

Stanford Law School: Law & Policy Lab

The International Criminal Court & Deterrence

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Introduction

This report will discuss the most accepted and compelling theoretical arguments in the debate about the ICC's capacity to deter future crimes and will analyze the way emerging empirical evidence supports or detracts from these theoretical arguments. Although the recent empirical evidence does not give full effect to broad claims about the ICC's potential to deter all actors in all situations, it does provide strong support for a conditional deterrence effect, taking into account the type of actor, type of conflict, and type of intervention. Most of the preliminary empirical evidence suggests that the theoretical arguments against the ICC may be overstated or, in some cases, altogether unsubstantiated. However, the empirical evidence is fairly new, and thus more research is needed to determine which claims are supported by the evidence and which are not.

Arguments and Empirical Research Showing Support for the ICC's Deterrence Effect:

1. Emerging empirical evidence suggests the ICC does have a direct deterrence effect on particular actors in specific situations.
2. Ratification of the ICC seems to exert a positive effect on domestic laws and practices, and is correlated with a reduction in hostilities and human rights violations.
3. The ICC exerts a normative influence by making prosecutions for human rights violations a primary mechanism for justice, which is associated with improvements in the protection of human rights.

Theoretical Arguments Against the ICC's Deterrence Effect:

1. It is hypothesized that ICC prosecutions may have a negative impact on peace processes by inflaming parties to a conflict with threats of prosecution, preventing them from negotiating peace agreements.
2. The alternative to an ICC prosecution is not necessarily impunity, but rather may also be prosecution at the domestic level. The outcome of these processes is often so severe that any deterrence effect by the threat of an ICC prosecution is overshadowed by the threat of more severe punishment that may be rendered in domestic systems.
3. The probability of an ICC conviction is too low to exert a deterrent effect, given the minimal number of indictments, prosecutions, and convictions to date, coupled with the potential to evade arrest in the first place.
4. Individuals who are committing mass atrocities that constitute crimes within the ICC's jurisdiction are not rational actors, a presumption that underlies any deterrence model, and thus they will not be deterred by traditional cost-benefit analyses.

Recommendations for Future Research:

- Deterrent effect of recent ICC action, including convictions (the Jo and Simmons data set extends only until 2011, before any of the Court's convictions);
- Information about the way perpetrators think and the way the ICC factors into their calculations;
- Further disaggregation of the types of actors, beyond the government and rebel distinction;
- Further disaggregation of the types of crimes and the ICC's deterrent effect on each.

Primary Arguments in Support of the ICC's Deterrence Effect

1. *Emerging empirical evidence suggests the ICC does have a direct deterrence effect on particular actors in specific situations.*

Given that it “can try cases arising out of any events taking place after 1 July 2002, the possibility of prosecution and punishment by the ICC might realistically enter into the calculations of potential perpetrators worldwide.”¹ Many of the early literature on the impact of the ICC based justifications on a general deterrence theory, positing that the threat of an ICC prosecution would deter both leaders and subordinates from committing atrocities across the board. For example, Payam Akhavan has argued, in the context of the ICTY, that the long culture of impunity created a world in which international law could not deter future violations of human rights, but that the creation of the ICTY could, at least to some extent.² He argued that “targeting political and military leaders and subjecting them to a threat of punishment, or even mere international opprobrium, can generate a form of immediate deterrence.”³

In recent years, emergent empirical evidence has shifted the discussion to a conditional deterrence model, suggesting that the ICC's capacity to deter will depend on the type of actor, the context, and the level of ICC involvement in a situation country.⁴ In perhaps the largest and most in-depth empirical study of the ICC's deterrence effect, published in 2015, Jo and Simmons present evidence supporting the conditional deterrence theory. Jo and Simmons found “[g]overnments that depend on aid relationships are easier to deter than the more self-reliant.”⁵ They also found that rebels are harder to deter than governments, but that “even rebels appear to have significantly reduced intentional civilian killing when the ICC has signaled its determination to prosecute.”⁶ Furthermore, there is variation among types of rebel leaders; secessionist rebels who want to rule and gain international legitimacy are more likely to be deterred by the threat of the ICC than non-secessionist rebels, due to the impact ICC action could have on their standing in the international community.⁷ Importantly, Jo and Simmons' findings suggest that individuals, especially rebel groups, may only be deterred once the ICC has taken affirmative steps toward investigation.⁸

¹ Kate Cronin-Furman, *Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity*, International Journal of Transitional Justice (2013): 1-21, at 8.

