

Marquette University

**e-Publications@Marquette**

---

Political Science Faculty Research and  
Publications

Political Science, Department of

---

10-2016

## **Why (not) Arrest? Third-party State Compliance and Noncompliance with International Criminal Tribunals**

Mark S. Berlin

Follow this and additional works at: [https://epublications.marquette.edu/polisci\\_fac](https://epublications.marquette.edu/polisci_fac)



Part of the [Political Science Commons](#)

---

Marquette University

e-Publications@Marquette

***Political Science Faculty Research and Publications/College of Arts and Sciences***

***This paper is NOT THE PUBLISHED VERSION.***

Access the published version via the link in the citation below.

*Journal of Human Rights*, Vol. 15, No. 4 (October/December): 509-532. [DOI](#). This article is © Taylor & Francis (Routledge) and permission has been granted for this version to appear in [e-Publications@Marquette](#). Taylor & Francis (Routledge) does not grant permission for this article to be further copied/distributed or hosted elsewhere without express permission from Taylor & Francis (Routledge).

# Why (Not) Arrest? Third-Party State Compliance and Noncompliance with International Criminal Tribunals.

Mark S. Berlin

Political Science, Marquette University, Milwaukee, WI

## Abstract

Why do some states comply with their legal obligations to arrest suspects indicted by international criminal tribunals (ICTs) while others do not? Research on this question has mostly focused on "target" states, like the former Yugoslav republics, where ICTs have intervened. In contrast, this article offers the first test of theories regarding ICT arrest-warrant compliance and noncompliance by third-party states. I examine the International Criminal Tribunal for Rwanda (ICTR) and 26 third-party states implicated in the pursuit of the court's 91 indicted suspects. Using fuzzy-set qualitative comparative analysis, I find support for the procompliance influence of liberal democratic norms and foreign aid dependency on third-party states. I also find that noncompliance — something existing studies tend to leave untheorized — can be explained by the presence of either non-compliance constituencies or

high official corruption. By testing several theories of compliance and noncompliance on a so far understudied class of cases, these findings provide support for the generalizability of a number of explanations in the broader literature on compliance with human rights obligations. The analysis also shows that problematizing noncompliance — and not merely reducing it to an absence of procompliance factors — can help us develop fuller explanations of compliance behavior.

A central and recurrent problem for international criminal tribunals (ICTs) is the apprehension of wanted suspects. Most glaring is the case of Sudanese President Omar al-Bashir, who, since being indicted by the International Criminal Court (ICC) in 2009 for genocide, war crimes, and crimes against humanity, has safely traveled to several ICC member states without arrest, leading the frustrated ICC Prosecutor to recently suspend the court's case against him. But beyond the al-Bashir case, ICTs — from Nuremberg the former Yugoslavia to Sierra Leone — have often struggled to gain custody of the accused. That is because ICTs lack their own police forces or sanctioning authority, so they must depend on state authorities to pursue, to arrest, and to transfer indictees. But even though states are often legally obligated to arrest and hand over suspects known to be in their territories, sometimes they resist or refuse. *Why do some states aid international criminal tribunals in the pursuit of indicted suspects while others do not?*

This question is important because, to its advocates, international criminal justice promises to facilitate conflict resolution, to deter future abuses, and to end the culture of impunity that has traditionally shielded the world's worst human rights violators from accountability. Some recent studies offer evidence that domestic and international criminal prosecutions for past atrocities may have positive short- and long-term effects on peacebuilding, democracy, and the protection of human rights in postconflict and postauthoritarian societies (Akhavan [ 2]; Sikkink and Walling [67]; Kim and Sikkink [39]; Olsen et al. [50]). But if international courts like the ICC fail to apprehend suspects, they largely cannot function. Consequentially, justice goes unrealized, impunity prevails, and whatever potential benefits these tribunals might have offered are lost. Furthermore, suspects who elude capture may actively undermine peacebuilding efforts (Scharf [64]: 975–978). Finally, the failure of ICTs to function properly threatens their very legitimacy, undermining further efforts to secure cooperation and to promote the cause of international criminal justice generally (Roper and Barria [61]: 458).

A small but growing body of research has identified factors that help account for states' compliance with arrest-warrant obligations (Bass [ 6]; Meernik [45]; Peskin [51]; Roper and Barria [61]; McClendon [44]; Subotic [70]; Lamont [41]; Grodsky [28]). But so far these studies have mostly focused on "target" states, that is, those like the former Yugoslav republics whose conflicts were the focus of these tribunals in the first place. However, the history of ICTs demonstrates that it is often *third-party* states — states external to the conflict in question but that nonetheless face indicted suspects in their territories — that are crucial to enforcing international arrest warrants. Yet, the literature has focused little on the behavior of these states, so it remains unclear whether the factors that explain target states' behavior also apply to third-party states.

Here I examine the International Criminal Tribunal for Rwanda (ICTR) and the over two dozen third-party states implicated in the pursuit of 91 indicted suspects. Most third-party states that faced ICTR indictees in their territories have complied with their legal obligations to pursue them, but about one third have at some point either resisted or refused to do so. Using qualitative comparative analysis

(QCA), I test existing theories of arrest-warrant compliance on the behavior of these third-party states. I also derive new hypotheses to account for *non*compliance among them — something that extant explanations of arrest-warrant compliance tend to leave untheorized.

