Power and Interests at the International Criminal Court

Darren Hawkins

U.S. policy toward the International Criminal Court is disconnected from the central politics of the Court and focused on a mostly irrelevant sideshow. The Court’s fundamental political problem is its need for money and security forces to arrest suspects and try them. This feature makes the Court more subject to the control of powerful states than most have realized. Even if the United States cooperated with the Court, however, arrests and prisoners would likely be few and far between. Instead, the United States should work with the Court to refocus its efforts on capacity building in weakly democratic states.

If Google results can be used as a measure of importance, the United States has little to fear from the International Criminal Court (ICC). Type “ICC” into Google and the Court places a distant 11th in Internet relevance, behind entities such as the International Cricket Council, the Internet Chess Club, and Illinois Central College. In terms of influence over people’s lives, that ranking seems about right.

The creation of the ICC stirred a tempest in U.S. policy and U.S. relations with other states. Yet the storm has blown over without much altering the landscape. Both proponents and opponents have oversold the importance of the Court. It may yet prove worthy of its hype, but the Court’s basic problem is that it lacks prisoners and has little means of getting them. The most direct way for the United States to influence the Court is to cooperate (or not) with Court requests to arrest suspects or to provide other assistance essential to any investigation and trial. In contrast, U.S. policy has focused on punishing mostly small states for working with the Court, an unfortunate sideshow that might reap some small benefits for the United States but also incurs significant costs and ultimately has little effect on the ICC.

Nongovernmental organizations (NGOs) and court supporters have been attracted by the same sideshow of influencing small- and medium-sized states around the world by encouraging them to ratify the Court’s statute, to implement the necessary domestic legislation, and to resist U.S. pressure to undermine the Court. To an extent, their instincts are correct. The more states that support the Court, the greater the Court’s legitimacy. Legitimacy, however, is necessary but insufficient for the functioning of the Court. Legitimacy will not bring suspects to the Court’s cells and trial chambers and

Darren Hawkins is Associate Professor of Political Science at Brigham Young University. He has published Delegation and Agency in International Organizations with Cambridge University Press, and articles on international human rights issues in International Studies Quarterly and Journal of Politics, among others.

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will not pay the Court’s bills. For that, the Court needs powerful states. To be sure, NGOs have not neglected Great Britain, France and Germany, but they have probably underappreciated the importance of those states, and especially of the United States, to the whole enterprise.

To identify an appropriate U.S. policy toward the Court requires an understanding of the politics and behavior of the Court and the states that interact with it, something that has been in fairly short supply, in part because the Court is so new. Most commentators on the Court have focused on U.S. policy and U.S. relations with other countries, or on the legal rules of the Court and the obligations incurred by states that have joined the Court. These are important dimensions, but they neglect the politics of the Court and the resources necessary for it to operate. This essay will thus focus on these issues.

As a bottom line, the United States would do well to re-engage the ICC and to reshape it as a tool to build judicial capacity in new and struggling democracies and in countries trending toward democratic transitions. The ICC is likely to be a rather listless organization until an unexpected situation comes along where powerful states can provide suspects. Even when such a situation occurs, the interests of justice in that country are unlikely to be served by the Court’s efforts. If the United States sought to use the Court in a capacity building manner, on the other hand, it could find common ground with Europe and with NGOs, promote democracy and human rights abroad, and dramatically improve the U.S. image and its relationships at little cost.

A Bit of History

Court supporters—states and nonstate actors alike—gambled on a novel strategy at the Rome Conference that created the Court in July 1998. They placed a bet that they could form a major international organization without the support of the world’s most powerful state and several other powerful states (e.g., Russia, China, India) that feared the Court would restrict their foreign policy options. For the first few years, their wager performed better than expected. The agreement required 60 state ratifications to go into effect, a milestone that was reached more quickly than expected in April 2002. The Statute for the ICC entered into force on 1 July 2002. In subsequent months, states fleshed out the specific rules that would govern the new organization. By the first anniversary of the Court in July 2003, states had selected the judges and prosecutors and set them to work. Supporters were both elated and stunned by their early success.