² Payam Akhavan, *Justice in The Hague, Peace in the Former Yugoslavia?*, Human Rights Quarterly 20(4) (1998): 745-9 (Also discussing the role of prosecutorial discretion and the way allocation of limited resources can be used to enhance deterrence effects).

³ *Id.* at 749.

⁴ See e.g., Cronin-Furman, *supra*; Hyeran Jo and Beth Simmons, *Can the International Criminal Court Deter Atrocity?*, (December 2014) Available at SSRN: <http://ssrn.com/abstract=2552820>; Michael Broache, *The International Criminal Court and Atrocities in DRC: A Case Study of the RCD-Goma (Nkunda Faction)/CNDP/M23 Rebel Group*, (September 2014) Available at SSRN: <http://ssrn.com/abstract=2434703>; Yvonne Dutton and Tessa Alleblas, *Unpacking the Deterrent Effect of the International Criminal Court: Lessons From Kenya*, (May 2016 Draft) Available at SSRN: <http://ssrn.com/abstract=2757731>.

⁵ Jo and Simmons, *supra*, at 37.

⁶ *Id.*, at 37-8.

⁷ *Id.*, at 35.

⁸ *Id.*, at 38.

In the primary findings of a case study of Kenya that is still underway, Dutton and Alleblas describe three factors that together impact the deterrent effect of the ICC: 1. The domestic political context, 2. The type of actor, and 3. The level of ICC intervention. Their findings suggest that ratification of the ICC Statute alone did not necessarily produce any deterrent effect in Kenya, but that the investigation and indictments of Kenyatta and Ruto seems to have produced some deterrent effect, contributing to the relatively peaceful elections in 2013. However, sustaining this increased level of involvement may have also contributed to the unintended consequence of forcing “the country’s leaders into a corner, and they responded by taking actions to ensure that they would not be held accountable for any human rights abuses.”⁹ These findings in Kenya lend support to Jo and Simmons’ conclusion that individuals may only be deterred once the ICC has taken affirmative steps to investigate.

Furthermore, a recent in-depth analysis of the situation in the DRC by Broache found that “the publication of the arrest warrant for Ntaganda had no significant effect on violence against civilians, mostly because Ntaganda and other CNDP leaders perceived a low probability of arrest.”¹⁰ While the conviction of Lubanga was associated with an immediate increase in violence against civilians, “Ntaganda’s voluntary surrender to the ICC was associated with lower levels of violence against civilians, mostly because it significantly weakened the M23.”¹¹ Broache argues for reframing the deterrence debate to look at various stages of the legal process, and his research in the DRC gives further weight to a conditional deterrence theory, as opposed to all-or-nothing approaches.

Along with earlier literature discussing a more theoretical basis for the deterrence argument, these emergent findings support the ICC’s capacity to deter in specific situations. For example, Cronin-Furman’s earlier research found that commanders who permit or fail to punish subordinates for atrocities will be easier to deter than those who explicitly order the commission of such atrocities.¹² This lends additional support to the distinction both Jo and Simmons and Dutton and Alleblas make between different types of actors.

In a recent online symposium created to discuss the emerging research by Jo and Simmons, a number of experts in this field weighed in on the study. These criticisms will be further elaborated on in the second section. However, there are a number of criticisms of the study itself that merit discussion here. First, the data set used by Jo and Simmons ends in 2011, as discussed by Drumbl, and thus was generated before the ICC had actually convicted anyone.¹³ Therefore, although the study is comprehensive and very well done, it does not actually address the way the most recent and significant prosecutorial developments affect the deterrence argument. Second, it is impossible to completely eliminate all selection effects that arise from “the fact that states *choose* to accept the court’s jurisdiction through ratification of the Rome Statute.”¹⁴ Therefore, it is difficult to entirely eliminate the possibility

⁹ Dutton and Alleblas, *supra* note 4, at 54.

¹⁰ Broache, *supra* note 4, at 34-5.

¹¹ *Id.*, at 35.

¹² Cronin-Furman, *supra* note 1, at 21.

