still relatively underdeveloped, lacks the sort of consensus required to implement this approach.

An alternative option is for scholars to choose and justify  $m$  based on their substantive knowledge of the topic and/or the data at hand. While some might balk at the idea of allowing scholars to define  $m$  themselves, "Choosing  $m$  and explicitly testing the hypothesis drives the researcher to make a clearer and more compelling argument for a negligible effect than any apparent alternative" (Rainey 2014, 1085). Moreover, as I describe later, it is possible to visually inspect one's results to judge the robustness of the choice of  $m$ .

In line with Rainey's advice for research agendas that lack consensus on meaningful effect sizes, I let the data speak for itself. Specifically, I define  $m$  as 3.1 percentage points, which is the predicted change in the probability of an ICC investigation when the cumulative number of civilian killings in a country increases from 500 to 5,000.<sup>11</sup> By the unfortunate standards of atrocity crimes, this represents a moderate increase in the death toll. In fact, these numbers approximate the levels of one-sided violence in Kenya and the Central Africa Republic, respectively, before the ICC opened investigations. Using this value as  $m$ , I conclude an effect size is negligible only if its confidence interval falls entirely between -3.1 and 3.1 percentage points.

My results, which are reported in Figure 1 of the main text, show that it is possible to rule out effect sizes larger than 3.1 percentage points because the confidence intervals for the average marginal effects consistently fall entirely within the negligible effects range (the dashed lines). Despite this, skeptical readers might still doubt my conclusion that the effect of American troops on ICC investigations is negligible because they are wary of the choice of  $m$ . Fortunately, readers can visually inspect the results in Figure 1 to assess the robustness of my choice of  $m$ . As Rainey (2014, 1087) notes:

"Confidence intervals allow readers to quickly evaluate the robustness of the researchers' claims to the choice of  $m$ , making empirical claims more meaningful and transparent...For example, if a researcher argues that a three percentage point change in turnout is substantively meaningful, and the 90% confidence interval suggests that

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<sup>10</sup> This approach provides much stronger evidence in favor of a null effect than simply declaring that there are "no statistically significant differences."

<sup>11</sup> I use the gravity of violence to calculate  $m$  because gravity is the only variable that is consistently significant in Table 1.

effects as small as 1 percentage point are implausible, then skeptical readers can be reassured. On the other hand, if the confidence interval contains effects near three percentage points, then the same readers might demand further study.”

The first scenario Rainey describes almost perfectly captures my results. I argued that 3.1 percentage points represents an appropriate value for  $m$ . All five models using my main indicator of US military presence imply that effect sizes larger than just 1 percentage point are implausible. Furthermore, all five models using my alternative indicator of US military presence allow me to rule out effect sizes larger than 1.4 percentage points. Therefore, even if one quibbles with the choice of  $m$ , skeptical readers can rest assured that all plausible effect sizes are considerably smaller than the negligible effects range.

## Preliminary Examinations

The dependent variable in my paper is the onset of an ICC investigation (sometimes called a “full” or “formal” investigation). I deliberately chose to focus on investigations rather than preliminary examinations. A preliminary examination is the period that precedes an investigation. It effectively is an information gathering exercise: the ICC inquires whether there is plausible evidence and proper jurisdiction to open an investigation. As a 2013 report from the ICC’s Office of the Prosecutor puts it, the “goal [of a preliminary examination] is to collect all relevant information necessary to reach a fully informed determination of whether there is a reasonable basis to proceed with an investigation.”<sup>12</sup>

There are two main reasons why I opted not to focus on preliminary examinations in the main text. First, the ICC has little discretion over them relative to investigations. For example, the aforementioned ICC report on preliminary examinations notes that the Court’s policy is to open “a preliminary examination of all situations that are not manifestly outside the jurisdiction of the Court.”<sup>13</sup> This means that if a state refers a situation to the Court—even if it has almost no chance ever progressing to an investigation—the ICC will nonetheless open a preliminary examination. By contrast, the ICC prosecutor has far greater influence over the decision to initiate investigations. Many preliminary examinations never led to investigations precisely because the ICC prosecutor uses her discretion and decides not to proceed. Thus, investigations are the more appropriate place to test for the presence of ICC bias. Second, the ICC sometimes keeps secret the date on which it opens preliminary examinations. In these cases, the ICC merely shares when preliminary examinations are “made public.” This leaves some ambiguity about when preliminary examinations started and makes statistical modeling more difficult than it is more investigations.