I thus aim to make three contributions. First, I contribute to existing ICT research by analyzing a class of cases — third-party states — that have so far received little attention, while testing several theories of compliance and noncompliance on a tribunal — the ICTR — that has been underutilized for theory testing. Second, I contribute to research on compliance with international human rights law and courts by providing support for the generalizability of a number of factors that have received attention in these literatures, including the procompliance influence of liberal democratic norms (in democracies) and foreign aid dependency (in nondemocracies), as well as the countervailing influence of noncompliance constituencies (in democracies) and high official corruption (in nondemocracies). Finally, I demonstrate the value of "bringing violations back in" to the study of compliance with ICTs and human rights obligations more generally. Research on human rights compliance commonly takes for granted that noncompliance results from a lack of procompliance factors — whether material incentives or internalized norms — without theorizing states' positive motivations for violating norms (Cardenas [ 8]: 25–26). I show that by problematizing compliance and noncompliance separately, we can develop more comprehensive models of compliance behavior.

The first section of this article introduces the puzzles of third-party state compliance and noncompliance with ICTs. The second section discusses the origin of the ICTR and its record with third-party state compliance. The third and fourth sections detail my hypotheses and research design. The fifth section presents the results of the QCA analyses and discusses the findings in the context of a number of specific cases. The conclusion discusses these findings' implications for human rights compliance research generally and our understanding of the ICC in particular, as well as highlights avenues for future research.

## ICTs and third-party state (non)compliance

International criminal tribunals (ICTs) are courts established and operated multilaterally and designed to prosecute individuals for international crimes, such as war crimes, genocide, and crimes against humanity. While not all ICTs are created equal, all face a similar enforcement problem (Ritter and Wolford [60]). Unlike national criminal justice systems, which can deploy the power of the state to apprehend suspects, international courts lack their own law enforcement capacity. Therefore, ICTs must usually rely on individual states to execute arrest warrants for suspects in their respective territories.[ 1] In many cases, states are obligated under international law to assist ICTs. Yet, barring intervention by the UN Security Council or other states, ICTs lack the ability to punish or coerce governments that defy their legal obligations.

Scholars have recently begun to develop and test theories of state compliance with ICT arrest warrants.[ 2] My study contributes to this literature by addressing two of its gaps. The first concerns the types of states examined. The majority of studies on arrest-warrant compliance have focused either partially or entirely on the arrest record of the International Criminal Tribunal for the Former Yugoslavia (ICTY), for which the vast majority of indicted suspects were apprehended in Serbia, Bosnia, or Croatia (Meernik [45]; Peskin [51]; McClendon [44]; Subotic [70]; Lamont [41]; Grodsky [28]).[ 3]

These states are what I refer to as "target" states, that is, states that participated in the particular conflict in which a given ICT has intervened. But the history of international criminal justice shows that suspects often seek refuge in *third-party states*, that is, states external to the conflict in question. Third-party state cooperation has proved crucial for the apprehension of many high-profile ICT indictees, such as former Liberian president Charles Taylor, Croatian lieutenant general Ante Gotovina, and the so-called "mastermind" of the Rwandan Genocide, Théoneste Bagosora. At the same time, the failure of third-party states to cooperate with ICTs has allowed others, including Sudanese president Omar al-Bashir, to avoid prosecution. Thus, it is important to examine the behavior of not just target states but third-party states as well. Nevertheless, these states have received relatively little attention in the literature, so it remains unclear whether the same theories offered to explain the compliance of target states can also account for the behavior of third-party states. My study thus offers the first test of existing theories of ICT compliance on a sample of third-party states.

Second, the above research has mostly developed theories to explain why states ultimately comply with their legal obligations, while largely overlooking the question of why states defy ICTs in the first place. As Sonia Cardenas has noted, this tendency towards explaining positive outcomes pervades the broader literature on state compliance with human rights norms, which tends to regard compliance as puzzling, while largely taking noncompliance for granted (2007: 25–26). That is because the commitment to human rights treaties ostensibly entails little cost for governments, while repression is often advantageous. Likewise, since existing studies have focused mostly on the behavior of target states, the emphasis on explaining compliance is understandable. Target states are often required to turn over their own citizens, something that is typically anathema to these governments and their constituencies. Thus, public and elite demand for compliance is generally low. Even if a target state government prefers compliance, it faces the possibility of a backlash from either the public at large or elite spoilers still in a position to wield influence (Peskin [51]: 13–14; Subotic [70]: 33–34; Grodsky [28]). Thus, noncompliance by target states is largely unsurprising and therefore typically taken for granted in existing research.

But third-party state noncompliance is more puzzling. These states usually do not face the same domestic political circumstances, like public opposition and elite spoilers, that make compliance costly for target states. Yet, if they defy ICTs, third-party states often face similar types of international condemnation that can raise the costs of noncompliance for target states. For example, in 2010 Kenya, an ICC member state, faced domestic and international shaming for its decision to host indicted Sudanese President al-Bashir at a ceremony celebrating the promulgation of Kenya's new constitution (Leftie and Kelly [42]). The ICC responded with a formal complaint to the UN Security Council over Kenya's unwillingness to arrest al-Bashir. When al-Bashir was again slated to appear in Kenya for a regional conference, the meeting was moved at the last minute to Ethiopia, an ICC nonparty, suggesting that Kenya preferred to avoid further domestic and international condemnation over its noncompliance (International Criminal Court [33]; Namunane [47]0). If third-party states, like Kenya, would not face the prospect of domestic backlash for their *compliance* — a 2009 poll found that 77% of Kenyans supported the al-Bashir arrest warrant (WorldPublic-Opinion.org [85]) — it is not obvious why they would choose to risk the costly backlash that may result from their *noncompliance*.