¹³ Mark Drumbl, “Hey Look at Me: Deterreo, Ergo Sum,” (March 17, 2016) in James Stewart’s Online Symposium: “Can the International Criminal Court Deter Atrocity?” At: <http://jamesgstewart.com/new-symposium-can-the-international-criminal-court-deter-atrocity/>

¹⁴ Kate Cronin-Furman, “Can We Tell if the ICC Can Deter Atrocity?” (March 21, 2016), in Stewart’s Online Symposium, *supra*.

that any change in the behavior of various actors is due to the same factors that lead the state to ratify the ICC Statute in the first place, such as a democratic transition or a commitment to peace and justice.¹⁵

2. *Ratification of the ICC seems to exert a positive effect on domestic laws and practices, and is correlated with a reduction in hostilities and human rights violations.*

There is some evidence that ratification of the ICC Statute alone produces a deterrent effect. Studies have found “suggestive evidence that a government’s ratification of the ICC tends to be correlated with a pause in civil war hostilities or reduction in human rights violations.”¹⁶ Part of this effect may be attributable to the ICC’s complementarity provision, which provides Member States with an incentive to develop or strengthen domestic justice systems in order to preclude ICC jurisdiction. “There is strong evidence of a reduction in intentional civilian killing by government actors when states implement ICC-consistent statutes in domestic criminal law, which we can reasonably attribute, at least indirectly to the ICC’s influence.”¹⁷ It may be impossible to tease apart the deterrent effect of the new domestic laws from that of the ICC itself, but regardless, joining and engaging with the ICC seems to have some deterrent effect, either directly or indirectly.

Simmons and Danner found through an empirical analysis that the “the least accountable governments – the least democratic, with the weakest reputations for respecting the rule of law, the least politically constrained – with a recent past of civil violence,” were among the earliest to ratify the Rome Statute.¹⁸ They attribute this finding to something they call “credible commitment theory,” which explains why governments with such low accountability voluntarily chose to subject themselves to ICC jurisdiction.¹⁹ This theory posits that ratification of the ICC can be used as a form of self-binding by states that are most vulnerable to ICC prosecution and least able to commit credibly to domestic alternatives, by essentially tying their hands as they work toward conflict resolution.²⁰

Furthermore, even in countries that are able to commit credibly to domestic alternatives, there is evidence that avoiding ICC jurisdiction by conducting domestic prosecutions has positive effects on human rights practices. For example, research by Sikkink and Walling in 2007 found that “in 14 of the 17 cases of Latin American countries that have chosen trials, human rights seem to have improved.”²¹ In response to critics of trials who argue that judicial processes exacerbate conflict (discussed more fully below), Sikkink and Walling conclude that “there is not a single transitional trial case in Latin America where it can be reasonably argued that the decision to undertake trials extended or exacerbated conflict.”²² Although the ICC did not intervene in any of these cases, the act of conducting domestic prosecutions, consistent with the ICC’s complementarity provision, had a positive effect on human rights practices throughout the region.

¹⁵ *Id.*

¹⁶ Beth Simmons and Allison Danner, *Credible Commitments and the International Criminal Court*, International Organization 64(2) (2010): 225-256.

¹⁷ Jo and Simmons, *supra* note 4, at 37

¹⁸ Simmons and Danner, *supra*, at 252.

¹⁹ *Id.*, at 227.

²⁰ *Id.*

²¹ Kathryn Sikkink and Carrie Booth Walling, *The Impact of Human Rights Trials in Latin America*, Journal of Peace Research 44(4) (2007): 427-445, at 442.

²² *Id.*, at 440.

3. *The ICC exerts a normative influence by making prosecutions for human rights violations a primary mechanism for justice, which is associated with improvements in the protection of human rights.*

Research by Kim and Sikkink “provides evidence that prosecutions work both through their punishment effects and because they communicate norms.”²³ The ICC has the ability to communicate such norms at a very high level that could have widespread effects, given the Court’s visibility and potential for nearly worldwide jurisdiction. By investigating and prosecuting human rights abuses, the ICC exerts a normative influence, communicating the importance and value of prosecutions as a mechanism for justice. Prosecutions are some of the most visible forms of justice in post-conflict societies with the potential to advance peace by highlighting the measures taken to hold specific individuals accountable. Furthermore, prosecutions can help to advance peace by dispelling notions of collective guilt and highlighting individual responsibilities for atrocities.²⁴

While there has been some debate about the appropriateness of prosecutions as a tool for justice, research in Latin America by Kim and Sikkink highlights the value of human rights trials. For example, they found that “transitional countries with human rights prosecutions are less repressive than countries without prosecution,” that “countries with more cumulative prosecutions are less repressive than countries with fewer prosecutions,” and that even “countries with more neighbors with prosecutions are less repressive.”²⁵ They argue that “both normative pressures and material punishment are at work in deterrence, and the combination of the two...is more effective than either pure punishment or pure normative pressure.”²⁶

The ICC may also be able to assert a normative effect on victim involvement in prosecutions, although this impact has yet to be empirically studied. Victims are theoretically given a more prominent role in the ICC than in other international criminal tribunals.²⁷ If the ICC is looked to as a model of how to prosecute human rights abuses, it may have an impact on the decisions domestic or other international bodies to increase victims’ roles within a prosecution.