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<sup>12</sup> Office of the Prosecutor, “Policy Paper on Preliminary Examinations,” November 2013. Available at: [https://www.icc-cpi.int/iccdocs/otp/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf).

<sup>13</sup> Ibid.

Despite these issues, it is a useful robustness check to verify that my results are similar when the dependent variable is the opening of a preliminary examination. Therefore, in Table A7, I shift my focus to preliminary examinations. For these models, I use the date that preliminary examinations were made public if the opening date of the preliminary examinations was kept secret. Other than that, the basic structure of the tests is comparable to the models in the main text. That is, the unit of analysis is the country year. A country enters my sample after its first instance of one-sided violence, putting it “at risk” of a preliminary examination. The country exits my sample if and when the ICC opens a preliminary examination. As Table A7 shows, my conclusions are unchanged when focusing on preliminary examinations. Overall, it is encouraging that my results for preliminary examinations are consistent, though investigations remain the more appropriate dependent variable.

**Table A7: Preliminary Examinations as an Alternative Dependent Variable.**

	1	2	3	4	5
US Military Presence	0.261 (0.581)	0.292 (0.620)	0.350 (0.646)	0.319 (0.660)	0.523 (0.670)
Rome Ratifier	1.340** (0.656)	1.407* (0.727)	1.519** (0.756)	1.481* (0.770)	1.423* (0.808)
Gravity of Violence	0.037** (0.016)	0.038** (0.016)	0.040** (0.016)	0.045** (0.019)	0.053** (0.019)
Rule of Law	-1.381 (1.340)	-1.555 (1.571)	-1.435 (1.629)	-1.131 (1.485)	-0.899 (1.515)
Africa		-0.219 (0.727)	-0.385 (0.893)	-0.696 (1.014)	-0.800 (1.051)
P5 Alliance			-0.390 (0.916)	-0.507 (0.991)	-0.632 (1.013)
Article 98				0.792 (0.685)	0.860 (0.691)
Bush					0.525 (0.983)
Obama					1.358 (0.975)
Time	-0.381 (0.341)	-0.385 (0.342)	-0.384 (0.350)	-0.425 (0.341)	-0.466 (0.324)
Time <sup>2</sup>	0.027 (0.048)	0.027 (0.048)	0.026 (0.049)	0.030 (0.048)	0.023 (0.049)
Time <sup>3</sup>	-0.000 (0.002)	-0.000 (0.002)	-0.000 (0.002)	-0.000 (0.002)	0.000 (0.002)
Constant	-3.224** (0.810)	-3.103** (0.905)	-3.052** (0.911)	-3.358** (1.029)	-4.237** (1.439)
<i>N</i>	619	619	619	619	619
<i>AIC</i>	146.50	148.38	150.05	150.43	151.85
<i>BIC</i>	181.93	188.23	194.33	199.14	209.42

Note: The dependent variable is ICC preliminary examination onset. Standard errors clustered by country are in parentheses. \*  $p < 0.10$ , \*\*  $p < 0.05$  (two-tailed).

## Investigating America's Friends

Readers might also wonder about ICC investigations of America's friends. Even if the ICC does not unfairly target the US military, it is possible that the ICC threatens American interests by disproportionately targeting American-aligned countries with its investigations.