Their winning streak continued in the next couple of years, but also began to succumb to an iron law of politics—no success comes without costs and problems, some unanticipated. During negotiations, ICC supporters had been worried about how the Court would receive or initiate cases. All agreed that states and the Security Council could submit “situations” to the Court for investigation and potential prosecution. Yet almost no one expected individual states to do so, because any state complaining against
another could easily find itself complained against. And many states did not want the Court to simply end up as a tool of the Security Council. Hence, supporters fought long and hard for the ability of the prosecutor to initiate investigations on his own authority. U.S. officials and some commentators have consistently maligned this “unchecked” authority, even comparing it to the power to undertake witch-hunts. 2

Unexpectedly, however, this authority has so far been unimportant. Uganda, realizing the Court could be used as a tool against unwanted rebels and warlords, referred its own civil war with the Lord’s Resistance Army to the Court in December 2003. 3 Uganda’s political strategy was unexpected and smart, even brilliant. It forced international involvement in the conflict when Western states had been studiously avoiding much effort. Uganda’s government essentially increased the pressure on powerful Western states (at least those who wanted the Court to succeed) to help it gain control of its country. Of course, Uganda risked the indictment of its own government officials, but they could (implicitly) offer cooperation with the prosecutor in exchange for the prosecutor’s focus on rebels. Sensing a good thing, Congo and the Central African Republic followed suit the next year. After gathering information, the prosecutor opened investigations into all three cases and has publicly sought arrest warrants for two suspects in Congo and five in Uganda (though one has since died). 4 The prosecutor so far has focused his attention on rebel groups rather than on government officials.

In a different vein, the Security Council in March 2005 referred the situation in Darfur to the ICC prosecutor, who opened an investigation in June. This referral followed the pattern that Western states established in Rwanda and Yugoslavia. In those cases, many groups called for military interventions as the nasty, well-publicized conflicts increased public expectations that Western states should “do something.” Because such interventions are costly and difficult, states generally avoid them as long as possible, offering instead to investigate and try the perpetrators. In Sudan, states have also resisted interventions but have repeated history by referring the case to an international court. It is somewhat surprising the United States went along with this, given its open hostility toward the ICC. On the other hand, utilizing an international court is precisely the strategy the United States adopted in the past when faced with genocide abroad, and reflects longstanding U.S. views of the appropriate role for the ICC as a tool of the Security Council.

Thus, six years and a few hundred million Euros after it was established, the Court in early 2008 has four extraordinarily complicated situations under investigation, a raft of requests by nonstate actors to review other situations, a fair number of pleas from the ICC to states to hand over someone to try, and only two suspects of middling importance in custody. While it is possible that an unexpected turn of events would breathe new life into the Court, an analysis of the politics of the various actors suggest that this state of affairs (large demands and expectations, few suspects) is likely to become routine.
The Politics of States Torn by Violence

For states torn by violence, the main political dynamic is relatively simple but rarely articulated and perhaps not well understood. States whose authority is challenged by rebels would dearly love to capture those rebels, but frequently cannot. Because rebels typically engage in war crimes and crimes against humanity, their home state governments can denounce these crimes and seek the help of the ICC, hoping that ICC pressure will induce other states to apprehend the rebels. At the same time, those governments also typically engage in the types of practices outlawed by the ICC. Hence, they have an incentive to cut implicit deals with the ICC prosecutor for information on the rebels in exchange for immunity.

The incentives of war-torn states change once they either capture a rebel themselves, or decide to cut a peace deal with the rebels. In the case of capture, states are tempted to either try the rebel themselves, as a lesson to others, or to leave him in limbo to avoid angering his followers and to deflect accusations of foreign influence. In the case of a peace deal, governments are frequently motivated to provide amnesty for war criminals, in part to induce rebels to negotiate and in part to avoid the prosecution of their own officials. In all of these situations, war-torn states have little reason to arrest suspects and turn them over to the ICC.

The case of Germain Katanga, a Congolese warlord, offers an illustration of this dynamic. Katanga made peace with the government in late 2004 and was rewarded with the post of general in Congo’s army. Militia forces associated with Katanga then attacked UN troops in Congo, killing nine of them. In response, powerful states insisted the Congolese government arrest suspects. The ensuing manhunt in March 2005 rounded up a few militia leaders, including Katanga, who then spent more than two years in prison in Congo before being surrendered to the ICC in October 2007. Congo, despite asking for the ICC’s help, was clearly less than enthusiastic about actually turning Katanga over, first rewarding him with the rank of general and then allowing him to languish in prison. Others associated with the attack on UN troops, although arrested by the Congolese authorities, have not been turned over. The central difficulty facing Congo’s government is that Katanga and other warlords are locally popular and powerful. To entice Katanga to lay down arms, Congo rewarded him, and then—either because Congo did not want to anger Katanga’s supporters or because it did not want to look like a pawn of the West—failed for a long time to turn him over to the ICC.

