Threats and Commitments: International Tribunals and Domestic Trials in Peace Negotiations

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Abstract

Does the threat of intervention from the International Criminal Court (ICC) affect the agreements parties to a civil conflict make, especially regarding matters of justice and accountability? In this paper, I argue that international criminal tribunals in general – and the ICC in particular – place a unique pressure on domestic elites negotiating peace in the wake of political violence. In order to avoid going to trial in the international arena, elites facing the threat of intervention have an incentive to agree to implement some form of domestic accountability. By agreeing to hold domestic trials, elites signal to the international community that they can handle their own business while also signaling to their opponents how they intend to conduct themselves in peacetime. I test my argument using data on the content of peace agreements negotiated between 2002 and 2019. I measure the threat imposed by international tribunals using disaggregated data on ICC involvement around the world, distinguishing between the threat of intervention and intervention itself. I find that the threat of ICC intervention increases the probability that peace agreements will include commitments to holding trials domestically. This suggests that the ICC may be more effective than previously believed, even in the context of peace processes.

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1 Introduction

Does the threat of intervention by an international tribunal affect the agreements parties to a civil conflict make, especially regarding justice? Arguably since the trials against the Nazis at Nuremberg, holding perpetrators accountable for the atrocities they commit during conflict has been linked to the hope that such gross human rights violations "never again" happen. This was the logic behind creating the International Criminal Tribunal in Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), and the logic behind agreeing to establish a permanent world court with "jurisdiction over the most serious crimes of concern to the international community as a whole" (*Rome Statute of the International Criminal Court* 1998). The goal to establish such a court came to fruition in 2002, when 60 states ratified the Rome Statute of the International Criminal Court (ICC).

At the domestic level, ensuring accountability for the commission of atrocities has been taken up by human rights activists and organizations as well as politicians, all seeking to implement their own versions of "never again." Criminal trials of perpetrators have increased over time, as have other mechanisms of accountability (Olsen, Payne & Reiter 2010, Sikkink 2011). Justice mechanisms are even implemented in the midst of conflict, to varying ends (Loyle & Binningsbø 2018). Even after conflict has ended, when parties that fought and committed atrocities hold the reigns of power, the question of justice and accountability is often times present (Binningsbø, Loyle, Gates & Elster 2012).

In this paper, I argue that international tribunals place a unique pressure on domestic elites negotiating peace agreements in wake of political violence. In order to avoid going to trial in the international arena, elites facing the threat of intervention have an incentive to agree to implement domestic accountability at home. By agreeing to hold domestic trials, elites signal to the international community that they can handle their own business while also signaling to their opponents how they intend to conduct themselves in peacetime. I test my argument using data on the content of nearly 500 of the peace agreements related to civil

conflict negotiated between 2002 and 2019. I measure the threat imposed by international tribunals using data on the International Criminal Court (ICC), and find that ICC involvement in a country where peace negotiations occur increases the probability that the peace agreement will include commitments to holding domestic trials. This finding contributes to the literatures on transitional justice and international institutions by providing a link between international tribunals and the domestic politics of accountability.

In the next section, I describe some of the existing approaches to studying the impact of the International Criminal Court. In Sections 3 and 4, I outline my argument in detail and provide an explanation for why the ICC is the appropriate tribunal through which to understand these dynamics. Section 5 describes my research design, honing in specifically on how I measure the *threat* of ICC intervention and try to capture its effects on commitments to accountability in peace negotiations. In Section 6 I present the results of analysis. I find suggestive evidence that the threat of ICC intervention increases the probability that a peace agreement will contain a substantive commitment to hold perpetrators accountable via domestic trials. This is particularly true when the threat is credible, coming from the ICC as an institution and not merely the Prosecutor as an individual. In Section 7, I conclude, outlining avenues for further research.

2 Understanding the ICC's Impact on Peace Processes

In the decades since the end of the Cold War, research on ending civil conflict has focused on the important role formal peace processes can play in addressing the causes of conflict and ensuring warring parties can credibly commit to ending violence (Walter 1997, Hartzell, Hoddie & Rothchild 2001, Walter 2002). Increasingly, this literature has pointed to the content of peace agreements – as the foundations of transitional and post-conflict institutions – to understand the successes and failures of peace processes (Walter 1999, Hartzell & Hoddie 2003, Mukherjee 2006, Bell 2006, Mattes & Savun 2009, Martin 2013, Matanock 2017).

In line with this burgeoning research, I focus on one particular feature of contemporary peace agreements, transitional justice provisions, and show how international institutions like the International Criminal Court can impact whether or not negotiating parties consider transitional justice provisions during peace processes.

Transitional justice is defined as the "formal and informal procedures implemented by a group or institution of accepted legitimacy around the time of a transition out of an oppressive or violent social order, for rendering justice to perpetrators and their collaborators, as well as to their victims" (Kaminski, Nalepa & O'Neill 2006, 295).[1] Within the scope of this definition of transitional justice fall various transitional justice processes, including "both judicial and non-judicial mechanisms, with differing levels of international involvement...and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (United Nations Security Council 2004, 6). Broadly, it is comprised of three primary components: (1) accountability for those who have committed atrocities, (2) support for victims of abuses, and (3) structural reforms aimed at ensuring the non-repetition of abuses. These policies can be implemented at the international, domestic, and local level, with varying scopes and degrees of specificity.

Previous scholarship exploring the effects of international transitional justice institutions like the International Criminal Court have almost entirely focused on understanding the effects indirectly. Many scholars have focused on how Rome Statute ratification can shape human rights practices in the States Party to the ICC system. Simmons & Danner (2010) argue that states ratify the Rome Statute to tie their hands, forcing themselves to make credible commitments to comply with human rights norms. They find that states at the tails of the human rights spectrum – those most and least likely to face ICC intervention – are the

[1]Kaminski, Nalepa & O'Neill (2006) separate transitional justice into two general categories: endogenous transitional justice, or "the procedures are administered by the society itself, without external intervention," and exogenous transitional justice, or transitional justice "administered from the outside, typically by agents who were not engaged in the conflict, and often under the auspices of an ongoing institution" (295-6). While in many cases this is a useful distinction to make, for the purposes of this project, which deals with the ways that exogenous transitional justice can affect transitional justice at the local level, the aforementioned distinction is unnecessary.

states most likely to ratify the Rome Statute, and for those with the worst records, ratifying the Statute actually leads to a tentative reduction in violence. Chapman & Chaudoin (2013) find, in contrast, that with few exceptions, joining the ICC system is avoided by the states with the worst human rights records. The few exceptions, they argue, have either shown a weak commitment to comply with the Statute or have used it to target their enemies.

Other work has focused instead on the dynamics of popular support for ICC intervention. Chapman & Chaudoin (2018) conduct a survey experiment in Kyrgyzstan and find that otherwise high support for the Court decreased when respondents were asked about an investigation into recent violence. This was particularly true in the regions most affected by the violence. Zvobgo (2019) finds that in the United States, where the federal government has had shifting priorities as it pertains to the ICC, individuals are more supportive of the ICC when the Court is described as in line with US foreign policy regarding human rights and less supportive when it is described as in conflict with US national interests. And in their survey of Kenyan attitudes towards the ICC, Dancy, Dutton, Alleblas & Aloyo (2020) find that while those exposed to political violence are less likely to believe the Court is biased against Africans, those who ethnically identify with the ruling coalition are particularly likely to see the Court as biased. All of these studies make important contributions by explaining individual attitudes towards the Court. Dancy et. al in particular advance our understanding by analyzing the opinions of individuals in a country actually experiencing ICC intervention.

Understanding which states willingly submit to the ICC regime and why is important for setting expectations about the Court's potential effects. And explaining why individuals may support or reject ICC intervention is important also for understanding the implications of that intervention once it occurs. Neither of these types of analysis, however, focus on how the ICC as an actor in the international system can shape domestic outcomes directly.

Nalepa & Powell (2016) and Krcmaric (2018) both focus precisely on this issue, exploring the effect of international transitional justice on the decision-making of repressive autocrats. Nalepa & Powell argue that the presence of an institution like the ICC changes an autocrat's

decision calculus: a strong international criminal tribunal can deter dictators' decisions to peacefully step down from power, despite the fact that their domestic opposition has "skeletons in the closet." They find that when the ICC is weak, dictators are more likely to peacefully step down the more skeletons the opposition has in its own closet. Krcmaric argues that by removing the useful option of political exile, international transitional justice incentivizes autocrats to fight harder to stay in power. He finds that leaders responsible for atrocities are six times less likely to go into exile in the era of the ICC than they were prior to the creation of the Rome Statute. While important for understanding the effects of the Court, these findings focus on the likelihood that autocrats will step down from power, providing little information about conflict settings where the dynamics of accountability may be very different.

In her analysis, Prorok (2017) does focus on the issue of conflict, arguing that ICC involvement prolongs conflict only when the risk of domestic punishment is low. Building on theories about the peace-justice divide—the idea that the ICC in particular can prolong conflict—she finds that ICC involvement in a conflict setting significantly reduces the probability of conflict termination when government and rebel groups have committed similar levels of atrocities. The Court's counterproductive impact, however, decreases as the number of atrocities committed by one party to a conflict increases relative to the number committed by other parties. And Jo & Simmons (2016) provide more nuance, arguing that the ICC has differential effects on the conduct of state forces and rebel groups during periods of civil conflict.

Dancy & Montal (2017) instead link ICC involvement directly to prosecutions at the national level. They argue that an ICC investigation sparks a strategic interaction between ruling elites who want to demonstrate their willingness to comply with the Rome Statute and reformers who want to prove the elites' efforts as false. In an effort to feign compliance, elites allow reformers to push human rights cases at the domestic level, thereby increasing the number of human rights prosecutions. Using novel data from the Transitional Justice

Research Collaborative, they find that ICC investigations do produce human rights prosecutions domestically.