To date, this concern has been most prominent with the ICC investigation of the situation in Palestine/Israel.<sup>14</sup> This recent investigation focuses on potential atrocities committed in the Palestinian territories by both Israeli and Palestinian forces. However, the public discourse surrounding this situation—including reactions from the media and policymakers—has generally treated it as an investigation of Israel. Indeed, the ICC's investigation elicited harsh reactions from Israeli and American leadership. For example, Israeli Prime Minister Benjamin Netanyahu labeled the ICC investigation a case of "pure antisemitism" and vowed "to fight this perversion of justice with all our might!"<sup>15</sup> The US State Department used less colorful language but nonetheless publicly opposed the ICC's investigation: "We have serious concerns about the ICC's attempts to exercise its jurisdiction over Israeli personnel."<sup>16</sup>

The Biden administration has, for the most part, signaled that it has no desire to antagonize the ICC in the way that the Trump administration did. For example, Biden revoked the sanctions that Trump imposed on members of the ICC prosecutor's office. Many believe that Biden's preferred approach to the ICC is to continue the policies that were put in place during his time as Obama's vice president.<sup>17</sup> In other words, joining the ICC remains very unlikely, but Biden probably will support the Court's work as long as its decisions do not threaten American interests. However, the ICC's investigation of the situation in Palestine/Israel, especially if it results in the arrest of any Israeli soldiers or officials, will test the Biden administration's nascent rapprochement with the ICC. As this example indicates, ICC investigations of the American military may be the primary threat to the US-ICC relationship, but investigations of America's friends are potentially another complicating factor.

This discussion of Israel suggests a broader question: Do ICC investigations disproportionately target America's friends? To check, I follow the standard practice of using data on United Nations General Assembly voting patterns as a proxy for the degree of foreign policy alignment (Bailey, Strezhnev, and Voeten 2017). In Table A8, I find that there is no evidence to suggest that the ICC

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<sup>14</sup> Given the contested nature of Palestine's statehood and borders, even the name of this investigation is a source of controversy.

<sup>15</sup> "Prime Minister Netanyahu's Statement Regarding the ICC Decision," Israel Ministry of Foreign Affairs, February 6, 2021. Available at <https://mfa.gov.il/MFA/PressRoom/2021/Pages/Statement-by-PM-Netanyahu-regarding-the-ICC-decision-6-February-2021.aspx>.

<sup>16</sup> "Opposing the International Criminal Court's Attempts to Affirm Territorial Jurisdiction Over the Palestinian Situation," US Department of State, February 5, 2021. Available at: <https://www.state.gov/opposing-international-criminal-court-attempts-to-affirm-territorial-jurisdiction-over-the-palestinian-situation/>.

<sup>17</sup> "Like Obama: What Biden's Presidency Could Mean for Human Rights," *Al Jazeera*, November 12, 2020.

investigates America's friends at a higher rate than other countries. Specifically, the variable *UN Voting Distance* is never statistically significant (in fact, the *p*-value is never less than .49). Overall, this suggests that while the Palestine/Israel situation does present a risk to the US-ICC relationship, it is not part of a broader trend in which ICC investigations systematically target America's friends.

**Table A8: Do ICC Investigations Target America's Friends?**

	1	2	3	4	5
UN Voting Distance	0.598 (0.890)	0.565 (0.927)	0.601 (0.922)	0.602 (0.885)	0.560 (0.928)
Rome Ratifier	1.483 (0.967)	1.062 (1.072)	1.037 (1.139)	1.259 (1.158)	1.303 (1.180)
Gravity of Violence	0.033** (0.013)	0.032** (0.012)	0.032** (0.012)	0.030** (0.013)	0.029** (0.013)
Rule of Law	-1.841 (1.592)	-1.244 (1.724)	-1.257 (1.820)	-1.430 (1.893)	-1.406 (2.021)
Africa		1.252 (0.892)	1.299 (1.096)	1.509 (1.154)	1.462 (1.200)
P5 Alliance			0.134 (1.600)	0.205 (1.628)	0.116 (1.834)
Article 98				-0.608 (0.834)	-0.640 (0.778)
Bush					0.507 (1.420)
Obama					0.274 (0.900)
Time	-0.292 (0.411)	-0.294 (0.405)	-0.297 (0.425)	-0.243 (0.426)	-0.218 (0.490)
Time <sup>2</sup>	-0.002 (0.061)	0.003 (0.059)	0.004 (0.064)	0.000 (0.064)	0.001 (0.063)
Time <sup>3</sup>	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)	0.001 (0.002)
Constant	-5.834 (3.845)	-6.544* (3.605)	-6.701** (3.389)	-6.673** (3.279)	-6.944** (3.025)
<i>N</i>	709	709	709	709	709
<i>AIC</i>	104.43	103.98	105.97	107.47	111.34
<i>BIC</i>	140.94	145.06	151.61	157.67	170.67