The Politics of States at Peace Who Support the ICC

States enjoying domestic peace generally have little interest in risking their own blood and treasure to capture war criminals elsewhere, as they have repeatedly demonstrated in Sudan, Rwanda, Bosnia, Somalia, Sierra Leone, and several other cases. Arresting suspects generally requires first overthrowing a government or dismantling a well-armed opposition group. Once that
occurs, security forces must track down suspects, no easy task when those suspects often retain substantial popular support, and when security forces have more pressing concerns. Western forces occupied Bosnia for some time before becoming more serious about arresting war crimes suspects and, as of this writing, two of the most important suspects remain free despite enormous international pressure.8

Perhaps bowing to this reality, NGOs who support the ICC have focused much of their energy on getting states to ratify the ICC and to change their domestic legislation to conform to the Court’s Statute. While the ratification campaign exceeded expectations (especially in the first few years), the implementation effort has been a slower slog. Amnesty International has identified two necessary types of implementation changes in domestic legislation: one that ensures domestic justice systems will operate in accordance with international norms (complementarity legislation) and one that ensures state cooperation with ICC requests (cooperation legislation). As of April 2006, the most recent date with available data, only 22 of the 100 or so states party to the ICC had implemented both forms of legislation.9 An additional 18 had implemented one or the other while 31 had some form of draft legislation pending. In most states, it is not a simple task to reform criminal codes and to design new bureaucratic procedures.

At the same time, Western states committed to the ICC have a strong financial incentive to make the Court work. States budgeted 80 million Euros for the Court in 2006, 89 million Euros in 2007 and 98 million Euros in 2008.10 These are substantial amounts. When the Yugoslav Tribunal began spending about $100 million a year, states began to worry it was excessive, although the Tribunal was prosecuting dozens of prisoners at that price, including Milosevic. The ICC is already spending nearly as much each year as the Yugoslav Tribunal ever has, and it only has two prisoners. It seems likely that state supporters will eventually insist on a much better return on their investment.

For European states, the least costly method of getting suspects is to pressure weaker governments to arrest them and hand them over. It seems likely that this occurred with Katanga. A warlord associated with the killing of UN troops was certainly a good choice to mollify international pressure. Such pressure is likely to lead to the arrest and transfer of other suspects in coming years, though it is difficult to say how frequently this method will prove fruitful, given the politics of violent states outlined above.

A more costly method is to use Western security forces to arrest suspects. This can and does happen, but it is fairly rare. It usually only occurs in the aftermath of a major security operation. In recent years, only the United States has been able to bring the

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most powerful war criminals to justice through security operations, economic pressure and diplomacy. Slobodan Milosevic and Saddam Hussein were removed from power through war, combined with a popular uprising in the case of Milosevic. Charles Taylor was removed from power in Liberia and then turned over to the Sierra Leone Tribunal only under U.S. pressure. And these leaders have been relatively easy to find—they were sitting heads of state or hiding in a conquered country crawling with U.S. forces. Capturing a guerrilla leader is far more difficult, as the United States discovered when it went after warlord Mohamed Farrah Aidid in Somalia.

**Politics in the Prosecutor's Office**

While the United States could be central to the Court's success, it has been sharply critical of the Court so far. Some prominent U.S. officials and analysts have expressed fear that the ICC will carry out a witch-hunt (understood to be prosecution of individuals due to popular demand or judicial ideology, but without much evidence) against U.S. citizens. In this section, I assess that claim by examining politics in the prosecutor's office.

Prosecutors and judges are professionally trained to seek justice; those selected for the ICC will probably possess a strong desire to honorably fulfill their duties by prosecuting the most egregious violators they can. Given the rich selection of war criminals in the world, it seems unlikely they would want to focus the Court's scarce resources on suspects from Western states whose crimes are subject to functioning justice systems. As professionals deeply committed to the rule of law, they are likely to respect one of the Court's key foundational principles, which allows domestic justice systems to take precedence over the Court.

Given that one can construct legal scenarios for almost any hypothetical (including ICC indictment of a U.S. citizen), however, the question of likely Court action turns to incentives and resources. The Court is utterly dependent on states for finances and security forces. It has an incentive to please its principal donors; otherwise, it will receive less funding and security help. The principal donors are Western states friendly with the United States. If the United States reaches a point where its key allies want to see U.S. citizens indicted, tried and humiliated internationally, the country will have troubles that far exceed those imposed by the ICC. A rogue state may arrest a U.S. citizen, but the United States has plenty of economic, security and diplomatic tools to ensure that person's transfer into U.S. custody. Even Chile managed to pry the notorious Augusto Pinochet from Britain's grip. It seems an even easier task for the world's most powerful state to regain jurisdiction over one of its citizens, whose crimes would almost certainly be less clear-cut or extensive than those of Pinochet.