Although there are many advocates of the emergence of prosecutions as a new norm for seeking justice, there are also skeptics and opponents. For example, Nouwen and Werner argue that adversarial prosecutions threaten to monopolize global justice efforts, minimizing or eliminating other reparative conceptions of justice. They suggest that the ICC has a significant impact on this effect both because it legitimizes prosecution as the only acceptable form of justice, and because its complementarity provision could operate to force states to choose prosecutions in order to avoid jurisdiction.²⁸

²³ Hunjoon Kim and Kathryn Sikkink, *Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries*, *International Studies Quarterly* 54(4) (2010): 939-963, at 958.

²⁴ James Meernik, Angela Nichols, and Kimi King, *The Impact of International Tribunals and Domestic Trials on Peace and Human Rights After Civil War*, *International Studies Perspectives* 11 (2010): 309-334, at 312.

²⁵ Kim and Sikkink, *supra*, at 941.

²⁶ *Id.*

²⁷ For a more complete analysis of the role of victims in the ICC, see *The Victim’s Court? A Study of 622 Victim Participants at the International Criminal Court*, Human Rights Center, UC Berkeley School of Law (2015).

²⁸ Sarah Nouwen and Wouter Werner, *Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity*, *Journal of International Criminal Diversity* (2014): 1-20.

Primary Arguments Against the ICC's Deterrence Effect

1. ICC prosecutions may have a negative impact on peace processes by inflaming parties to a conflict with threats of prosecution, preventing them from negotiating peace agreements.

This theoretical argument stems from the broader discussion about peace versus justice, and whether one must come at the expense of the other. The general argument is that ICC prosecutions may have a negative impact on peace processes by inflaming warring parties with threats of prosecution, thus preventing them from coming to the negotiating table.²⁹ Ku and Nzelibe have been some of the strongest proponents of this theory, arguing that prosecutions can discourage bargaining between warring parties, thus blocking the use of amnesty and prolonging the conflict.³⁰ To illustrate their point, they discuss the feelings of a number of Acholi leaders in Uganda who have expressed their disapproval of the ICC's role in the peace talks, suggesting that neither peace nor justice will be served because the ICC is branding the LRA as criminals.³¹ Similarly, "some commentators suggest that the UN Security Council Resolution 1970 (2011) referring the situation of Libya to the ICC impeded a political solution of a negotiated exit for Gaddafi and instead forced him to fight to the end."³²

Snyder and Vinjamuri have also argued that prosecutions can be antithetical to peace, positing that when "enforcement power is weak, pragmatic bargaining may be an indispensable tool in getting perpetrators to relinquish power and desist from their abuses."³³ They suggest that this dynamic is applicable to the ICC; since the Court is often unable to enforce its indictments with arrests and prosecutions, perpetrators have no reason to relinquish power and stop violating human rights. Therefore, they argue that pragmatic bargaining is a necessary tool to achieve these aims. Furthermore, they suggest that prosecutions can actually inflame peace processes, and list several factors that make attempts to prosecute perpetrators "likely to increase the risk of violent conflict and further abuses, and therefore hinder the institutionalization of the rule of law," including weak political institutions, an ongoing conflict without a decisive victor, and potential spoilers.³⁴

However, the work of both Snyder and Vinjamuri and Ku and Nzelibe is in large part theoretical. In contrast, the work of Sikkink and Walling in Latin America addresses the peace versus justice question through an empirical analysis of 17 transitional countries that chose either truth commissions, prosecutions, or both. They conclude that "there is not a single transitional trial case in Latin America where it can be reasonably argued that the decision to undertake trials extended or exacerbated conflict."³⁵ While their research is geographically limited, they suggest that there is no reason to assume the same would not be true in other regions of the world undergoing democratic transitions.³⁶

²⁹ Julian Ku and Jide Nzelibe, *Do International Criminal Tribunals Deter or Exacerbate Humanitarian Atrocities?*, Wash. U. L. Rev. 777 (2006), at 826.