My analysis builds on the work of Prorok, Jo & Simmons, and Dancy & Montal in particular by also showing how ICC involvement affects commitments to hold domestic trials in countries experiencing conflict. I distinguish between different types of ICC involvement and argue that the level of Court involvement can have differential effects. I make a further contribution, however, by linking these trial commitments directly to the content of peace negotiations. By taking seriously the dynamics of negotiated settlements, I contribute to the literature on peace agreements by showing how the threat of certain kinds of international intervention can shape the commitments made during negotiations. In doing so, I provide further evidence of the unintended effects of the ICC's complementarity regime.

3 Argument

Elites involved in political violence have an incentive to try to maintain control of the post-conflict political environment once they return to peacetime.[2] This is particularly true for the parts of the post-conflict environment that relate to matters of justice and accountability. In post-conflict settings, elites are concerned about justice matters precisely because justice may be one of the means by which the parties previously in conflict seek to cut deals and score-settle (Lake 2017).

The context in which mechanisms of justice are established, however, is important for understanding what these mechanisms actually do. The logic of establishing justice mechanisms during conflict, for example, may be very different from the logic of establishing justice mechanisms after conflict (Loyle & Binningsbø 2018). In this paper, I outline and test a theory of justice mechanisms established at the negotiating table. I argue that the

[2]Elites are those in positions of authority over the state or over armed groups interacting with the state. I intentionally keep the definition broad in order to encompass a variety of actors who could be potentially affected by tribunal investigations and/or domestic justice mechanisms, including state officials and members of the military, rebel groups, and pro-government militias.

threat of intervention by an international tribunal, in this case by the International Criminal Court, affects the likelihood that peace negotiations will include commitments to provide sanctions against those responsible for atrocities. This is because when negotiating, those most responsible for core international crimes—crimes against humanity, war crimes, and genocide—want to avoid being tried at the Court. They may have these preferences for many reasons, both individual and geopolitical. At the geopolitical level, concerns about sovereignty and authority may lead state officials to prefer non-interference from the Court. Individuals may personally prefer non-intervention for several reasons, including: (1) international trials are visible public trials that put ones worst crimes on display for the world to see, (2) the physical separation from loved ones caused by being held for trial at the Hague,[3] or relatedly, (3) the inability to leverage ones institutionalized authority to engage in damage control and affect a finding of guilt or innocence. Regardless of the reason, I suggest that the individuals and groups negotiating about justice have an incentive to thwart ICC intervention. They do so by committing to hold perpetrators accountable at home.

Furthermore, enshrining the commitment to using domestic processes in peace agreements can also outline the terms of justice for the parties to the conflict themselves. Bargaining over justice institutions can provide valuable information to the negotiating parties about the intentions of their opponents, and the deals they strike can define the rules of the game in peacetime.

4 Why the International Criminal Court?

The question this paper seeks to answer is if the threat of international intervention influences agreements about domestic justice. Intervention (or the threat of it) by the ICC's Office of the Prosecutor (OTP) is the perfect framework through which to investigate this question because of the features of the Court that provide specific mechanisms by which

[3]Notorious Ugandan warlord Joseph Kony was allegedly deeply concerned about being held in the Hague for trial, in part because it would remove him from his community (Clark 2018),

it can impact conflict-associated political elites. The International Criminal Court as an institution is unique in that, unlike many of its regional and supra-national predecessors it is charged with holding *individuals*, rather than states, accountable for atrocities committed (Simmons & Danner 2010, Cronin-Furman 2013).[4] There are three mechanisms by which situations are referred to the Court: (1) a referral by a state party to the Rome Statute, (2) a referral by the UN Security Council, and (3) a referral by the Office of the Prosecutor itself using its *propio motu* authority (*Rome Statute of the International Criminal Court* 1998).[5] Thus, the Office of the Prosecutor is authorized to initiate proceedings regarding situations in the states party to the Rome Statute without relying exclusively on referrals from the states themselves. Only referrals by the United Nations Security Council (as occurred with Sudan and Libya), can explicitly address situations in states not party to the Rome Statute, though the increasingly internationalized nature of the situations investigated by the Prosecutor has raised questions about the scope of the Court's jurisdiction, even for the Prosecutor's Office itself.[6]

Additionally, the Court "does not recognize any of the immunities traditionally accorded to heads of state and other senior officials under international law. In fact the treaty overrides any immunities that states may grant to presidential, parliamentary, or legislative officials in their domestic systems" (Simmons & Danner 2010, 230).[7] Only the United Nations Security Council has the authority to suspend a Court investigation, and only in instances when

[4]The Court's immediate predecessors, the ICTR and ICTY, were also charged with holding individuals accountable, but were limited to investigating crimes committed during specific conflicts. The ICC is neither limited to particular countries or regions, nor is it limited to conflict.

[5]Note that the term "situation" is used to describe the entire context of Court involvement in a particular area. That is, the Office of the Prosecutor investigates "situations," but brings cases against specific individuals as the process moves beyond the investigation phase.

[6]For example, the referral of the Rohingya crisis in Myanmar, a state not party to the Rome Statute, via the involvement of Bangladesh, a state party to the Rome Statute, called this into question (Barron 2018). The self-referral of the situation in Palestine by Palestinian authorities raised additional jurisdictional concerns for the Prosecutor's Office, particularly because Israel is not a state party to the Rome Statute (https://www.icc-cpi.int/palestine).

[7]Simmons & Danner (2010) also note several other important features of the Court, including that the Rome Statute does not allow states to accept the Court's jurisdiction on a case-by-case basis, and it does not allow states to make reservations to its provisions.

investigations are believed to pose a threat to international peace and security.[8]

The most important feature of the Court for the purposes of my argument, however, is the complementarity principle, which essentially states that countries facing ICC investigations are given the first shot at investigating crimes and holding those most responsible for the worst offenses accountable through domestic proceedings. The ICC can find a case admissible only when the state in question is either "unwilling or unable genuinely to carry out the investigation or prosecution" (*Rome Statute of the International Criminal Court* 1998, Art 17(1)(a)).[9] One can think of the complementarity principle, especially the promises of positive complementarity, as essentially the carrot that accompanies the stick of ICC intervention.

The Court's role in addressing complementarity concerns has been controversial due to claims surrounding both the substance of complementarity decisions specifically[10] and the (un)intended effects of the complementarity system more generally.[11] Particularly controversial has been the concept of positive complementarity, the idea that "[r]ather than competing with national systems for jurisdiction, [the Prosecutor's Office] will encourage national proceedings whenever possible."[12] Nevertheless, political elites are aware of and take into consideration questions of complementarity when assessing the prospect of being subject to a Court investigation (Kersten 2016, Hillebrecht & Straus 2017, Clark 2018). More specifically, both states and individual defendants can and do make complementarity challenges – arguments that cases are not admissible before the Court because of the existence or prospect of local prosecutions – to avoid ICC intervention.

[8]See *Rome Statute of the International Criminal Court* (1998). But note that there has never been a successful challenge to ICC intervention on these grounds (Clark 2018).

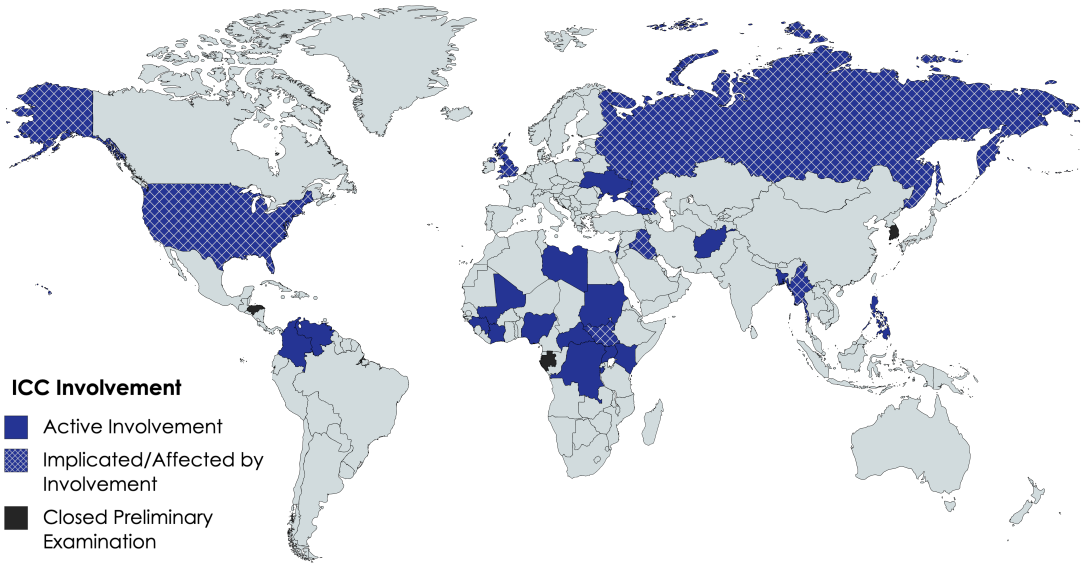
[9]Clark (2018) challenges this claim specifically, arguing that the Court is often times acts as a competitor to domestic justice institutions rather than a complement. Nouwen (2013) goes even further, challenging the commonly used definition of complementarity entirely. She does so by distinguishing between three understandings of complementarity, and explaining that only one of those understandings – complementarity as a legal admissibility criterion – is actually outlined in the Rome Statute.

[10]See Clark (2011) and Clark (2018), but also Peskin (2009) and Stewart (2015).

[11]See, e.g., Lake (2014) and Dancy & Montal (2017).

[12]See Moreno-Ocampo (2004) as quoted in Nouwen (2013), p. 20.