Thus, another contribution of my study is to highlight the value of "bringing violations back in" to the study of human rights compliance by problematizing noncompliance as a distinct outcome requiring its own explanations (Cardenas [ 8]: 9). Research on human rights compliance commonly takes for granted that noncompliance results from either a lack of procompliance incentives or insufficiently internalized norms. But even when these ostensibly procompliance conditions are met, states or particular sectors within them may still have an interest in noncompliance, and those interests are often left unexplored in extant research (Cardenas [ 8]: 25–26). It is thus important to problematize violations not just because they are puzzling on their own but because understanding the countervailing factors that produce the nonoccurrence of a phenomenon (noncompliance) can contribute to a better understanding of the conditions that produce its occurrence (compliance) (Cardenas [ 8]; see also Carpenter [ 9]).[ 4] Thus, a fuller picture of compliance depends on a better understanding of noncompliance.

## The Rwandan Genocide and compliance with the ICTR

In April 1994, the assassination of Rwandan president and Hutu Juvénal Habyarimana provided the pretext the Hutu-led government and ruling elite had been seeking since the end of the country's civil war (1990–1993) to enact a plan of systematic extermination of the minority Tutsi (Straus [69]). Over the next 100 days, organized military forces and popular militias, instigated by hardline government and community leaders, unleashed a wave of mass killing that left between 500,000, and 1 million Tutsis and moderate Hutus dead (Des Forges [16]: 15–16). The killing ended when the Tutsi-led Rwandan Patriotic Front (RPF) swept through the country, defeated the Rwandan military and took control of the government in Kigali.

Leading up to and following victory by the RPF, many remaining Hutu extremists, along with millions of Hutu refugees, fled to various neighboring states. Among these exiles were the highest level architects and commanders of the genocide. Most of these high-level perpetrators fled to Zaire, where they hid among the refugee camps and would go on to stage new cross-border attacks against Rwanda in the hopes of destabilizing and ultimately overthrowing the new Tutsi-led government. (These forces eventually provoked Rwanda into invading eastern Zaire, starting the First Congo War and leading to the overthrow of Zairian president Mobutu Sésé Seko.) Other high-level Hutus sought refuge in a variety of other African and European states. One suspect even fled to the United States. Rwanda and the United States, along with the UN, wanted to see these high-level perpetrators of the genocide prosecuted. Though given that most of the countries where these individuals had fled to either lacked extradition agreements with Rwanda or opposed its use of capital punishment, it was unlikely that states would extradite these individuals to Rwanda (Peskin [51]: 157–161). Instead, a new international criminal tribunal modeled on the one for the former Yugoslavia that had been established the year earlier, was proposed. Thus, in November 1994, the UN Security Council established the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania to facilitate the prosecution of those individuals accused of bearing the most responsibility for the conflict's atrocities (UN Security Council 1994).[ 5]

The ICTR presents an excellent testing ground for theories of third-party state compliance with ICTs. Unlike the indictees of the ICTY, most of whom were captured in target states, all indicted ICTR suspects fled to third-party states. Of the 91 individuals indicted between 1995 and 2005 for crimes

committed during the genocide, all 82 who have been arrested were apprehended in one of 25 African and European states or the United States.[ 6] Under the ICTR statute, these third-party states are legally obligated to pursue, to arrest, and to hand over indicted suspects believed to be in their territories.[ 7] Some of these states willingly complied with their legal obligations from the start, but others either neglected or outright resisted their duties and only ultimately complied after succumbing to international pressure. No other ICT has required the arrest-warrant cooperation of so many third-party states, yet no study has systematically examined the behavior of these states. In the next section, I build upon existing scholarship on ICTs and human rights compliance to develop plausible theories for compliance and noncompliance by third-party states, which I subsequently test on the arrest record of the ICTR.

## Explaining third-party compliance and noncompliance with ICTs

### Compliance

Existing research on state cooperation with ICTs has followed two lines of explanation that derive from the broader literatures on compliance with international human rights law and courts. The first type of explanation points to domestic normative factors and suggests that liberal democracies should be more likely to comply with their arrest-warrant obligations to ICTs (Bass [ 6]; Kelley [37]).[ 8] This explanation builds upon a large body of research on international law that posits that liberal democracies share particular cultural and institutional features that overall make them more likely to comply with their international legal obligations. Culturally, liberal democracies value their commitment to the rule of law, so their governments are socialized to view their international legal obligations as legitimately binding, especially when the content of those obligations — like those relating to human rights — resonate with deeply held domestic values (Slaughter [68]; Checkel [12]). Liberal democratic governments are also habituated to following the judgments of their own domestic courts, so they are more likely to take compliance with international courts for granted as the appropriate thing to do (von Staden [80]). Institutionally, liberal democracies are accountable to their publics, and experimental research has offered evidence that publics are less likely to support a government's policy if it violates international law (Tomz [74]). Thus, even if democratic leaders prefer noncompliance for strategic reasons, domestic interest groups in these states, such as human rights nongovernmental organizations (NGOs), can raise the costs of noncompliance for governments by bringing public attention to behavior that violates domestically salient norms of rights and justice (Cortell and Davis [13]; Dai [14]).

The effect of liberal democracy has found support in several recent studies on compliance with human rights law and the laws of war. Liberal democracies are, for example, more likely to comply with human rights treaties (Neumayer [48]), judgments by the European Court of Human Rights (Hillebrecht [30]), and rules on the treatment of prisoners of war (Wallace [81]). Scholars applying this approach to ICTs argue that the principles of human rights and rule of law that underlie international criminal justice processes are fundamental to the identities of democracies (Bass [ 6]: 21). Such governments should thus more likely value the work of ICTs as well as seek to avoid the public backlash that would likely arise from violating obligations to pursue suspects (Kelley [37]). Thus, in her study of why some countries risked sanctions and refused to sign agreements with the United States to pledge not to surrender Americans to the ICC, Kelley ([37]) argues that countries characterized by a strong rule of

law, like Costa Rica and Estonia, were motivated by a combination of principled obligation to uphold their commitment to the ICC and the potential for domestic backlash should they violate these commitments. Applied to warrant compliance, we should thus expect that *third-party states that are liberal democracies will likely comply with their arrest-warrant obligations*.