³⁰ *Id.*, at 821

³¹ *Id.*

³² Dutton and Alleblas, *supra* note 4, at 12.

³³ Jack Snyder and Leslie Vinjamuri, *Trials and Errors: Principle and Pragmatism in Strategies of International Justice*, International Security 28(3) (2004): 5-44, at 11-12.

³⁴ *Id.* at 15.

³⁵ Sikkink and Walling, *supra* note 21, at 440.

³⁶ *Id.*, at 443.

2. *The alternative to an ICC prosecution is no longer exclusively impunity, but rather may amount to justice at the domestic level as well, and outcomes are often so severe that any deterrence effect by the threat of an ICC prosecution is overshadowed by the threat of more severe punishment in the domestic system.*

In analyzing the ICC's deterrence potential, Cronin-Furman's draws on traditional criminological theory that concludes that deterrence depends on both the severity of the sentence and the certainty of punishment. With regard to the first, her research suggests that "the punishments the ICC can pose are less stringent than those that would be imposed by domestic jurisdictions."³⁷ The fact that the ICC cannot impose the death penalty and its record of relatively light sentencing could both reduce its deterrent effect; for example, Lubanga was sentenced to 14 years, Katanga was sentenced to 12.³⁸ Furthermore, the location of any prison sentence might also minimize any deterrent effect, given that prison conditions in The Hague might be substantially better than prison conditions in the defendant's home country.

Another example in support of this argument is the case of the former President of Ivory Coast, Laurent Gbagbo, who is currently on trial at the ICC. Although an ICC indictment was also issued for his wife, she was convicted by an Ivorian court, and is serving a 20-year-sentence in a local prison. What is interesting about this case, according to Ku and Nzelibe, is that Amnesty International petitioned the Ivorian government to transfer her case to the ICC, likely motivated by fear over her welfare. This example suggests that perhaps the alternatives to ICC prosecution may be so severe that the deterrent effect they exert overshadows any deterrent effect the ICC can exert, by virtue of the greater severity of punishment available.³⁹

However, a preliminary study by Jo and Simmons on the impact of the ICC in Uganda concludes that the reduction in violence in early 2004 could be traced to the ICC's announcement of its investigation.⁴⁰ Furthermore, there is evidence that at the Juba peace negotiations, Joseph Kony demanded that ICC prosecution be revoked, which demonstrates that the indictment against him was a factor, even for someone who has managed to evade capture for an indictment issued over ten years ago.⁴¹

3. *The probability of an ICC conviction may be too low to exert a deterrent effect, given the minimal number of indictments, prosecutions, and convictions to date, coupled with the potential to evade arrest in the first place.*

The second aspect of traditional criminological theories on deterrence is the certainty of punishment, which may also weigh against the ICC's impact. Furthermore, there is evidence to suggest that this aspect is more influential, given that "studies suggest the most important component is the certainty of

³⁷ Cronin-Furman, *supra* note 1, at 9.

³⁸ *The Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06; *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07.

³⁹ Ku and Nzelibe, "Grounds for Continued Skepticism About the ICC's Deterrence," (March 23, 2016), in Stewart's Online Symposium, *supra* note 13.

⁴⁰ Hyeran Jo and Beth Simmons, "Running the numbers on ICC deterrence: when does it actually work?" Open Democracy, (March 22, 2016) At: <https://www.opendemocracy.net/openglobalrights/beth-simmons-hyeran-jo/running-numbers-on-icc-deterrence-when-does-it-actually-work>.

⁴¹ Jo and Simmons, "Quo Vadimus? A Response to Critics," (April 7, 2016), in Stewart's Online Symposium, *supra* note 13.

punishment.”⁴² Similarly, Kim and Sikkink argue that “beliefs about the likelihood or probability of arrest and punishment have more deterrent effects than increases in the severity of punishment.”⁴³

Given that the ICC lacks enforcement mechanisms, it is forced to rely on member states to arrest and turn over suspects.⁴⁴ Furthermore, of the nearly 40 individuals indicted in the ICC’s history, only three have been convicted, and only two have been sentenced. A number of suspects remain at large.⁴⁵ These numbers do not make the likelihood of punishment anywhere near certain, which may negatively impact any deterrent effect.