Figure 1: ICC Involvement Around the World (January 31, 2019)



While the Court has been accused of having an "Africa bias," (Mills 2012) as Figure 1 shows, the Prosecutor's reach is global. Figure 1 outlines where the Court has been involved since the Rome Statute went into effect. The countries shaded in blue are those situations where Court involvement was ongoing as of December 31, 2019, while countries with the cross hatched shading are those implicated by Court involvement elsewhere. The countries shaded in dark gray are those situations where the Prosecutor has declined to request the opening of a formal investigation.[13] Countries without direct Court intervention that have nevertheless been implicated by the involvement of the Court include, among others, the United States (Afghanistan), Russia (Ukraine), and Israel (Palestine).[14]

[13]The Prosecutor's involvement in the "Situation in Iraq/UK" is depicted on this map but not included in any future analysis because of the exclusively international nature of the conflict. That is, the Prosecutor's Office was only involved in Iraq as it related to the commission of atrocities by UK forces and was only involved in the United Kingdom as it related to commission of atrocities in Iraq. This is because Iraq is not a state party to the Rome Statute, while the United Kingdom is.

[14]In a controversial decision in April 2019, the Court's Pre-Trial Chamber unanimously rejected the Prosecutor's request to initiate an investigation into war crimes and crimes against humanity allegedly committed in Afghanistan (Singh 2019, Hansler 2019). In March 2020, the Appeal's Chamber reversed the decision, authorizing the Prosecutor's Office to initiate a formal investigation.

Figure 2: ICC Involvement over Time by Referral Type (2002-2019)

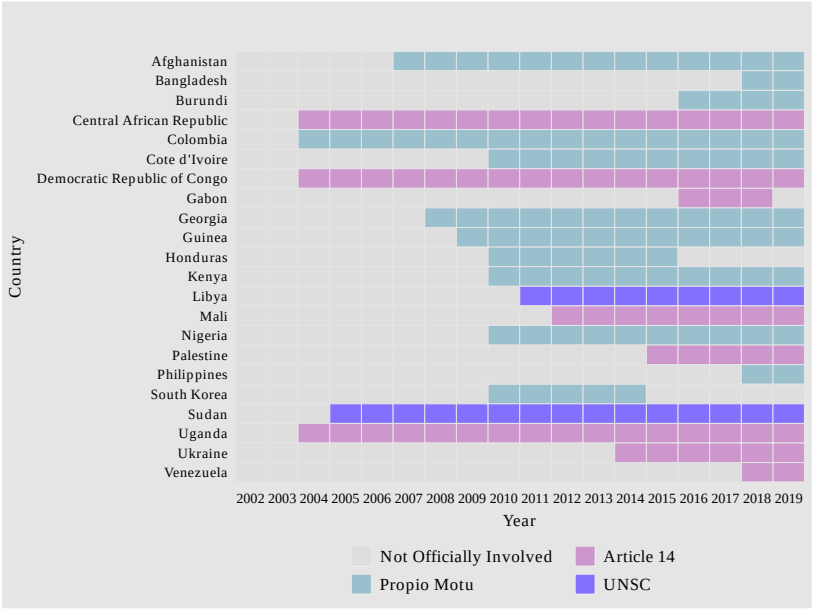


Figure 2 narrows in on those countries where the Court has been involved directly, showing where and when the Court has been involved, and via what referral mechanism. There are only two situations where the Court has become involved via a UN Security Council referral: Sudan and Libya. The Article 14 and *propio motu* referral mechanisms are far more common, with the number of *propio motu* initiations having increased in recent years. As of December 2019, the OTP had closed three preliminary examinations without proceeding to a formal investigation: South Korea, Honduras, and Gabon.

The stages of ICC involvement include: (1) the opening of a preliminary examination, (2) the initiation of a formal investigation, (3) the issuing of arrest warrants, (4) holding trials, and (5) securing convictions. Preliminary examinations actually precede active investigations in a situation—they primarily involve determining if crimes subject to the Court's jurisdiction have occurred and if cases involving the prosecution of those crimes are admissible before the Court. A situation may remain in the preliminary examination stage for many years, it may be closed[15], or it may result in a formal investigation. A formal investigation

[15]But one need look no further than Figure 1 to see how rare it is that preliminary examinations are closed.

involves the collection of evidence and building of cases against individuals for the alleged commission of crimes covered by the Court's jurisdiction, often but not exclusively those outlined in the preliminary examination analysis. While the Court's Office of the Prosecutor is primarily responsible for conducting preliminary examination activities, it must request and receive authorization from the Court's Pre-Trial Chamber to begin a formal investigation. Once a formal investigation begins, the Prosecutor can request that the Court issue arrest warrants or summons to appear for suspects who, if arrested and the charges are confirmed, subsequently appear at trial.[16] After trials are held and convictions or acquittals are secured, the Prosecutor or defense may file any necessary appeals that, once exhausted, result in a final judgement.

These stages of involvement, however, are simply the ways the ICC *as an institution* is involved in situations. There are two additional informal ways in which the Prosecutor may be involved. The first is that the OTP may receive information, called "communications" in the language of the OTP, about the alleged commission of atrocities (Office of the Prosecutor 2013). Anyone, including states, individuals or groups, NGOs, and other "reliable sources" can submit such a communication (Office of the Prosecutor 2013, 17). An example of this occurred in Mexico in 2011, when human rights activists submitted information to the OTP regarding atrocities committed by the Mexican military and large scale drug trafficking organizations throughout the course of the drug war (Webb & Rueda 2011). In Syria, human rights lawyers submitted a communication to the OTP regarding abuses committed in the Syrian civil war, particularly on behalf of refugees in Jordan (BBC 2019).[17] And in Australia, an MP submitted a communication to the OTP over the Australian government's refugee and asylum detention policy (Doherty 2020). All such communications are initially

[16]The difference between a warrant and a summons to appear is that a summons to appear allows those wanted for trial to ostensibly appear voluntarily. However, as the Court's website makes clear, "if not, an arrest warrant may be issued" (https://www.icc-cpi.int/about/how-the-court-works). The period between the issuing of arrest warrants and the beginning of trial is called the pre-trial stage, and includes the filing of any pre-arrest legal submissions, but also the confirmation of charges hearings once the suspect is arrested.

[17]Note that Syria is not a State Party to the Rome Statute, but Jordan is. As such, this submission was building in part on the Court's prior ruling regarding the situation in Bangladesh/Myanmar (BBC 2019).

treated equally by the OTP which has established an evaluation process for determining whether or not to initiate a preliminary examination (Office of the Prosecutor 2013).[18] While the OTP acknowledging that they have received communications such as these may be perceived as a threat of intervention by parties negotiating peace agreements, receiving such communications does not necessarily mean that the OTP believes atrocities have in fact been committed or that intervention is warranted.[19]

The second informal way that the Prosecutor can become involved is that the OTP itself may express concern about the alleged commission of atrocities in a particular situation. This expression of concern often takes the form of public statements made to the media by the Prosecutor herself. An example of this occurred in 2016, when the Prosecutor released a statement regarding the alleged commission of atrocities in the Philippines, noting that she was "deeply concerned about these alleged killings and the fact that public statements of high officials of the Republic of the Philippines seem to condone such killings and further seem to encourage State forces and civilians alike to continue targeting these individuals with lethal force" (Office of the Prosecutor 2016).[20] These statements need not be linked to a preliminary examination – the OTP did not initiate a preliminary examination in the Philippines until 2018, two years after the Prosecutor's first public statement – but they nevertheless provide a clear signal that the OTP is monitoring the behavior of certain actors.

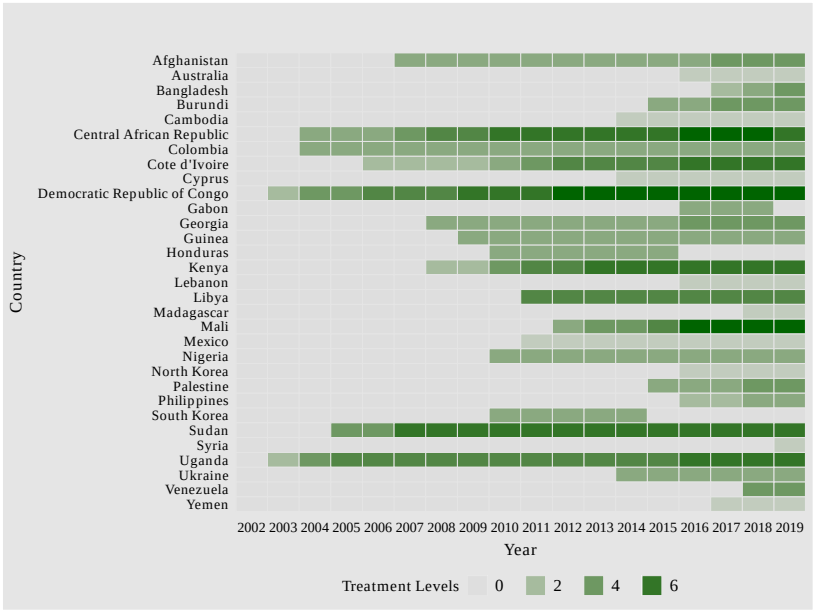
Figure 3 provides a country-by-country breakdown of the extent of ICC involvement in every country where the ICC has been involved, taking into consideration the most mini-

[18]The OTP outlined these guidelines in its 2013 policy paper, stating that "[p]ursuant to article 15, the Office may receive information on crimes from multiple sources. Such communications do not automatically lead to the start of a preliminary examination of a specific situation since the first phase of the approach described below is to filter out those that are manifestly outside the jurisdiction of the Court. The Office will only open a preliminary examination on the basis of article 15 communications when the alleged crimes appear to fall within the jurisdiction of the Court" (Office of the Prosecutor 2013, 18).

[19]For example, in its 2020 report on preliminary examinations, the OTP noted that it had received 813 such communications, 638 of which were related to new potential situations. Only 26 of those communications were deemed to warrant further analysis, which they will undergo at the OTP until a determination is made on whether or not initiate a preliminary examination (Office of the Prosecutor 2020).