Other scholars are skeptical that liberal democratic states are uniquely disposed to comply with ICTs. These authors point out that, in some instances, illiberal states like Croatia and Rwanda led the call for the international community to establish their respective tribunals, and, in others, liberal democracies, such as the United States, have stymied international justice efforts (Peskin [51]: 20–22; Lamont [41]: 14). Instead, these scholars draw on a tradition in the compliance literature that focuses on international pressure to explain why governments cooperate with ICTs. Realist and political economy approaches to international legal compliance have long argued that states are unlikely to comply with international legal obligations absent an incentive structure that makes compliance materially advantageous. Thus, a number of studies have shown that powerful states can use their economic leverage over weaker ones to force compliance with international norms and legal regimes that they favor (e.g., Nooruddin and Payton [50]; Whitaker [83]; Hafner-Burton [29]).

Existing research on ICTs highlights economic coercion in the form of foreign aid conditionality as the chief form of international pressure that may compel compliance. The states that have most actively supported the work of international criminal justice, such as the United States and Western European states, also provide large amounts of aid to developing countries. To the extent that noncompliant states are dependent on foreign aid, the backers of international justice are in a position to coerce these states into compliance by reducing or withholding aid. A wealth of case-study evidence illustrates that threats to withhold aid to Serbia and Croatia — countries that desperately needed assistance to rebuild their war-torn economies — were crucial in compelling these states to arrest (or at least arrange the surrender of) high-ranking indictees in their territories (Scharf [64]: 946–949; Peskin [51]: 67–71; Subotic [70]: 45–47; Grodsky [28]: 130–131). As the former Serbian deputy prime minister, Čedomir Jovanović, explained in reference to his country's decisions to pursue indictees: "We wanted the American money, we wanted EU money" (Subotic [70]: 46). Statistical studies using duration models have also shown that reductions in aid to or threats of sanctions against governments increase the likelihood that suspects in their territories will be apprehended faster (Meernik [45]; McClendon [44]). As recent studies by Prorok and Appel (2014) and Goodliffe et al. ([27]) suggest, the mere expectation of punitive sanctions from powerful states can be sufficient to compel weaker states to comply with legal obligations. Thus, if target states are susceptible to economic coercion, then we would also expect that *third-party states that are highly dependent on foreign aid will likely comply with their arrest-warrant obligations*.

## Noncompliance

As argued above, the motivations for third-party states to defy ICTs are not obvious, nor have they been systematically explored in the literature on ICT compliance. Thus, drawing on other strands of International Relations (IR) and international law research, I posit three factors — one international and two domestic — that may motivate states to defy their obligations to ICTs.

First, on an international level, a third-party state may defy its obligations to ICTs for reasons of national security. In keeping with realist IR theory, a number of studies have shown that states are

more likely to violate international law, such as by disregarding international legal rules restricting the use of force, if such violations stand to benefit the government's national security objectives (e.g., Valentino, Huth, and Croco [79]; Cardenas [ 8]). In the case of ICT obligations, a third-party government is most likely to perceive noncompliance as beneficial to its national security if it shares a common adversary with indictees in its territory. Protecting or even cooperating with such indictees may stand to benefit a third-party state's national security in at least three different ways.

First, the third-party government in question may recruit indictees (who often are military actors themselves) to participate in a conflict against their common adversary. For example, Hutu forces that fled to the Republic of Congo (ROC) following the genocide reportedly teamed up with former ROC president Denis Sassou-Nguesso to overthrow president Pascal Lissouba, who had allied with Tutsi exiles in his country (Prunier [55]: 167–171). Second, third-party governments may be willing to provide a safe haven for indictees who wish to continue to fight against the postconflict target state government. For example, there is extensive evidence that the Zairian government actively sheltered Hutu extremists seeking refuge in its territory and supported their efforts to stage new attacks against its adversary, the Tutsi-led Rwandan government (Human Rights Watch [31]). Finally, a third-party government might have been an ally of the factions that ruled the target state prior to the conflict in question. The third-party state thus may seek to undermine the new government by sabotaging its efforts to prosecute its challengers. Likewise, the third-party government may also seek to maintain influence with its ally in case it regains power. A number of states to which ICTR indictees fled, such as Zaire, Kenya, and France, were long-standing allies of the former Hutu regime and had come to the aid of the Hutu-led government during the Rwandan Civil War in the early 1990s. Thus, these states might have sought to undermine the fledgling postgenocide Tutsi-led government by neglecting to pursue Hutu indictees in their territories. Thus, *a third-party state will likely not comply with its arrest-warrant obligations if it shares a common adversary with indictees.*

Second, in contrast to the geopolitical concerns of realist approaches, political economy approaches to foreign policy point inward towards domestic politics and attribute a leader's decision calculus to a "logic of political survival," whereby the goal of regime security is paramount (Bueno de Mesquita et al. [ 7]). In democracies, regime survival means winning elections. But in autocratic states, such as most of the African states to which ICTR indictees fled, regime security is based on a different dynamic. In particular, scholars of African politics often characterize African autocratic regimes as based on "neopatrimonial" rule. Neopatrimonial rule entails autocratic leaders who rely not on the approval of publics to maintain their regimes but on personalized patronage networks of supporters and clients. These rulers are not constrained by institutions, which are weak, nor is their authority derived from rational-legal legitimacy. Rather, a leader's power is largely a function of his or her ability to maintain and exploit these clientelistic relations as well as to use force to subdue opposition actors. Given the weakness of institutions and the necessity to use extralegal means (e.g., bribery, coercion) to secure one's position, neopatrimonial regimes are typically characterized by widespread official corruption among both government leaders and lower level officials and bureaucrats (Jackson and Rosberg [35]).