Although these theoretical arguments certainly carry weight, the emerging empirical evidence demonstrates that the ICC does in fact exert a deterrent effect under certain conditions. Therefore, it seems more likely that the appropriate conclusion is that the ICC’s deterrent effect may be minimized by its reduced likelihood of prosecution, or confined to specific types of individuals or situations, but not altogether eliminated.

4. *Individuals who are committing mass atrocities that constitute crimes within the ICC’s jurisdiction are not rational actors, which is the presumption underlying any deterrence model, and thus they will not be deterred by traditional cost-benefit analyses.*

Deterrence depends on a rational actor model, whereby the individual calculates the perceived benefit from the crime to be lower than the perceived cost (taking into account severity of sentence and certainty of punishment). However, some have argued that individuals who are committing the types of crimes under the ICC jurisdiction are not rational actors, and have a skewed view of the costs and benefits of committing those crimes.⁴⁶ Cronin-Furman distinguishes between those leaders who affirmatively order violence against civilians for tactical purposes from those who simply allow subordinates to commit atrocities.⁴⁷ Her research suggests that the former category may have overriding interests that skew the cost-benefit analysis, preventing them from being deterred as might be expected. On the other hand, she concludes that the latter should be able to be deterred by the threat of ICC prosecution if it is severe and certain enough.⁴⁸

Similarly, Smeulers argues that the “most extreme crimes are committed by ruthless dictators who do not care about the international legal order or their own legitimacy and they are much less likely to be deterred by the ICC.”⁴⁹ When an individual’s primary objective is to secure power by whatever means necessary, “their survival instincts will make them focus on the (alleged) danger to their lives rather than

⁴² Dutton and Alleblas, *supra* note 4, at 7, citing to Christopher Mullins and Dawn Rothe, *The Ability of the International Criminal Court to Deter Violations of International Criminal Law: A Theoretical Assessment*, 10 Int’l Crim. L. Rev. 771, 773 (2010).

⁴³ Kim and Sikkink, *supra* note 23, at 943.

⁴⁴ Ku and Nzelibe, *supra* note 29, at 828.

⁴⁵ See e.g., Kony et. al. Case, ICC-02/04-01/05; Al Bashir Case, ICC-02/05-01/09; Hussein Case, ICC-02/05-01/12.

⁴⁶ See, e.g., Cronin-Furman, *supra* note 1, at 6.

⁴⁷ Cronin-Furman, *supra* note 1, at 13.

⁴⁸ *Id.*

⁴⁹ Alette Smeulers, “The ICC Fails to Deter when Deterrence Is Needed Most,” (April 1, 2016), in Stewart’s Online Symposium, *supra* note 13.

the danger to their reputation or the possibility of at some point being prosecuted for their crimes.”⁵⁰ She also points to the fact that some dictators begin to “suffer from megalomania once in power,” which skews their cost-benefit analysis away from the rational actor model we would expect.⁵¹

Conclusion

There are a number of conclusions that can be drawn from the emerging empirical evidence; while this research does not support an “all-or-nothing” deterrent effect by the ICC in all situations, it does give support to a conditional deterrence theory that is affected by the type of actor, the type of conflict, and the type of intervention. First, ratification of the ICC alone exerts a deterrent effect on both government actors and secessionist rebels. Second, an increase in ICC involvement in a situation country, including a signal that it is willing to prosecute, can have a greater deterrent effect even on rebel groups that are otherwise hard to deter, but may be sensitive to local conditions and politics. Third, the ICC has a positive impact on domestic governments and practices, especially regarding vulnerable governments that use ratification of the ICC as a way to self-bind. Last, the peace versus justice argument against the ICC is likely a false dichotomy, and is not supported empirically in the context of Latin America.

There are a number of questions that need future research in order to fully understand when the ICC can have a positive deterrence effect. First, the impact of more recent ICC action, including convictions after the Jo and Simmons data set (ending in 2011), must be studied. Second, information about the way perpetrators think and the way in which the ICC factors into their calculations or consciousness would be useful to better understand their perceptions of the certainty of punishment and whether they operate as rational actors. Third, further disaggregation of the types of actors beyond governments and rebels will be useful in understanding under what conditions the ICC can impact each type of actor. Last, much of the empirical research, including that by Jo and Simmons, has focused on the intentional killings of civilians; further disaggregation of the types of crimes and the ICC’s deterrent effect on each would be helpful in making decisions about the types of cases to prioritize and where to focus resources.

⁵⁰ *Id.*

⁵¹ *Id.*