[20]The Prosecutor went on to state: "Let me be clear: any person in the Philippines who incites or engages in acts of mass violence including by ordering, requesting, encouraging or contributing, in any other manner, to the commission of crimes within the jurisdiction of the ICC is potentially liable to prosecution before the Court" (Office of the Prosecutor 2016).

Figure 3: Extent of ICC Involvement: Informal and Institutional (2002 – 2019)



Note: The "treatment levels" indicate the various stages of OTP involvement in each country. Darker shades mean higher stages of involvement, where 0 is no involvement and 1 represents the informal forms of involvement, including the receipt of communications or the OTP making statements expressing concern. 2 is the initiation of a preliminary examination, 3 is a formal investigation, 4 is arrest warrants, 5 is trials, and 6 is convictions.

mal definition of involvement. The lightest shade of green indicates the informal forms of involvement, while the darker shades of green indicate the more formal institutional forms of ICC involvement.[21] In addition to Australia, Mexico, and Syria, the OTP has received communications related to alleged abuses in Cambodia, Lebanon, Madagascar, North Korea, and Yemen. In addition to the Philippines, the OTP made public expressions of concern in Kenya, Democratic Republic of Congo, Cote d'Ivoire, and Uganda.[22] Note that I do not make a distinction between the informal types of involvement.

While many of the countries where the Office of the Prosecutor has recently become involved are still in early stages, as Figure 3 shows, there is wide variation in, for example, how long a preliminary examination lasts before either a formal investigation is opened or the preliminary examination is closed. In countries like Uganda and the Democratic Republic of

[21]Countries were only included if there was evidence in OTP reports that at least one communication had been received.

[22]In the Democratic Republic of Congo and Uganda, these expressions of concern were not made via public statements, but there is evidence to suggest that the OTP began communicating with the governments about the potential for self-referrals prior to them occurring (Clark 2011, Bosco 2013).

Congo, formal investigations were opened shortly after the Prosecutor became involved, while in Colombia and Afghanistan preliminary examinations have moved slowly. In the countries like Venezuela and Sudan, where the preliminary examination moved particularly quickly and a formal investigation was initiated in the same year, only the formal investigation is included.

5 Research Design

I test my argument using data on the peace agreements negotiated between 2002, when the Rome Statute establishing the ICC went into effect, and 2019. These data are drawn from the PA-X Peace Agreement Database, which collects and codes data on the content of all peace agreements negotiated from 1990 through December 2019 (PA-X 2017, Bell & Badanjak 2018). PA-X collects data on all agreements related to any conflict, but I subset the agreements in this analysis to those related to civil conflict.[23] Thus, each observation in the dataset is a civil conflict-related peace agreement.

Since 2002, 832 peace agreements related to civil conflict have been negotiated.[24] 217 of those peace agreements, just over a quarter, have included transitional justice provisions of some kind. These justice provisions include provisions related to amnesties, domestic courts, international courts, vetting, victim compensation, and reparations. They also include a residual category, which accounts for provisions that call for "a body other than one specifically tailored to the other categories...(specifically such as for example regional conservatories, Truth and Reconciliation Commissions, etc.)" (Bell, Badanjak, Forster, Jamar,

[23]While the International Criminal Court has become involved in inter-state conflicts like Iraq (by way of the UK's involvement), and similar dynamics may play out in the context of such conflicts, I exclude them from my analysis here. Note also that PA-X distinguishes between civil conflicts and local (sub-national) conflicts. While I do not distinguish between these types of conflicts theoretically, for the purposes of my analysis, which also incorporates data on conflict intensity, only civil conflicts as defined by UCDP are included. This is important because agreements related to political violence, like what happened in Kenya in 2007 and early 2008 are not included in this analysis.

[24]One agreement, which is related to conflict between Kurdish groups in Kurdistan, does not appear in the dataset. This is because of the nature of Kurdistan's borders. That is, because Kurdistan is not a recognized state, data on other important country-level variables could not be collected, so the observation was dropped.

Pospisil & Wise 2017, 59).[25]

The argument presented above naturally leads to the following hypothesis:

Hypothesis 1. *The threat of trials at the ICC will increase the probability that a peace agreement will contain commitments to hold perpetrators accountable domestically.*

Dependent Variable

Because I am interested in how the threat of intervention by the ICC affects commitments to holding domestic trials against human rights violators during peace negotiations, I use as a dependent variable PA-X's measure of transitional justice related to national courts (*TjJaNc*). This measure is a binary variable, which takes the value of 1 if the peace agreement includes a provision dealing with substantive domestic judicial accountability (a trial), and 0 otherwise (Bell et al. 2017).[26] In 39 peace agreements between 2002 and 2019, the parties to the conflict made commitments to hold trials specifically at the domestic level. While commitments to holding domestic trials only occur in 5% of peace agreements, such commitments make up nearly 20% of all transitional justice related provisions. Figure 4, below, shows how the occurrence of provisions related to domestic criminal trials has changed between 2002 and 2019.

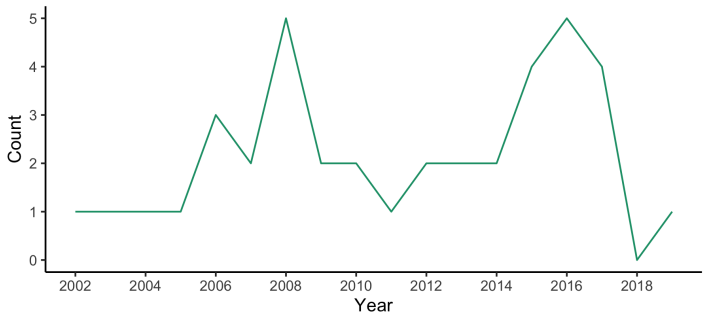
Independent Variable

In order to measure the key independent variable, I use the data presented in Figure 3 to construct a measure of International Criminal Court involvement in the country participating in the peace negotiations. But ICC involvement in general does not exactly equate to the threat of intervention. I suggest that the *threat* of intervention—which I consider involvement

[25]Note that the PA-X data also deals with prisoner release and provisions for finding the missing under its heading of transitional justice, but I do not include those in my count of TJ provisions here. I also do not include what PA-X codes as weak and rhetorical commitments to a given TJ mechanism (including the ones I describe above).

[26]More specifically, the variable is coded as 1 if the agreement includes a provision dealing with domestic judicial accountability that is "pro-active, [with] a clear mention of a national court having jurisdiction, or being given provision to deal with that past" (Bell et al. 2017, 66).

Figure 4: Number of Peace Agreements with Trial Commitments (2002 – 2019)



of the Court prior to the issuing of arrest warrants—can lead elites to seek out the promises of positive complementarity in order to avoid the pitfalls of justice at the Hague. Until an arrest warrant (or summons to appear) is issued, the threat is present but abstract: the Prosecutor may identify particular crimes or even groups of interest, but it is still simply a threat.[27]

Once warrants are issued, however, the threat is realized, and the negotiating parties must seek out different recourse. While people accused of crimes before the ICC have succeeded in evading accountability, either by evading capture or by combating the charges in court, the Prosecutor has never unilaterally requested that a warrant be suspended for a living fugitive from the Court. Involvement beyond the issuing of warrants can change the dynamics of the negotiations and ultimately the outcome of the peace process.[28]

My theory suggests that it is in the early stages of involvement that the impact of the Prosecutor's Office—the threat of intervention—should be most apparent. However, the effect of increasing Court involvement should be less important after the initial stages. That is, as the Office of the Prosecutor becomes increasingly involved *early* in a situation, the threat of losing control of accountability processes becomes more apparent and domestic elites are more likely to commit to holding national trials. But eventually, the Court intervenes

[27] An example of this comes from Colombia, where the Prosecutor's Office has placed increasing pressure on the Colombian government to address the alleged commission of crimes by the Colombian military.

[28] An example of this comes from Uganda, where the Prosecutor's involvement has been cited as the cause of the collapsed peace negotiations between the Ugandan government and the LRA (Peskin 2009, Hayner 2018).

and is so involved that parties to the conflict realize they have already lost control and perhaps seek to thwart the ICC by other means.

As explained above in Section 4, there are a number of ways of understanding the threat of ICC intervention. Given these different understandings, I construct two measures. Each measure breaks down the stages of involvement into "ICC threat" or "Intervention," with the residual category being "No involvement." The first is what I call the minimalist measure of threat. In this minimalist measure, all involvement of the OTP prior to the issuing of arrest warrants – including the receipt of communications and issuing of public statements, as well as preliminary examinations and the initiation of formal investigations – is considered a threat.[29] Everything after an arrest warrant is issued is considered intervention.

The second measure, which I call the institutional measure of threat, acknowledges that communications and statements of concern by the OTP are primarily informal and may be seen by those negotiating peace agreements as purely cheap talk. The formal commencement of a preliminary examination, however, provides evidence that the OTP is an actual threat. Therefore, in this measure, I count as a threat only the commencement of a preliminary examination and the initiation of a formal investigation. Everything prior to the initiation of a preliminary examination is not considered to be involvement.

Following Prorok's (2017) coding of ICC involvement in conflict, I code the threat level for all agreements in a country experiencing ICC involvement because "the court investigates entire situations, not specific individuals or groups" (Prorok 2017, 224). This coding is even more justified in the case of peace agreements because many agreements are not exclusively dyadic—they can involve multiple actors from different parties to the conflict. Even if the Office of the Prosecutor were to focus on particular individuals at the initiation of its involvement, the participation of more than two groups in peace negotiations makes it more likely that at least some of those groups contain individuals who are facing the threat of international prosecution. Based on this coding, 280 peace agreements were made in

[29]In Figure 3, these are treatment levels 1 (communications and statements by the OTP), 2 (preliminary examinations), and 3 (formal investigations).

countries facing some level of ICC involvement between 2002 and 2019, 125 of which are coded as having been made under at least the minimalist threat of intervention.