The less hysterical question is whether the prosecutor is likely to go against the wishes of Western states in subtler, less confrontational ways. A rogue prosecutor may create trouble in at least two ways. First, the prosecutor may go after individuals in developing countries who Western states would rather leave alone. For example, he might prosecute officials who are clients of powerful states. Second, he could use his office as a bully pulpit...
to denounce or question the actions of Western states even if he does not indict their officials.

This sort of question is ably addressed by the principal-agent literature in international relations. Whenever principals (states, in this case) delegate authority to an agent (the ICC prosecutor), the agent has some autonomy to act contrary to principal preferences. The prosecutor might, for example, be able to draw on the support of some states even if others disagree, especially if he moves cautiously. This is the problem of collective principals, conceptualized by Nielson and Tierney. The prosecutor can also reinterpret his mandate to justify new and partially unwanted action. The current prosecutor has shown some inclination toward interpreting the Statute in ways that allow him greater prosecutorial latitude. It seems likely that states did not intend the prosecutor to accept self-referrals such as that of Uganda, yet he has.

At the same time, such efforts will probably not be targeted squarely at the Court’s most important funders and force providers. It seems unlikely that the Court would consign itself wholly to an irrelevant but celebrated existence by baiting powerful states or by expanding its pretended authority at the expense of actual suspects and trials. To the extent that the judges and prosecutors desire to pursue justice against deserving perpetrators, they will attempt to work with Western states, not against them. The mandate of the Court is broad enough that it should have plenty of cases to keep it busy without having to look for cases against Western states. How then should the United States deal with a Court whose values and incentives are generally structured in its favor?

U.S. Policy and Its Disconnect with ICC Politics

As with many international organizations (IOs), the United States has had an uneasy relationship with the ICC from the beginning. During ICC negotiations in the mid-1990s, the United States strongly preferred a Court that would be a tool of the Security Council with a prosecutor who would serve as the Council’s agent, rather than an independent actor. The United States fought hard throughout the negotiations to achieve its vision of the Court, exacting compromises but losing key battles. Nevertheless, Clinton signed the Statute on Dec. 31, 2000—the last day allowed for signature and one of Clinton’s last days in office—so the United States could remain involved in shaping the Court even if it did not ratify the Statute.

When it took office in 2001, the new Bush administration expressed general indifference or even outright hostility to most IOs. After September 11, the administration moved on multiple fronts to release the United States from international legal obligations governing war and the conduct of its armed forces. One such effort was the “unsigning” of the ICC on 6 May 2002. Not content with unilateral action, the United States soon engaged in major efforts to influence other states’ relationships with the ICC. While U.S. policy is often seen as an all-out attack on the ICC, it is more accurately characterized as an all-out effort to exempt U.S. citizens and foreign contractors of the U.S. government from the Court. To the extent that
this undermines the Court’s jurisdiction, such actions are an attack on the Court. Yet even the Bush administration signaled a willingness to use the Court to try war criminals from enemy or pariah states, as when it abstained on the Security Council referral of the situation in Darfur to the ICC.

U.S. actions toward the ICC can be divided into two parts. First, the United States has sought to use (with varying success) Security Council resolutions to restrict the ICC’s jurisdiction. In 2002 and 2003 the Security Council, at U.S. insistence, gave one-year immunity to individuals serving in UN peace operations if they were nationals of states who had not ratified the ICC. Then, the 2005 Security Council resolution on Darfur stipulated, under U.S. influence, that any person connected with international missions in Sudan and from countries not ratifying the ICC would be subject to the exclusive jurisdiction of the individual’s home state.

Second, the United States has sought to sign bilateral immunity agreements with every state in the world, regardless of whether that state has ratified the Statute. These bilateral nonsurrender agreements—sometimes known as Article 98 agreements in reference to a clause in the Statute that possibly provides a legal basis for them—obligate states to not surrender to the ICC any U.S. citizen or employee of the U.S. government, even if those employees are foreign nationals. European states, various lawyers and legal advisors and human rights groups have argued that these agreements are illegal, foster a climate of impunity, and attack the integrity of the founding Rome Statute.