In countries characterized by such highly clientelistic, informal institutions, governments and their clients will be more likely see indicted war criminals as a source of rents and, thus, be more willing to offer them protection. ICTs typically do not target low-level actors for indictment but focus mostly on

high-level commanders and enablers. These types of actors are often considerably wealthy in their own right and, thus, are well suited to offer payments in exchange for protection. Such has been the case with one of the few ICTR indictees to still remain at large, the Rwandan millionaire businessman and alleged financier of the genocide, Félicien Kabuga. As I discuss further in the analysis below, Kabuga's wealth has bought him protection in Kenya, where he reportedly helped finance president Daniel Arap Moi's reelection campaign. Thus, *a third-party state will likely not comply with its arrest-warrant obligations if it is characterized by high levels of official corruption.*

Finally, even though third-party states are not directly connected to the conflict in question, under some circumstances they may nonetheless experience similar domestic political pressures against compliance as those common in target states. The difference is that in third-party states, these pressures will likely come not from broad constituencies or elite spoilers but from more narrow interest groups who also share ties with indictees and who can use their political influence to push for noncompliance. This perspective follows work on so-called "compliance constituencies," who pursue conventional interest group strategies to pressure a government to meet its international obligations (Dai [14]). Likewise, Cardenas has developed the concept of "pro-violation constituencies," which refers to interest groups that have a preference for their governments to not comply with their legal obligations (2007: 27). For example, Whitaker ([83]) argues that Muslim civil society groups in Kenya successfully pressured their government to resist cooperating with the US-led international antiterrorism regime.

In the case of ICT indictees, the most relevant types of interest groups in third-party states would be those that share ethnic or religious identities with indictees. Existing research supports the idea that the existence of ethnic or other identity-based ties shape the foreign policy decisions of third-party states towards belligerent groups in other states (e.g., Saideman [62]). Thus, third-party states may be less likely to comply with their obligations to pursue indictees if pressure groups there that share ethnic or religious identities with indictees wield sufficient political influence to shape foreign policy decision making. An example discussed in the analysis below concerns how the Catholic Church in Italy reportedly pressured the Italian government to refrain from arresting a Rwandan Catholic priest indicted by the ICTR. Thus, *a third-party state will likely not comply with its arrest-warrant obligations if a domestic interest group there that identifies with indictees wields significant influence on government policy.*

### Analysis: Qualitative comparative analysis

Qualitative comparative analysis (QCA) is a method developed by Charles Ragin that uses set-theoretic logic and Boolean operations to infer necessary and sufficient causal conditions associated with an outcome (Ragin [56]). [ 9] For my purposes here, QCA offers particular advantages. First, the small size of my sample ( $N = 26$ ) precludes statistical analysis, but QCA can perform systematic cross-case comparisons of small- and medium- $N$  samples. Smaller samples are less problematic for QCA because, unlike conventional regression analysis, its purpose is not to infer the average effect of each independent variable across all cases, which requires a statistically valid sample and adequate variation. Instead, QCA is a configurational approach; its purpose is to identify the various yet distinct configurations (or combinations) of conditions that lead to the same outcome, irrespective of how frequently each solution occurs in a given population. As a result, a particular causal condition is

considered no less externally valid if it applies only to a single case (Schneider and Wagemann [66]: 281), whereas in regression methods, the effect of such a variable would likely fail to meet statistical significance.

Second, QCA is designed to infer separate explanations for the occurrence and nonoccurrence of a phenomenon — so-called "causal asymmetry" — which is useful given my goal to problematize compliance and noncompliance separately. In contrast, regression analysis assumes causality to be symmetrical, whereby if the presence of X causes Y, then it is assumed that the absence of X will lead to the absence of Y. But QCA derives its notion of causality from set theory, not probability theory and statistics, which allows for the possibility that if X is a sufficient condition for Y, then the absence of X does not necessarily preclude the existence of Y. A particular condition may even lead to both the occurrence and nonoccurrence of an outcome depending on its combination with other conditions. In other words, it is possible that X leads to an outcome when combined with Condition B but leads to the absence of the outcome when combined with Condition C.[10] As Goertz and Mahoney ([26]: 64) emphasize, set-theoretic notions of causality are commonly implied in the types of causal arguments made by qualitative researchers, but neither set-theoretic nor statistical notions of causality are universally correct — each may be more or less useful for analyzing different phenomena. As the authors write: "Ultimately, whether a relationship is symmetrical or asymmetrical is an empirical question."

## Case selection

I define a "case" in my model as a state that was knowingly in a position to arrest one or more ICTR indictees in its territory. Due to the limits of available data, accurately identifying this population requires consulting a variety of sources. To compile a sample of cases, I combined two approaches. First, I used official ICTR reports to identify every state that was reported to have arrested one or more of the 82 captured indictees (a total of 25 states).[11] Though each of these states eventually complied with at least some of their legal obligations, some were initially noncompliant. (I outline the coding procedures for compliance and noncompliance below.) But suspects may have traveled to several states before finally being arrested, so only including states that arrested indictees will likely omit some relevant cases. Thus, as a second approach, I also sought to identify states to which indictees fled but that did not arrest them. To do so, I scoured a variety of sources — including official UN and ICTR documents, NGO reports, scholarly publications, and American diplomatic cables made public by Wikileaks — and looked for references to states known to have indictees located in their territories. To identify relevant media reports, I also performed keyword searches of the Lexis Nexis and the Foreign Broadcast Information Service databases and the websites of Hirondele (an Arusha-based news agency reporting on international justice) and the Integrated Regional Information Networks (IRIN) news service (a news agency previously under the auspices of the UN reporting on humanitarian issues).