While all threats from the ICC may matter in shaping the outcome of peace negotiations, I posit that those threats with the formal institutional backing of the OTP – the commencement of a preliminary examination or initiation of a formal investigation – are likely to matter more than informal threats via outside actors or even the Prosecutor herself. This may be the case because threats to intervene are seen as more credible when the OTP has already shown its commitment to following through on serving justice internationally if it is not faced domestically. Putting a situation on the pathway to intervention by initiating a preliminary examination will likely make these threats more credible.

Controls

I include several control variables to account for arguments in the existing literature, which suggests that several other factors may affect the likelihood of adopting different justice mechanisms in transitional societies. Using data from Smith & Wiest (2005), I control for human rights organization member/volunteer presence in the state involved in the peace agreement at the time of the agreement. I do this in order to account for arguments that human rights organizations and networks help explain justice and human rights outcomes (Simmons 2009, Sikkink 2011). In their original dataset, Smith & Weist use the *Yearbook of International Organizations* to find relevant human rights organizations and identify which of those organizations have an on-the-ground presence in a given country. In line with Murdie & Davis (2012) and Bell, Clay & Murdie (2019), I fill in the missing observations using linear interpolation.

Next, in line with Prorok (2017), I control for whether or not the state involved in negotiating the peace agreement has ratified the Rome Statute. I do this for two reasons: first, because ratifying the Rome Statute means accepting the Court's jurisdiction, ratification

may increase the likelihood of ICC involvement.[30] Additionally, because ratification has been associated with increased human rights protections (Simmons & Danner 2010), it may also be associated with an increase in commitments to punish those who have committed atrocities. Using data from the ICC website, I code Rome Statute ratification as 1 if the state involved in the peace agreement has ratified the Rome Statute in the year of the agreement and 0 otherwise.

It is also possible that pressure from the international community can affect the Prosecutor's decision-making process regarding intervening in a situation. Because it is possible that the involvement of other international actors during the peace negotiation process may affect the likelihood of the OTP to become involved, I control for the involvement of other parts of the international community in the negotiation process. The PA-X data include two different measures to account for international involvement in the negotiation process. The first is a binary variable that accounts for whether or not the United Nations is a signatory to the agreement, and the second is a binary variable that accounts for whether or not any other "international actor, state representative, or representative of an international organisation" is a signatory to the agreement (Bell et al. 2017, 69). IO Signature is the sum of these two measures, which takes the value of 0 if there is no signature from an international actor, 1 if either the UN or another international signature is included on the agreement, and 2 if both types of signature are included on the agreement.

The final group of controls relates to domestic politics and state capacity in the country involved in the peace agreement. To account for the fact that commitments to hold domestic trials may result from demands from below, I include a measure for regime type, focusing on the participatory aspect of democracy. I use the participatory democracy index (*v2x_partipdem*) from the V-Dem expert survey. The participatory democracy measure ranges from 0-1 and measures the extent to which the ideal of participatory democracy is

[30]The Court can become involved in a situation without the state in question having ratified the Rome Statute. And as the results I present in Section 6 show, involvement via a UN Security Council resolution may be particularly credible as a threat. However, intervention in situations where states have not ratified the Rome Statute is still relatively uncommon.

achieved.[31] I also use V-Dem's access to justice variable (*v2xcl_acjst*) to measure domestic judicial capacity because justice-sector capacity may affect whether the parties to the peace agreement are willing to commit to holding domestic trials. Parties may be less willing to commit to domestic trials if domestic judicial capacity is high, as they recognize that regular national courts with higher capacity may be more likely to actually hold them accountable for their crimes. The access to justice measure also ranges from 0-1, and captures the extent to which citizens have "secure and effective access to justice."

Similarly, I include a variable measuring the intensity of the conflict in question (*intensity_level*), which I have taken from the UCDP Armed Conflict Dataset. I include this measure because the intensity of the conflict may affect the negotiating parties' willingness to commit to justice provisions in general, and trials specifically. While combatants tend to focus on how they were victimized during the conflict at the negotiating table (Hayner 2018), they are nevertheless often aware of the atrocities they themselves have committed. The conflict intensity variable takes the value of 0 if there were fewer than 25 battle-related deaths in a given year, 1 if 25–999 battle-related deaths occurred, and 2 if at least 1000 battle-related deaths occurred. I lagged the variable by one year throughout the analysis. Finally, while commitments to trials in peace agreements do not necessarily lead to trials actually occurring, because some forms transitional justice – like trials – are financially costly for states to implement, I use data from the World Bank to control for GDP per capita (logged).[32] Note that the UCDP conflict data does not have data on conflict dynamics for every agreement included in the peace agreement dataset. After dropping the observations without conflict data, 510 agreements remain.

I also remove from my analysis those agreements with provisions related to trials at international courts. While committing to trials internationally may affect the likelihood of

[31] Coppedge, Gerring, Knutsen, Lindberg, Skaaning, Teorell, Altman, Bernhard, Cornell, Fish, Gjerlow, Glynn, Hicken, Krusell, L uhrmann, Marquardt, McMann, Mechkova, Olin, Paxton, Pemstein, Seim, Sigman, Staton, Sundtr om, Tzelgov, Uberti, ting Wang, Wig & Ziblatt (2018) suggest that this measure "emphasizes active participation by citizens in all political processes, electoral and non-electoral" (41).

[32] Data collection on the implementation of transitional justice provisions in peace agreements is currently in progress.

committing to hold trials domestically, it is also the case that the threat of ICC intervention may affect the likelihood of committing to hold trials internationally. There are 17 agreements in the dataset with international trial commitments, and only 3 of those agreements also include domestic trial commitments.[33]

Summary statistics for all of these measures are shown in Table 4 in the Appendix. In Section 6, I fit a series of linear probability models where the dependent variable is a binary measure of whether or not a given agreement contains a commitment to domestic trials. The unit of analysis for the model is the peace agreement, which occurs in country c in year t. The model uses robust standard errors clustered at the country level to account for non-independence across observations within a country. While not a complete solution to endogeneity concerns, I also include country and year fixed effects in all models in order to account for time- and space-invariant unobservables and better approximate causal interpretation. Note that given the nature of the conflicts and countries included in the analysis, these data include more than one agreement per country over time, thus explaining the fixed effects.[34]

6 Results and Discussion

Preliminary results are included in Table 1. Model 1 includes just the measure of ICC involvement – disaggregating between the threat of intervention and actual intervention – while model 2 includes the relevant covariates. The results provide suggestive evidence in support of my argument. The threat of being held accountable by the ICC, as measured by the involvement of the Court's Office of the Prosecutor in its institutional capacity (the preliminary examination or formal investigation phase), is associated with an increase in

[33]Figure 6 in the Appendix shows how the number of international trial provisions varies over time in comparison to national trial provisions.

[34]Because I include fixed effects, I removed from the analyses any agreements that are singletons. That is, I remove observations from the data if every agreement in a particular country occurred in a single year. After removing these agreements, there are 489 observations left in the analysis. Table 11 in the Appendix removes the fixed effects and provides results of an analysis fitting a standard OLS model with an Africa regional dummy and a linear time trend.

the probability that a peace agreement will include a substantive commitment to domestic trials. This relationship is substantial: the Prosecutor being involved is associated with a 13.1 percentage point increase in the probability that an agreement will include a domestic trial commitment relative to no involvement. Moreover, ICC intervention appears to have no affect on the likelihood that an agreement contains a domestic trial commitment once covariates are incorporated into the analysis.

Table 1: Effect of the Threat of Institutional ICC Intervention on Domestic Trial Commitments in Peace Agreements

	Domestic Trial Commitment	
	(1)	(2)
ICC Intervention	0.118***	0.090
	(0.041)	(0.056)
ICC Threat (Institutional)	0.150***	0.131***
	(0.019)	(0.037)
Lagged GDP Per Capita (log)		−0.046**
		(0.017)
Rome Statute Ratification		−0.073**
		(0.030)
IO Signature		0.006
		(0.028)
Participatory Democracy		0.694**
		(0.331)
Access to Justice		−0.638**
		(0.269)
HR Organizations		0.007
		(0.005)
Conflict Intensity (lagged)		−0.096**
		(0.037)
Observations	489	489
R^2	0.102	0.123
Adjusted R^2	0.018	0.025
Residual Std. Error	0.192 (df = 446)	0.191 (df = 439)
Note:		*p<0.1; **p<0.05; ***p<0.01
		Country and Year fixed effects; clustered SE (country)

Several of the control variables are insignificant. Other forms of involvement from the international community, measured by IO signatures on the agreements and human rights organization presence, have little effect on domestic trial commitments in peace agreements. These results suggest that findings in the existing transitional justice literature about the direct effect of human rights organizations and advocacy groups may be limited to the context of transitions to democracy. The results for human rights organization presence in particular, however, should be interpreted with caution given the amount of data that was interpolated.

Higher levels of participatory democracy are particularly associated with an increase in the probability that an agreement will include domestic trials, suggesting that agreements made in places responsive to demands from below are likely to focus on holding perpetrators responsible for human rights violations accountable for their crimes. Nevertheless, some domestic capacity factors, including Access to Justice and GDP per capita, are negatively associated with committing to domestic trials. The Access to Justice results are intuitive: the higher the quality of domestic judicial institutions, the less likely it is that those negotiating will find it necessary to explicitly address accountability in the negotiations. Per capita GDP significantly predicts a decreased probability of committing to establishing domestic trials in most specifications throughout this analysis, suggesting that higher levels of GDP per capita actually decrease the probability that negotiating parties will commit to domestic trials.[35]

Finally, the intensity of the conflict in the year prior to the agreement is negatively associated with trial commitments. That is, the more intense the level of conflict in prior years, the less likely it is that an agreement will include commitments to domestic trials. This provides at least suggestive evidence that in countries transitioning from conflict, beliefs about the trade-offs between peace and justice may lead negotiators to hold off on pursuing accountability, at least at the negotiating table.