Note: The dependent variable is ICC investigation onset. Standard errors clustered by country are in parentheses. \* *p* < 0.10, \*\* *p* < 0.05 (two-tailed).

## Other Types of ICC Bias

My article focuses on the possibility of ICC bias toward the US, but that is not the only conceivable type of ICC bias. In fact, some have suggested that the ICC may be biased toward the global south,

especially Africa. It is worth discussing the extent to which my results speak to debates about anti-Africa bias at the ICC even though it is not the primary focus of my article.

Given that the ICC's first nine investigations all were in African countries, allegations of Africa bias have been rampant for some time. In 2013, the *Washington Post* published an op-ed asking the provocative question: "Why is the International Criminal Court picking only on Africa?"<sup>18</sup> Many African political elites share the view that the ICC is a biased institution. To give just a few examples, one African Union official lambasted the ICC's "glaring practice of selective justice."<sup>19</sup> Rwanda's prime minister warned that "Westerners who don't understand anything about Africa should stop trying to import their solutions."<sup>20</sup> Gambia's information minister claimed that the ICC actually is "an International Caucasian Court for the persecution and humiliation of people of color, especially Africans."<sup>21</sup>

On the other hand, there are two plausible reasons to question claims of Africa bias at the ICC. First, a large share of civil conflicts and human rights violations have taken place in Africa, so a large number of investigations there is not necessarily evidence of ICC bias (Smeulers, Weerdesteijn, and Hola 2015). In fact, African victims of atrocity crimes have often advocated for international justice in their countries precisely because political elites have denied victims justice at home. Second, African states are not always passive actors in their relations with the ICC. As Ba (2020) argues, several African regimes have strategically used the international justice system to advance their interests (e.g., self-referring to the ICC in the hopes of marginalizing domestic political opponents).

My results speak to debates about Africa bias at the ICC, though they certainly do not resolve them. In my analysis, I account for the possibility of Africa bias by including a dummy variable for states in Africa. This variable is consistently positive (meaning that investigations are more likely in Africa), but it is never statistically significant in any of the models in Table 1. Looking ahead, this clearly is an area where more research would be a welcome addition to the literature on the ICC. To start, future work could try to pursue more creative research designs that do not rely on a dummy variable for the entire African continent. Additionally, scholars could try to explain the following over-time variation: the ICC's first nine investigations were all in Africa, but only one of the past eight investigations have been in Africa. What explains this change? Finally, future research could consider anti-Africa bias at the arrest warrant phase rather than at the investigation phase. At the time of writing, all of the individuals indicted at the ICC were charged in connection with one of the Court's investigations in Africa. It is conceivable that this pattern is merely a product of the ICC's early investigations being exclusively in Africa (after all,

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<sup>18</sup> David Bosco, "Why is the International Criminal Court Picking Only on Africa?" *Washington Post*, 29 March 2013.

<sup>19</sup> "African ICC Members Mull Withdrawal Over Bashir Indictment," *Voice of America News*, 2 November 2009.

<sup>20</sup> Alfred de Montesquiou, "African Leaders Denounce International Court," *Associated Press*, 3 July 2009.

<sup>21</sup> "The Gambia joins African Queue to Leave ICC," *BBC News*, 26 October 2016.



building a case takes time), but this is an area where the possibility of Africa bias ought to be taken seriously.

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