U.S. efforts to sanction states that do not sign these immunity agreements have been unusually strident and controversial. The U.S. Congress passed the American Service-Members Protection Act in July 2002, prohibiting military aid to countries that have ratified the ICC Statute without also signing a bilateral immunity agreement. In July 2003, the Bush administration announced sanctions on 35 states. The legislation allows the president to waive the sanctions for security reasons, a provision the Bush administration first employed in November 2003 for select East European states. In December 2004, Bush signed into law the Nethercutt Amendment, which added economic aid penalties to states who ratified the ICC Statute without also signing a bilateral immunity agreement. U.S. government officials have gone much further than this. In Eastern Europe, administration officials tied the bilateral nonsurrender agreements to NATO membership and the placing of bases. The United States won over Macedonia in part by offering to use its desired name “Republic of Macedonia” (rather than the more common and less contentious “Former Yugoslav Republic of Macedonia”) in the bilateral nonsurrender agreement.

As a policy action, sanctions have well-known difficulties, including questions about effectiveness. The United States has had middling levels of success with its efforts. Of the 100 states party to the ICC Statute in August 2006, 43 have signed a nonsurrender agreement. An even larger problem is that sanctions can backfire or can create ill will even when they achieve their stated purpose. Less powerful states feel manipulated and react with superficial and somewhat grudging compliance, as when a top Serbian official...
announced Serbia would comply with its bilateral nonsurrender agreement until it became a candidate for EU membership. European states have pushed back fairly hard, including support for the ICC in trade agreements with other countries and in requirements for EU membership.

Another problem is that sanctions can hurt the sender as well as the target. When the United States cuts off military and economic funding, it also loses some influence. Unhappy about losing military training programs in Latin America and elsewhere, the U.S. military has pushed back. As a result, in September 2006, Congress excluded military training programs from the list of sanctions. Economic programs subject to possible sanction include money to finance democratic reforms, anti-drug initiatives, anti-corruption programs and anti-terrorism efforts. It seems likely that the costs to the United States of cutting these kinds of programs for some states are larger than the benefits gained from a bilateral immunity agreement.

The most fundamental problem with U.S. policy is that it is disconnected from the political realities mapped above. The main thrust of U.S. policy toward the ICC is to pressure medium and small states to not cooperate with the ICC. This is a losing cause, it is unnecessary, and it focuses on less important features of the Court.

It is a losing cause in part because European states, while realizing that some smaller states must accommodate the United States, have strongly supported the Court, have pushed others to support it, and have encouraged states to place limitations on the bilateral nonsurrender agreements. Domestic political leaders seeking relatively low-cost ways to demonstrate their willingness to stand up to the United States can resist U.S. pressure relative to the ICC. Even states that sign agreements can later undo them, as the Serb official suggested, or can create small difficulties by refusing to cooperate on other issues after feeling bullied on the ICC. Justice norms also come into play. States and their citizens generally favor justice for war criminals and thus support the ICC. Public U.S. actions against the Court make the United States appear to be non-cooperative and opposed to justice for some of the worst war criminals in the world.

U.S. policy is unnecessary because states are already reluctant to cooperate with the ICC—as argued above, it is costly and difficult to capture suspects and provide evidence. Moreover, states are also disinclined to change their domestic legal procedures and laws.

Finally, U.S. policy toward the ICC focuses on less important features because the fundamental goal of the Court is to capture and try suspected war criminals where domestic legal systems cannot or do not function. Small- and medium-sized states that are friendly to the ICC are nearly irrelevant in that effort. They have neither the budgets nor the security forces to make serious efforts in this direction. If the United States wants to influence the ICC, it should utilize the resources the ICC and powerful state allies care
about: money and force in pursuit of justice. Withholding those resources entirely and refusing to discuss the issue makes it difficult to influence the ICC. Selective cooperation would be far more influential.

**What Is To Be Done?**

Determining proper U.S. policy toward the ICC requires not only assessing its politics, but also its promise. What is the Court good for? So far, it has not achieved much justice, peace and reconciliation, public knowledge about abuses, or deterrence. Of course, not enough time has passed, but there are reasons to be skeptical about its ability to achieve these goals.