Table 2 provides a comparison of the two different measures of the threat of intervention.

[35]A notable exception is the logit analysis presented in Table 7, which is included in the Appendix.

Table 2: Effect of the Threat of ICC Intervention on Domestic Trial Commitments in Peace Agreements – Comparison of Each Threat Measure

	Domestic Trial Commitment	
	(1)	(2)
ICC Intervention (Institutional)	0.090	
	(0.056)	
ICC Threat (Institutional)	0.131***	
	(0.037)	
ICC Intervention (Minimalist)		0.038
		(0.056)
ICC Threat (Minimalist)		0.050
		(0.038)
Lagged GDP Per Capita (log)	−0.046**	−0.047**
	(0.017)	(0.018)
Rome Statute Ratification	−0.073**	−0.100***
	(0.030)	(0.030)
IO Signature	0.006	0.008
	(0.028)	(0.029)
Participatory Democracy	0.694**	0.704*
	(0.331)	(0.343)
Access to Justice	−0.638**	−0.613**
	(0.269)	(0.266)
HR Organizations	0.007	0.006
	(0.005)	(0.005)
Conflict Intensity (lagged)	−0.096**	−0.104**
	(0.037)	(0.037)
Observations	489	489
R^2	0.123	0.118
Adjusted R^2	0.025	0.019
Residual Std. Error (df = 439)	0.191	0.192
Note:		*p<0.1; **p<0.05; ***p<0.01
		Country and Year fixed effects; clustered SE (country)

The first model reproduces the results of model 2 in Table 1. The second model provides the results of the analysis with the minimalist measure of threat. Interestingly, the minimalist measure of threat is not a significant predictor of domestic trial commitments. This suggests that while official involvement via the institution of the OTP provides a credible threat, submissions of communications or expressions of concern by the Prosecutor herself aren't enough to be seen as credible. All other coefficients remain relatively stable.

I conduct several robustness checks in the Appendix, including an analysis where ICC involvement – determined by the institutional measure – is broken down by each separate stage of involvement.[36] The results are largely consistent: the threat of intervention posed by the ICC is associated with an increased probability of agreements containing domestic trial commitments.

Table 3 presents the results of a similar analysis, this time explicitly accounting for the mechanisms by which situations come to be at the ICC. As explained above, there are three mechanisms by which the Office of the Prosecutor can initiate an investigation: (1) a referral from the United Nations Security Council (UNSC), (2) an Article 14 referral, or (3) via the Prosecutor's own *propio motu* authority. Disaggregating the threat by referral type is one way of modeling more explicitly how situations are selected into treatment. More importantly, however, accounting for different referral mechanisms has theoretical importance. This is because the threat of ICC intervention may be seen as more credible depending on the referral mechanism—referrals via the UN Security Council have explicit international support, for example, whereas there may be more variation in the credibility of threats via propio motu referrals.

As the results in Table 3 show, ICC involvement via a UN Security Council referral is a strong predictor of a peace agreement containing a domestic trial commitment. This makes sense because referrals via the UN Security Council are those which are most likely to have

[36]Table 8 in the Appendix provides the results of this analysis. In Table 9, I provide an additional robustness check by running the analysis on an aggregate measure of the *extent* of ICC involvement (logged) in a situation. Finally, in Table 10, I use aggregate data on targeted mass killings to estimate my model while measuring the commission of atrocities directly.

Table 3: Effect of the Threat of ICC Intervention by Referral Mechanism on Domestic Trial Commitments in Peace Agreements

	Domestic Trial Commitment	
	(1)	(2)
ICC Intervention	0.125***	0.111*
	(0.044)	(0.054)
Article 14 Threat (Institutional)	0.195***	0.229***
	(0.052)	(0.059)
Propio Motu Threat (Institutional)	0.146***	0.081
	(0.030)	(0.054)
UNSC Threat (Institutional)	0.139***	0.146***
	(0.037)	(0.027)
Lagged GDP Per Capita (log)		−0.048**
		(0.017)
Rome Statute Ratification		−0.076**
		(0.035)
IO Signature		0.006
		(0.028)
Participatory Democracy		0.727**
		(0.336)
Access to Justice		−0.641**
		(0.275)
HR Organizations		0.007
		(0.005)
Conflict Intensity (lagged)		−0.102**
		(0.038)
Observations	489	489
R^2	0.103	0.124
Adjusted R^2	0.014	0.022
Residual Std. Error	0.192 (df = 444)	0.191 (df = 437)
Note:		*p<0.1; **p<0.05; ***p<0.01
		Country and Year fixed effects; clustered SE (country)

the support of the broader international community. Such support is likely to increase the negotiating parties' beliefs that the threat of intervention is is credible. A *propio motu* threat, on the other hand does not appear to have any effect on the probability of committing to domestic trials. This may be because the parties negotiating an agreement are less concerned about the prosecutor when she is acting entirely on her own. A threat via the Article 14 mechanism is also a significant predictor of domestic trial commitments in peace agreements relative to no ICC involvement. The results for Article 14 referrals in particular are difficult to interpret, however, because of the nature of the Article 14 referral mechanism itself: while any State Party to the Rome Statute can refer a situation in another State Party to the Court,[37] this has in practice often been used by States that refer *themselves* to the Court. The dynamics of a self-referral – as occurred in Central African Republic in 2004 or Palestine in 2015 – may be very different, at least in some instances, than those of external Article 14 referrals. All other results are generally consistent with those presented in Table 1.

7 Conclusion

Since the Rome Statute went into effect in 2002, scholars and policymakers alike have debated what the actual impact of the Court may be. However, few have investigated the effects of Court involvement directly, instead relying on analyses of, for example, Rome Statute ratification patterns. Those who have studied the effects of the Court have primarily focused on exploring its potential impact on conflict outcomes or public opinion. In this paper, I take one of the first steps to move past this focus in the literature, instead examining both the threat of Court intervention *and* the incentives provided by the complementarity principle.

I argue that in an effort to maintain control of the post-conflict political environment, elites facing the threat of international intervention via criminal tribunals may agree to

[37] And, in fact, such referrals have occurred, as exemplified by the 2018 referral of the situation in Venezuela by a collection of other States Party to the Rome Statute from Latin America.

implement justice using domestic courts. They face incentives to do this first to signal to the international community that they can handle their own business, thus decreasing the prospect of further intervention. Elites also use negotiations over justice to signal to each other their peacetime objectives.

Using data on International Criminal Court involvement and the content of peace agreements negotiated between 2002 and 2019, I test my theory that international tribunal threats lead to domestic trial commitments in peace negotiations. I find that threats of intervention by the International Criminal Court's Office of the Prosecutor are associated with an increase in commitments to hold perpetrators accountable for atrocities domestically, especially when the Prosecutor's Office gets involved in its institutional capacity, and even more so when the office has the support of other actors in the international community like the UN Security Council.

This finding builds on existing work by Jo & Simmons, Prorok, and Dancy & Montal by showing first, that the OTP's influence goes beyond the effects of its direct intervention, and second, that the peace-justice divide is only one way of thinking about how the OTP can influence conflict outcome. In doing so, it suggests that the causes of justice in transitions from conflict to peace may be fundamentally different than causes of justice in transitions from dictatorship to democracy, particularly in the context of negotiated settlements.

While the analysis conducted in this paper provides consistent evidence supporting the theory and takes into consideration existing literature on transitional justice, endogeneity concerns remain. Future research can improve on this analysis by further reducing these concerns. Given the structure of the current peace agreement data, attempting causal identification using an instrumental variable analysis may prove fruitful. Incorporating current high-quality data on the presence and involvement of human rights organizations, especially those committed to justice and accountability, may also improve future analysis.

Furthermore, additional research exploring the effects of international tribunal involvement on the *implementation* of transitional justice provisions in agreements is necessary.

While this paper suggests that ICC involvement increases the likelihood of committing to domestic trials, once a justice mechanism is agreed upon, it must actually be implemented. The commitment to and effectiveness of the implementation process—in this case actually holding trials—is what results in perpetrators being held accountable for the abuses they have committed. For policymakers and human rights practitioners committed to the promises of accountability and "never again," understanding when commitments to justice made in peace agreements are upheld and when they are simply window dressing is essential.

For scholars seeking to understand the politics of accountability, this paper showcases one of the benefits of linking international courts to domestic politics. Understanding the effects of this particular form of international intervention is important for understanding the links between domestic and international politics because the commitments domestic elites make under international constraints may have lasting effects on justice sector and rule of law development in the countries affected by them.