The searches from this second approach yielded the inclusion of two cases in addition to the ones derived from ICTR arrest data: Italy and Zimbabwe.[12] (A discussion of the sources I used to make these determinations is contained in the online appendix [see supplemental material].) The number of cases in my sample thus totals 26 countries. Nevertheless, because of the limits of available data, it is likely that I have missed one or more cases of noncompliant states. While I cannot claim that I have

accounted for the entire population of cases as I define them, I nonetheless believe that my approach represents the best approximation possible with existing sources.

### Operationalization and calibration of conditions

Unlike statistical methods, QCA requires that outcome and explanatory conditions be "calibrated." Calibration means assigning degrees of set memberships to particular measures of each condition. Set memberships may be dichotomous (known as "crisp sets") or continuous (known as "fuzzy sets"). Either way, set memberships range from 0 ("fully out") to 1 ("fully in"), and, in the case of fuzzy sets, can take on values anywhere in between. The choice of whether to calibrate a given condition in terms of crisp sets or fuzzy sets is dictated by theory and the researcher's substantive knowledge of the phenomenon and cases under study. It is important to note that the goal is for degrees of set membership to reflect different qualitative states, as opposed to merely reproducing quantitative interval or ordinal measures. For instance, depending on the goals of a given research design, it may be justifiable to classify all countries above a certain GDP per capita as full members of the set of "rich countries" despite variation between them. It is up to the researcher to determine and justify a calibration rule for each condition based on theory and his or her substantive knowledge. One advantage of QCA is that, unlike statistical methods, the researcher is presumed to possess substantive knowledge of the cases in one's sample. Thus, while it may make sense to calibrate some conditions using raw quantitative data, the logic of QCA allows a researcher to also approach calibration the way a qualitative researcher approaches classifying cases, that is, by using "thick" case knowledge to make informed judgments about each case's score or set membership (Ragin [57]: 78–81).

The outcome in my QCA model is a government's behavior in response to its ICTR arrest-warrant obligations, coded dichotomously as either compliant or noncompliant. I coded a state as "noncompliant" if at any time its government refused or willingly neglected its legal obligation to arrest or transfer one or more indicted suspects. My coding thus aims to capture not the success of government efforts to arrest indictees but the willingness of states to do so, whether successful or not. But the behavior of these governments is difficult to observe, making coding tricky. Indictments were sometimes sealed, and efforts to pursue indictees often proceeded inconspicuously. Thus, to code the outcome, I relied on the same range of sources I used to identify my sample (discussed above), including reports and public statements by ICTR officials, NGOs, scholars, and journalists, all of which contained either the views of court insiders or those with expert investigative knowledge regarding which governments were or were not actively pursuing or transferring suspects believed to be in their territories.

I coded each case by combing through these sources and inductively identifying explicit claims regarding which states were compliant and which were not. States identified as defying their obligations — for example, those accused of "providing protection" to or "obstructing" efforts to apprehend suspects — were coded as noncompliant. Given the efforts by NGOs and other ICTR backers to identify and shame noncompliant states, I assumed that states that were not singled out as noncompliant in any of these sources remained compliant. (The online appendix details the sources and coding decisions for each case.) Some states faced more indictees in their territories than others, so the willingness of states to pursue them may have varied across indictees. Ideally, I would thus use indictee-states as the unit of analysis. But because available data are not fine grained enough to

distinguish between a given state's behavior towards different indictees, I use states as the unit of analysis. Thus, for the purpose of analysis, I code a state as noncompliant if it was noncompliant towards at least one indictee, despite potential compliance towards others.

In addition to the main explanatory conditions discussed in the theoretical section, I also include a number of conditions to account for plausible alternative explanations. The first is *high foreign direct investment (FDI) inflows*. Some research suggests that states receiving high levels of FDI may be eager to signal their commitment to the rule of law — something that concerns international investors — and, thus, may be more likely to comply with their international legal obligations (Farber [22]; Ginsburg [25]). Though FDI typically comes from private investors, research has shown that multinational corporations are less likely to invest in states that have been the target of human rights shaming. Though the mechanism underlying this relationship remains unclear, one possibility is that a state's commitment to human rights norms is seen as an indicator of its commitment to protecting property rights (Barry et al. [5]). Therefore, states may worry that the shaming provoked by harboring indictees may harm their reputation for rule of law and thus threaten future FDI. The second alternative explanatory condition is *international integration*. Some research suggests that the more a state participates in international organizations, the more it may be susceptible to international socialization pressures that promote norm conformity (Sandholtz and Gray [63]). The third alternative explanatory condition is *risk of future atrocities*. Governments that may be implicated in atrocities in the near future may anticipate their own officials could be the targets of future international prosecutions. Therefore, these governments may seek to undermine or delegitimize the international criminal justice regime by obstructing its processes at a time when the regime's viability was very much in question. A detailed discussion of the data sources and calibration decisions for all conditions, as well as the raw and calibrated scores for the entire sample, are contained in the online appendix. These sources and the coding rules I used to operationalize explanatory conditions are summarized in Table 1. Data for each country's explanatory conditions are taken from the year of the indictment for the first suspect believed to be in its territory.