A good case can be made that the ICC is unlikely to help produce peace and reconciliation in any state and that there are better, less costly and more effective ways to pursue justice. Of what possible help are Court officials sitting in the Netherlands to the resolution of a civil war in Africa? They may be able to shame one side or the other, but that is unlikely to influence events on the ground. They may be able to provide normative cover for a state that wishes to intervene militarily, but few states wish to do so and such states are capable of manufacturing their own normative cover. They may be able to help leverage a sitting head of state out of power, as the Sierra Leone tribunal did to Charles Taylor, but such cases will be few and far between and of uncertain benefit. Once a civil conflict has ended, they may be able to provide some justice, but the connection is tenuous between justice for a couple of officials in a Court in Europe and reconciliation between warring factions on the ground in a conflict-ridden society. To cite just one example, evidence exists that Milosevic’s trial in The Hague, on balance, heightened Serb nationalism and sharpened ethnic differences in the Balkans.

Of the international war crimes tribunals attempted so far, that of Sierra Leone wins the most praise. It helped push Taylor out of power, focused its indictments on the most deserving suspects, won widespread support from the people of Sierra Leone, helped provide a real sense of justice, and did not interfere with the parallel work of a truth commission that offered victims a crucial forum. Unfortunately, the ICC bears little resemblance to the Sierra Leone tribunal, which was located in the country, drew on a hybrid of international and national law, worked closely with local and regional officials, interacted extensively with the public, and began its efforts after the conflict was over.

The track record of the ICC in Uganda offers an instructive counterpoint. By indicting key members of the Lord’s Resistance Army, the ICC gave them an incentive to continue fighting rather than to negotiate an agreement and face trials. Moreover, it overturned a Ugandan amnesty popular with local citizens as a way to end the conflict. Most problematically, it offered normative legitimacy and support to the Ugandan government’s preferred military strategy in the civil war. A large army and counter-terrorist credentials aid Uganda’s repressive government in its quest to remain in power. By indicting Uganda’s rebels but not Uganda’s government, the ICC
Power and Interests at the International Criminal Court has essentially chosen sides in the conflict, possibly undermining its own legitimacy while failing to contribute to a sense of justice or reconciliation.

The multiple difficulties enumerated in this article pose formidable and perhaps insurmountable challenges to an effective ICC envisioned by supporters. War-torn states have few incentives to hand over suspects. States at peace have few incentives to go get those suspects. Only the most powerful states have the capability to arrest suspects, and even they find such tasks extremely challenging. The prosecutor is deeply dependent on powerful states and has few tools to push cases forward in the absence of suspects. Prosecutor indictments and investigations can actually make things worse, as in Uganda. U.S. policy toward the ICC is fundamentally misguided because it is based on fear of the ICC’s authority. Even with nominal U.S. support, which the ICC could receive in a new administration, the ICC is unlikely to have many suspects.

Given these multiple difficulties—and barring some post-conflict use of the ICC in a case where powerful states can track down key suspects—the best use of the ICC would be to turn it into a domestic capacity-building institution. ICC judges can be used to train judges in states with a weak culture of the rule of law. The ICC could help coordinate and combine information and investigative capacity offered by various UN agencies or states with that provided by local authorities. It could provide a stamp of credibility to national efforts, expertise in dealing with difficult problems, and then help bring that information to a wider national and international audience.

The ICC is already headed in this direction. The prosecutor’s office has adopted what it labels a “positive approach to complementarity.” Complementarity is the idea that the Court will only be used if domestic judicial systems are inoperative or completely unwilling to prosecute. Positive complementarity means that the Court will develop and deepen information exchanges with national governments in an effort to build domestic capacity for those governments to collect their own information about war crimes and try their own suspects. Many struggling democratic governments face strong authoritarian tendencies within important social groups or parts of their own governments, and would welcome the assistance of international organizations in strengthening the domestic rule of law. Colombia, for example, walks a delicate line as it attempts to prevent atrocities by government sympathizers while also taking a hard line against rebel groups, and generally welcomes international assistance in developing capacity in related areas like witness-protection programs.

A capacity-building mission fits well with existing European methods of democracy building in Eastern Europe and the former Soviet states. It also conforms to the American concern for good governance. If a good case comes along, then the ICC should of course be used to prosecute war criminals. In the meantime, shifting gears toward capacity building seems to be the best idea.
Notes

1 Results as of 31 Jan. 2008.
11 Kissinger, 86.
16 Arsanjani and Reisman, 395–396.
18 Rodman, 32–33.
23 Johansen, 315.
26 Boduszynski and Balalovska, 27–28.
29 Antoniadis and Bekou, 646–653.
30 Snyder and Vinjamuri, 5–7.
31 Snyder and Vinjamuri, 20–24.
34 Luis Moreno-Ocampo, Address to the Assembly of States Parties, 30 Nov. 2007.