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A Additional Figures and Summary Statistics

Figure 5: Proportion of Agreements with Any TJ Provisions and Commitments to Domestic Trials over Time (1990 – 2019)

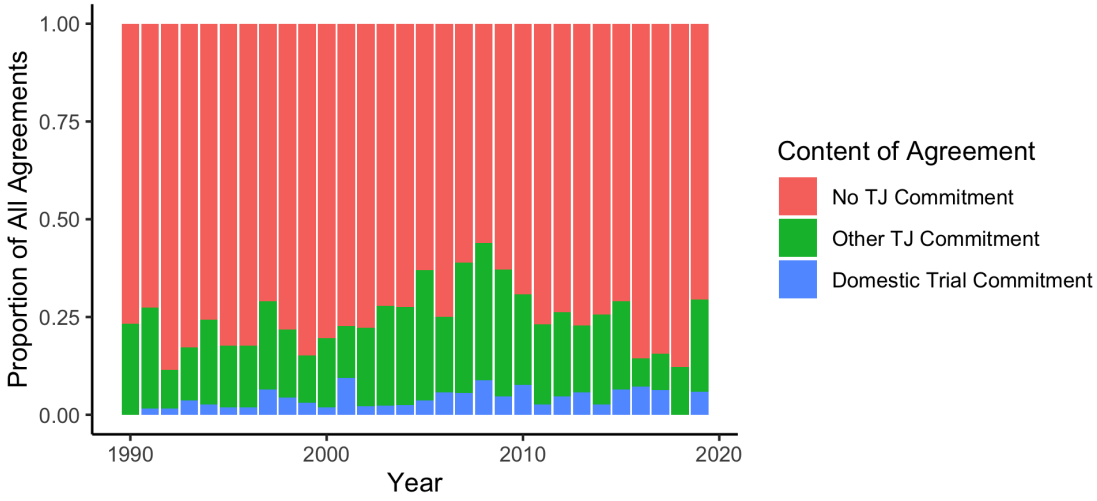

Figure 5 shows how the proportion of peace agreements with TJ provisions—including both domestic trial commitments and all other forms of transitional justice—has changed over time. Note that this figure includes data on all agreements from 1990 until the end of 2019. As can be seen above, domestic trial commitments generally follow the same pattern as other TJ provisions. With the exception of a spike in 2001, there are few commitments prior to 2006, with an increase in commitments in 2008 and 2014-2016. Like all TJ, there has been a steady decrease in the number of domestic trial commitments in peace agreements since 2017, though there was a slight uptick in trial commitments in 2019. Nevertheless, the majority of peace agreements do not include TJ commitments of any kind.

Figure 6: Number of Peace Agreements with International and Domestic Trial Commitments over Time (2002 – 2019)

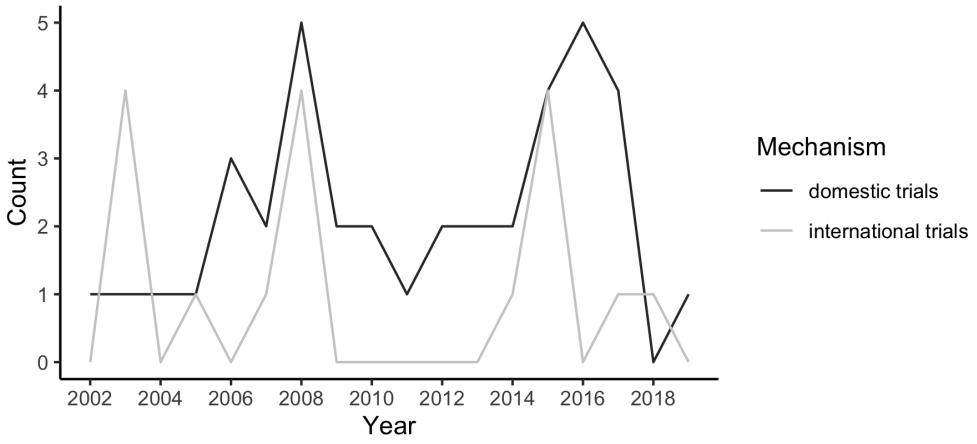

Figure 6 shows how the number of agreements with international trial commitments and the number of agreements with domestic trial commitment have changed over time. Note that there have only been 14 agreements since 2002 that have included provisions for international trials.

Table 4: Summary Statistics

Statistic	N	Mean	St. Dev.	Min	Max
Domestic Trial Commitments	832	0.047	0.211	0	1
ICC Involvement	831	0.337	0.473	0.000	1.000
ICC Threat (Institutional)	831	0.106	0.308	0.000	1.000
ICC Threat (Liberal)	831	0.324	0.468	0.000	1.000
ICC Threat (Minimalist)	831	0.337	0.473	0.000	1.000
Amnesty	832	0.119	0.324	0	1
Vetting	832	0.008	0.091	0	1
All TJ	832	0.261	0.439	0	1
IO Signature	832	0.377	0.624	0	2
Rome Statute Ratification	831	0.310	0.463	0.000	1.000
Participatory Democracy	831	0.213	0.123	0.052	0.649
Access to Justice	831	0.396	0.264	0.033	0.970
HR Organizations	831	39.423	20.410	11.618	108.423
Lagged GDP Per Capita (log)	831	7.640	1.391	5.367	10.855
Conflict Intensity (lagged)	510	1.410	0.492	1.000	2.000
UNSC Referral	831	0.091	0.288	0.000	1.000
Article 14 Referral	831	0.106	0.308	0.000	1.000
propio motu	831	0.081	0.272	0.000	1.000

Table 4 provides summary statistics for the data used in the empirical analysis. While the peace agreements dataset includes data on 832 agreements in civil conflict since 2002, after

including data on conflict and removing observations from the data if every agreement in a particular country occurred in a single year, I am left with 489 observations.

B Other Transitional Justice Commitments

Table 5: Effect of the Threat of Institutional ICC Intervention on Perpetrator-Centered TJ Commitments in Peace Agreements

	Commitment to Perp TJ			
	Domestic Trials	Amnesty	Vetting	Any TJ
	(1)	(2)	(3)	(4)
Intervention	0.090	0.028	−0.005	0.174
	(0.056)	(0.153)	(0.016)	(0.178)
ICC Threat (Institutional)	0.131***	0.132	0.019	0.386***
	(0.037)	(0.130)	(0.021)	(0.124)
Lagged GDP Per Capita (log)	−0.046**	0.025	−0.051***	−0.102*
	(0.017)	(0.029)	(0.007)	(0.053)
Rome Statute Ratification	−0.073**	0.005	−0.019	0.018
	(0.030)	(0.068)	(0.012)	(0.112)
IO Signature	0.006	0.029	0.006	0.027
	(0.028)	(0.028)	(0.008)	(0.043)
Participatory Democracy	0.694**	0.332	0.279	1.217
	(0.331)	(0.900)	(0.211)	(0.980)
Access to Justice	−0.638**	1.564**	0.181	0.464
	(0.269)	(0.637)	(0.169)	(0.787)
HR Organizations	0.007	−0.004	−0.001	−0.001
	(0.005)	(0.008)	(0.001)	(0.010)
Conflict Intensity (lagged)	−0.096**	−0.006	0.043	0.001
	(0.037)	(0.060)	(0.042)	(0.105)
Observations	489	489	489	489
R^2	0.123	0.232	0.152	0.154
Adjusted R^2	0.025	0.146	0.057	0.060
Residual Std. Error (df = 439)	0.191	0.265	0.076	0.384
Note:				*p<0.1; **p<0.05; ***p<0.01
				Country and Year fixed effects; clustered SE (country)

In Table 5, I include results for three additional dependent variables: amnesty, vetting, and a general variable accounting for any and all substantive transitional justice commit-

ments in peace agreements. Amnesties include formal amnesties and commitments to pardons and the lifting of sanctions in the agreement, while vettings are understood to be "the assessment of the integrity of public officers, the consequent exclusion of public servants who have been involved in human rights violations, or alternatively the mass disqualification of public servants who would have been involved in the abuses under the prior regime" (Bell et al. 2017, 67). I include these because they are other perpetrator-centered justice provisions, which focus on those who committed atrocities in the past rather than on victims or forward-looking processes like institutional reforms.

All data are taken from the PA-X dataset, and take the value of 1 if the relevant peace agreement includes a provision for the mechanism in question and 0 otherwise. For the amnesty and vetting variables, I re-code the PA-X variables, which code the data on an ordinal scale from 0 (no provision) to 3 (a detailed provision adopting a specific mechanism).[38] This analysis only includes provisions receiving a rating of 2 or higher. I also include a dummy variable for any and all substantive transitional justice commitments in peace agreements. This variable (TJ) aggregates across the different justice mechanisms included in the PA-X dataset, and takes the value of 1 if a substantive commitment to *any* form of transitional justice is included in the agreement and 0 otherwise.

As noted in Section 6 the threat of ICC intervention predicts an increased probability that an agreement will include trial commitments relative to the baseline of no involvement, while intervention appears to have no affect. Furthermore, no relationship exists between the threat of ICC intervention and amnesty or vetting commitments. The threat of ICC intervention does predict the presence some kind of substantive transitional justice commitment in peace agreements, however, suggesting that the involvement of an international tribunal like the ICC may affect other aspects of the transitional justice landscape during peace negotiations.

C Robustness Checks and Alternate Specifications

In Table 6, I extend my comparison of the different measures of threat of intervention, this time including a third, conservative measure. This conservative measure counts as a threat any situation that is in the formal investigation stage of involvement by the OTP, and counts everything prior to the opening of a formal investigation – including the initiation of a preliminary examination – as "no involvement." As with the other measures, everything after and including the issuing of arrest warrants is coded as intervention. Model 3 in Table 6 provides the results of this analysis. The conservative measure of threat is also associated with an increase in the probability that an agreement will contain domestic trial commitments. Opening a formal investigation increases the probability of domestic trial commitments by 12.9 percentage points relative to the baseline of no involvement. All other coefficients remain relatively stable.

[38] Codings of 1 include "weak and rhetorical references" to the mechanism, 2 include "substantive commitments" to the mechanism, and 3 include "providing for the adoption of mechanisms with detailed modalities, or strong unusual provisions that are tailored to the specific context" (Bell et al. 2017, 64).