Table 1. Summary of coding sources and calibration rules for explanatory conditions.

Explanatory Condition	Source	Calibration Rule
Liberal democracy	Freedom House (2013)	1 = "free"; 0 = "partially free" or "not free"
Aid dependence	World Bank (2011)	1 = 15% of GNI or greater;.66 = 10–15%;.33 = 5–10%; 0 = 0–5%
Shared adversary	Various	1 = shares an adversary with indictees; 0 = does not share an adversary
High official corruption	Kaufmann et al. (2010) control of corruption index	1 = –2.5– –1;.66 = –1 –0;.33 = 0–1; 0 = 1–2.5
Noncompliance constituencies	Various	1 = present; 0 = absent
International integration	Dreher (2006) KOF (Swiss Economic Institute) political globalization index	Rank order standardization (Koenig-Archibugi 2004: 157)

High FDI inflows	World Bank (2011)	1 = 15% of GDP or greater; .66 = 10–15%; .33 = 5–10%; 0 = 0–5%
Potential future atrocities	Ghosn and Bennett (2003); Themnér and Wallenstein (2012)	1 = currently involved in an internal or external military conflict; 0 = involved in no military conflict

10001 Indicates that calibration is based on a combination of quantitative and qualitative sources. See the online appendix for specific sources and coding decisions.

## Results and discussion

The QCA analysis consists of two separate models; Model 1 analyzes compliance and Model 2 analyzes noncompliance. Tables 2 and 3 display the models' truth tables, which provide simplified overviews of how cases are distributed across different combinations of conditions. (Conditions that are calibrated nondichotomously are rounded for the purpose of the truth table.) Table 4 reports the results of both models, which are derived using Boolean minimization.

Table 2. Model 1 (compliance) truth table.

	Causal conditions			
Cases	Democracy	Dependence	Integration	FDI
Zambia	1	1	1	0
Mali	1	1	0	0
Benin, Namibia, South Africa	1	0	0	0
Denmark, Netherlands	1	0	1	1
Belgium, France, Germany, *Italy, Senegal, Switzerland, United Kingdom, United States	1	0	1	0
Burkina Faso, Tanzania, Uganda	0	1	0	0
*Cameroon, *DRC, Ivory Coast, *ROC, *Zimbabwe	0	0	0	0
*Gabon, *Kenya	0	0	1	0

\*States coded as noncompliant.

Table 3. Model 2 (noncompliance) truth table.

	Causal Conditions					
Cases	Democracy	Dependence	Shared Adversary	Corruption	Noncomp. Constituencies	Future Atrocities
*Italy	1	0	0	0	1	0
*Cameroon	0	0	0	1	0	1
*DRC, *Zimbabwe	0	0	1	1	0	1
*Gabon, *Kenya, *ROC, Togo	0	0	0	1	0	0
Uganda	0	1	1	1	0	1
Ivory Coast	0	0	0	0	0	0

Burkina Faso, Tanzania	0	1	0	1	0	0
Mali, Zambia	1	1	0	1	0	0
Denmark, Netherlands, Senegal, Switzerland	1	0	0	0	0	0
Belgium, Germany, United Kingdom, United States	1	0	0	0	0	1
France	1	0	1	0	0	1
Benin	1	0	0	1	0	0
Namibia, South Africa	1	0	1	0	0	0

\*States coded as noncompliant.

Table 4. QCA solutions for Models 1 (compliance) and 2 (noncompliance).

	Raw Converge	Unique Coverage	Consistency
Model 1			
DEPENDENCE	0.33	0.17	0.76
DEMOCRACY	0.74	0.58	0.93
Solution coverage: 0.91 Solution consistency: 0.85			
Model 2			
CORRUPTION dependence democracy	0.57	0.57	0.75
CONSTITUENCY dependence	0.14	0.14	1.00
Solution coverage: 0.71 Solution consistency: 0.79			

Note. Analyses performed using fs/QCA 2.0 (Ragin et al.[59]) with a consistency cutoff of 0.51. A condition in uppercase indicates that its presence is or is part of the solution. A condition in lowercase indicates that its absence is part of the solution.

40001 Indicates the logical "and."

For both models, I report the "intermediate solution," which overcomes the problem of limited diversity of naturally occurring combinations in the sample by incorporating assumptions regarding "easy counterfactuals," that is, directional expectations based on prior theoretical and substantive knowledge. In contrast, the "complex solution" incorporates no additional assumptions to deal with limited empirical diversity, so its inferences are restricted to that sample. Thus, the intermediate solution is better equipped to generalize beyond the sample. The "parsimonious solution" goes further than the intermediate solution by incorporating *any* combinations which are unaccounted for in the sample as simplifying assumptions *if* the combinations produce a more parsimonious solution, whether they are theoretically tenable or not. For all the above reasons, the intermediate solution is usually the preferred one (Ragin [57]: 160–167; [58]: 111). In any case, when compared to the parsimonious and complex solutions, the intermediate solutions for these models achieve equal or higher levels of

coverage and consistency, indicating greater explanatory power. (The complex and parsimonious solutions are included in the online appendix.)

Model 1 tests four potential procompliance conditions: *liberal democracy*, *high aid dependency*, *high FDI inflows*, and *international integration*. The model's solution reveals two strong predictors of third-party compliance: liberal democracy and aid dependency. In other words, *either* a liberal democratic regime *or* aid dependency was likely sufficient for the compliance of a third-party state with the ICTR. Integration into international society and concerns over a loss of FDI do not seem to have influenced states' arrest-warrant behavior. On the one hand, this model lends strong support to the claim of normative approaches that liberal democracies are likely to support the work of ICTs (Bass [ 6]; Kelley [37]) and comply with international human rights obligations generally (Neumayer [48]; Hillebrecht [30]). Out of the 15 states in the sample coded as liberal democracies, 14 promptly complied with their obligations to pursue ICTR indictees in their territories. (The single democracy that was noncompliant was Italy, which is discussed below.)

