



Deterring Atrocities: Assessing The ICC on Justice Day

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The International Criminal Court has been the most ambitious attempt of the international community to prevent egregious human rights abuses and deter international crimes. International Justice Day provides an ample opportunity to assess whether the ICC can fulfil its goals.

Author's Note: *This article is based on the authors' research in [International Organization \(2016\)](#) and [Performance of International Courts and Tribunals \(Cambridge University Press, forthcoming\)](#).*

Today, 17 July, is the [Day of International Criminal Justice](#), marking the anniversary of International Criminal Court – the first permanent global institution that has jurisdiction over international crimes (genocide, war crimes, crimes against humanity, and crimes of aggression). The 15-year-old Court was created by the Rome Treaty of 17 July 1998, and now has about 120 States Parties, but lacks participation by several major powers (US, Russia, China and India). One of the core goals of the Court as specified in the [Rome Treaty Preamble](#) is to deter international crimes by prosecuting cases of serious international crimes that have occurred since 2002.

The ICC and atrocity deterrence

[Can the ICC actually deter atrocities?](#) To find out, we conducted the first systematic foray into the subject, collecting the data on one type of international crimes – intentional killing of civilians in civil conflicts around the world between 1989 and 2011. Our analysis shows that the ICC can deter under the circumstances where countries are sufficiently exposed to prosecutorial risks (by ratifying, by implementing crime statutes, by the Court's

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actions, etc.) as well as social pressures (specifically aid pressure and civil society influence). In civil conflicts, we do not find as strong of a deterrent effect as we observe for government actors, though there are hints of deterrence in some cases.

One of our theoretical innovations was to suggest the possibility of “social deterrence.” Not only are perpetrators subject to prosecutorial risks raised by the Court’s functioning, they are also affected by social environments engendered by the Court’s operation. We find some evidence for it: Rome Treaty ratifiers under aid pressure and greater civil society influence tend to reduce atrocities over time. This evidence jibes well with cultural changes identified in recent research in transitional justice.

We concluded that the ICC altered how state and non-state actors calculate the risks associated with egregious criminal acts, and that these changing calculations affected their behavior. Some states, like Uganda and Colombia, have altered their criminal statutes consistent with the Rome Treaty and increased the instances of domestic prosecution of egregious international crimes; Some rebel groups, the LRA (Lord’s Resistance Army) in Uganda and the FARC (Fuerzas Armadas Revolucionarias de Colombia) in Colombia reduced violence over time and participated in peace negotiations. These examples do not represent perfect accountability cases some idealists imagine and also, it is difficult to attribute all the changes to the ICC, but those are part of the broad changes we detected in our research.

Since we reported our findings, many scholars and practitioners published rejoinders ([here](#) and [here](#)) and subsequent works (examples [here](#) and [here](#)). Some questioned the very possibility of deterrence or pointed out analytical gaps; others presented additional empirical evidence. On this International

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Justice Day, we reflect on where we are headed in terms of our research by providing three avenues for further research.

First, new research can take a closer look at the ICC's role in specific conflict zones. Given [inferential challenges](#) in macro data, we decided to go micro, with help of [Mitchell Radtke](#). Our first test case was Uganda – which gives us several years to observe the Court's operation. In our contributing book chapter to the project on [Performance of International Courts and Tribunals](#), we conducted time-series intervention analysis of violence patterns in Uganda and found evidence that both government and rebel forces responded to the Court's actions. The Uganda People's Defense Force (UPDF) decreased its intentional targeting of civilians over time, and made [some efforts to reform crime statutes](#). The Lord's Resistance Army, the rebel force, reduced violence against civilians as well, and the effect was partly attributable to the Court's decision to issuance warrants and commence investigations. This effect of the Court holds even if we account for the fact that the LRA was largely driven out of the country by the military campaigns by the UPDF. We think similar micro-evidence research can shed light on other [cases where](#) the Court has become actively involved.

Second, research into the decision-making process of political actors should be further investigated. Internet and social media are providing ample opportunities to probe actors' information and motivations (examples [here](#) and [here](#)). Public opinion research on the ICC will give us more sense of how people feel about whether and how much the ICC contributes to justice (example [here](#)).

Third, ICC research should be linked to the broader political developments around the world. Any deterrent effect of the ICC is inseparable from the

broader political climate, as contestation over international justice continues. Recent backlash especially the ICC's uncomfortable relationship with the African Union, South Africa's attempt of withdrawal, and the exit of Burundi under threat of investigation, along with decreasing enthusiasm for international cooperation generally, do not bode well for the Court's functioning and legitimacy.

However, a recent referendum and [public opinion research in post-conflict Colombia](#) shows Colombians seek justice, featuring adamant resistance to former FARC members holding public offices. The example partly suggests the broader normative environment against impunity for international crimes may have taken hold. The other challenge we have not fully grasped is how ICC decisions can better cohere with other international policies in conflict zones (military interventions, peacekeeping, development policies, economic sanctions, etc.). This coordination of various international activities in conflict zones is of acute policy relevance.

Conclusion

The ICC is the most ambitious justice experiment in human history. International institutions in global security like the ICC are often weak, and it is important to remember the sustainability of the ICC depends on broader political developments in the international arena as well as politics at home.

Image credit: [UN Photo/Flickr](#).

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