Table 6: Effect of the Threat of ICC Intervention on Domestic Trial Commitments in Peace Agreements – Comparison of All Threat Measures

	Domestic Trial Commitment		
	(1)	(2)	(3)
ICC Intervention (Institutional)	0.090		
	(0.056)		
ICC Threat (Institutional)	0.131***		
	(0.037)		
ICC Intervention (Minimalist)		0.038	
		(0.056)	
ICC Threat (Minimalist)		0.050	
		(0.038)	
ICC Intervention (Conservative)			0.061
			(0.055)
ICC Threat (Conservative)			0.129***
			(0.023)
Lagged GDP Per Capita (log)	−0.046**	−0.047**	−0.048**
	(0.017)	(0.018)	(0.017)
Rome Statute Ratification	−0.073**	−0.100***	−0.089**
	(0.030)	(0.030)	(0.037)
IO Signature	0.006	0.008	0.005
	(0.028)	(0.029)	(0.028)
Participatory Democracy	0.694**	0.704*	0.662**
	(0.331)	(0.343)	(0.320)
Access to Justice	−0.638**	−0.613**	−0.616**
	(0.269)	(0.266)	(0.254)
HR Organizations	0.007	0.006	0.005
	(0.005)	(0.005)	(0.005)
Conflict Intensity (lagged)	−0.096**	−0.104**	−0.110***
	(0.037)	(0.037)	(0.038)
Observations	489	489	489
R^2	0.123	0.118	0.121
Adjusted R^2	0.025	0.019	0.023
Residual Std. Error (df = 439)	0.191	0.192	0.191

Note: *p<0.1; **p<0.05; ***p<0.01
Country and Year fixed effects; clustered SE (country)

Table 7: Effect of the Threat of ICC Intervention on Domestic Trial Commitments in Peace Agreements (Logit)

	Domestic Trial Commitment	
	(1)	(2)
ICC Intervention	1.225**	2.432*
	(0.585)	(1.405)
ICC Threat (Institutional)	1.784***	3.174**
	(0.562)	(1.295)
Lagged GDP Per Capita (log)		0.092
		(0.382)
Rome Statute Ratification		−2.857*
		(1.516)
IO Signature		0.155
		(0.394)
Participatory Democracy		19.178**
		(8.717)
Access to Justice		−13.703**
		(5.948)
HR Organizations		0.041*
		(0.024)
Conflict Intensity (lagged)		−0.490
		(0.676)
Africa		0.168
		(1.427)
Time		−0.007
		(0.085)
Observations	497	497
Log Likelihood	−75.406	−61.773
Akaike Inf. Crit.	156.811	147.546
Note:	*p<0.1; **p<0.05; ***p<0.01	
		Logit Model

In Table 7, I provide the results of a logit analysis with the same variables of interest as those included in Table 1 in the main text and in model 1 of Table 6. In this analysis, I have removed the country and year fixed effects and have instead included a linear time trend and a regional dummy for Africa. The Africa dummy in particular addresses claims that ICC intervention is more likely in Africa. The results are largely consistent with those in the main text, though interestingly, actual intervention by the ICC is also significant.

Table 8 breaks down the institutional involvement of the ICC by the stage of the Court's involvement. In this analysis, I include a categorical variable that tracks each stage of institutionalized involvement, including (1) no involvement (the baseline category), (2) the preliminary examination stage, (3) the formal investigation stage, (4) the issuing of arrest warrants, (5) trials, and (6) the securing of convictions. Note that the initiation of a formal investigation is a strong predictor of domestic trial commitments relative to the baseline of no ICC involvement. These findings are both in line with the findings of the conservative and institutional measures of threat presented in Tables 1 and 6. So is the commencement of a preliminary examination, but only weakly. Interestingly, the presence of trials also appears to predict a commitment to holding trials domestically, suggesting at least some evidence that the dynamics outlined in Dancy & Montal (2017) may be at play in the context of peace negotiations as well.

Table 9 provides the results of an analysis using a measure of the *extent* of ICC involvement in a situation. This measure aggregates the stages of involvement on a scale from 0 (no involvement) to 6 (securing of convictions). I then add 1 to ensure the measure is defined and take the log of the aggregate measure, thus accounting for what I suggest are the diminishing returns to increased involvement later. The results of the analysis provide additional support for my argument. The logged extent of ICC involvement is also a significant predictor of an increased probability that a peace agreement will contain a domestic trial commitment, though only weakly so.

Table 8: Effect of the Threat of ICC Intervention (by Stage of Involvement) on Domestic Trial Commitments in Peace Agreements

	Domestic Trial Commitment	
	(1)	(2)
Conviction	0.217***	0.141
	(0.077)	(0.087)
Formal Investigation	0.139***	0.133***
	(0.027)	(0.031)
Preliminary Examination	0.147***	0.102*
	(0.026)	(0.053)
Trial	0.154***	0.127**
	(0.035)	(0.051)
Warrant	−0.004	−0.038
	(0.074)	(0.089)
Lagged GDP Per Capita (log)		−0.040**
		(0.016)
Rome Statute Ratification		−0.060
		(0.035)
IO Signature		0.012
		(0.028)
Participatory Democracy		0.751*
		(0.398)
Access to Justice		−0.634**
		(0.273)
HR Organizations		0.003
		(0.004)
Conflict Intensity (lagged)		−0.085**
		(0.036)
Observations	489	489
R^2	0.112	0.129
Adjusted R^2	0.022	0.025
Residual Std. Error	0.191 (df = 443)	0.191 (df = 436)
Note:		*p<0.1; **p<0.05; ***p<0.01
		Country and Year fixed effects; clustered SE (country)

Table 9: Effect of Extent of ICC Involvement on Domestic Trial Commitments in Peace Agreements

	Domestic Trial Commitment	
	(1)	(2)
Extent of Involvement (log)	0.095^{***}	0.074^{*}
	(0.031)	(0.038)
Lagged GDP Per Capita (log)		-0.045^{**}
		(0.017)
Rome Statute Ratification		-0.069^{*}
		(0.040)
IO Signature		0.006
		(0.029)
Participatory Democracy		0.648^{*}
		(0.363)
Access to Justice		-0.557^{**}
		(0.265)
HR Organizations		0.007
		(0.005)
Conflict Intensity (lagged)		-0.098^{**}
		(0.038)
Observations	489	489
R^2	0.101	0.121
Adjusted R^2	0.019	0.025
Residual Std. Error	0.192 (df = 447)	0.191 (df = 440)
Note:		*p<0.1; **p<0.05; ***p<0.01
		Country and Year fixed effects; clustered SE (country)

Table 10 provides the results of an analysis using a direct measure of atrocity commission. Taken from the Targeted Mass Killing Dataset (Butcher, Goldsmith, Nanlohy, Sowmya & Muchlinski 2020), the aggregate targeted mass killing variable measures the number of

Table 10: Effect of the Threat of Institutional ICC Intervention on Domestic Trial Commitments in Peace Agreements Controlling for Atrocities

	Domestic Trial Commitment	
	(1)	(2)
ICC Intervention	0.131**	0.118
	(0.053)	(0.073)
ICC Threat (Institutional)	0.186***	0.149**
	(0.044)	(0.060)
Lagged GDP Per Capita (log)		0.021
		(0.161)
Rome Statute Ratification		−0.065*
		(0.032)
IO Signature		0.004
		(0.033)
Participatory Democracy		0.686**
		(0.293)
Access to Justice		−0.778
		(0.455)
HR Organizations		0.007
		(0.005)
Conflict Intensity (lagged)		−0.115***
		(0.033)
Targeted Mass Killing (lagged)		0.046*
		(0.026)
Observations	418	418
R^2	0.117	0.139
Adjusted R^2	0.018	0.022
Residual Std. Error	0.196 (df = 375)	0.196 (df = 367)
Note:		*p<0.1; **p<0.05; ***p<0.01
		Country and Year fixed effects; clustered SE (country)

targeted mass killings ongoing in a given country-year, where a targeted mass killing is defined as "the direct killing of noncombatant members of a group by a formally organized armed force that results in twenty-five or more deaths in an annual period, with the intent of destroying the group or intimidating the group by creating a perception of imminent threat

to its survival" (Butcher et al. 2020, 5).[39] In this analysis, the measure ranges from 1 to 3 and has been lagged by one year. While there are only 418 observations in the analysis, the results are also supportive of my argument. The institutionalized threat of ICC intervention increases the probability that an agreement will contain a commitment to domestic trials by 14.9 percentage points relative to a baseline of no ICC involvement. In this analysis, ICC intervention has no effect on the probability that an agreement contains a commitment to domestic trials.

Finally, Table 11 provides the results of an OLS model with country and year fixed effects removed. Similar to the logit model presented in Table 7, this model includes a regional dummy for Africa – addressing claims in the literature that the ICC has primarily been involved in African conflicts – as well as a linear time trend from 2002 to 2019. The threat of ICC intervention is again associated with an increase in the probability that an agreement will contain a commitment to holding perpetrators accountable domestically. Similar to the findings presented in Tables 7 and 8, intervention itself also appears to be associated with an increase in domestic trial commitments, suggesting that the dynamics of intervention itself may need to be explored in more detail.

[39]Note that this measure does not identify the perpetrator of the targeted mass killing events, only that such events have occurred in a given country year. Data collection on actual atrocities committed by relevant parties is ongoing.

Table 11: Effect of the Threat of ICC Intervention on Domestic Trial Commitments in Peace Agreements (OLS)

	Domestic Trial Commitment	
	(1)	(2)
ICC Intervention	0.048**	0.060*
	(0.024)	(0.034)
ICC Threat (Institutional)	0.094***	0.115***
	(0.028)	(0.035)
Lagged GDP Per Capita (log)		0.006
		(0.008)
Rome Statute Ratification		−0.030
		(0.029)
IO Signature		0.003
		(0.015)
Participatory Democracy		0.095
		(0.175)
Access to Justice		−0.137**
		(0.061)
HR Organizations		0.001**
		(0.001)
Conflict Intensity (lagged)		−0.019
		(0.025)
Africa		0.017
		(0.029)
Time		−0.001
		(0.002)
Observations	497	497
R^2	0.027	0.065
Adjusted R^2	0.023	0.044
Residual Std. Error	0.190 (df = 494)	0.188 (df = 485)
Note:		*p<0.1; **p<0.05; ***p<0.01
		Standard OLS Model