The high rate of compliance among European states (eight out of nine), all of which were liberal democracies, is consistent with both mechanisms contained within the liberal democracy thesis: Support for international human rights is a taken-for-granted attribute of European states' identities (the cultural mechanism) (Thomas [73]), and a high consciousness of rights and the rule of law among their publics combined with possibility of electoral accountability means that governments are sensitive to appearing to flout these obligations (the institutional mechanism). Some of these democracies may have had instrumental reasons to obstruct the court — and indeed attempted to do so — but nonetheless complied once their legal obligations to pursue suspects were activated. For example, France was a particularly close ally and active patron of the former Hutu-led Rwandan government that had overseen the genocide. During the Security Council negotiations to establish the ICTR, France consistently pushed to weaken the proposed legal obligation for states to arrest indictees in their territories (Scheffer [65]: 109–110). Nevertheless, once the ICTR indicted Rwandans who had taken refuge in France, the government dutifully apprehended them, suggesting that the combined effect of domestic norms and susceptibility to public backlash outweighed the influence of geopolitical concerns.

But beyond Europe, every African state classified as a democracy was also compliant (Benin, Mali, Namibia, Senegal, South Africa, and Zambia). Four of these states, Benin, Namibia, Senegal, and South Africa, also lacked high dependence on foreign aid. This lack of materialist procompliance motivation suggests that even in countries that have experienced relatively recent transitions to democracy, the high salience of democratic norms of rights and rule of law can dispose states towards compliance. This is consistent with Hillebrecht's ([30]) finding in relation to the European Court of Human Rights that new democracies behave much like established democracies regarding the likelihood of compliance. The case of Namibia illustrates this point. In 1995, following a request from the ICTR, Namibia arrested former Rwandan education minister Andre Rwamakuba but then released him after the court decided it lacked sufficient evidence. Two years later, the Rwandan government requested Rwamakuba's extradition in order to prosecute him in its own courts, but Namibia denied extradition, citing the lack of an extradition treaty with Rwanda as well as the Namibian constitution's prohibition on extraditing suspects for capital crimes. Namibia reportedly also considered prosecuting Rwamakuba for genocide

in its own courts but decided it was not possible because Namibia lacked an applicable domestic criminal statute. The next year the ICTR issued a new indictment, and just two weeks after the court issued a formal arrest order — and despite having just entered the Second Congo War on the opposite side of Rwanda — Namibia arrested and transferred Rwamakuba to Arusha (Inambao [32]; *Andre Rwamakuba v. The Prosecutor* [3]). Thus, Namibia's actions demonstrated a consistent adherence to legalistic standards of behavior and sensitivity to international legal obligations one would expect from a liberal democracy despite its potential national security interest in aiding fellow adversaries of the Tutsi-led Rwandan government.

On the other hand, the *aid dependency* condition also appears to be a strong predictor of third-party compliance, as all five states classified as highly dependent on foreign aid (Burkina Faso, Mali, Tanzania, Uganda, and Zambia) were compliant with the ICTR. Three of these states, Burkina Faso, Tanzania, and Uganda, were classified as autocracies. These three states received an average 15% of gross national income (GNI) in foreign aid during the first year that their arrest-warrant obligations were activated, suggesting that their dependence on foreign donors to maintain the basic functioning of their governments influenced their compliance decisions. This finding is consistent with ICT research on target states that emphasizes foreign aid dependence as a particularly potent source of leverage for effecting arrest-warrant cooperation. It also supports research that argues that the mere anticipation of retaliatory sanctions against highly dependent states can dispose them towards compliance with international legal obligations (Goodliffe et al. [27]; Prorok and Appel [52]). The overall compliance solution highlighting both norms and material incentives suggests that in contrast to much compliance research that pits these perspectives against each other (e.g., Chayes and Chayes [11]; Downs et al. [19]), these two approaches are complementary, not competing.

Model 2 analyzes the four conditions that may produce noncompliance — *shared adversary*, *high corruption*, *noncompliance constituency*, and *risk of future atrocities*. I also include *liberal democracy* and *aid dependency* in order to allow for potential conjunctural causation with conditions that were shown to promote compliance in Model 1. Again, Model 2 reveals two distinct causal paths to noncompliance with the ICTR: either the presence of a noncompliance constituency or the presence of high corruption combined with the absence of liberal democracy were sufficient for third-party noncompliance with the ICTR. Importantly, both paths require the absence of high aid dependency. That is, high aid dependency (10% of GNI in my analysis) appears to weaken the effect of both high corruption and noncompliance constituencies. However, in the absence of dependency, noncompliance constituencies appear able to undermine the otherwise procompliance effect of liberal democracy. Nevertheless, we should be cautious about drawing inferences from the *noncompliance constituency* solution. No case in the sample exhibits both noncompliance constituencies and high aid dependency, so we cannot assess whether the effect of the latter would actually diminish the effect of the former. There is also no case with a noncompliance constituency that lacks liberal democracy, so we are unable to test whether democratic institutions are necessary for the effect of noncompliance constituencies, though other research has found an effect of noncompliance constituencies in the absence of democracy (e.g., Cardenas [8]). [13] In any case, the overall noncompliance solution shows that noncompliance cannot be reduced to merely an absence of procompliance factors — such as material incentives or internalized norms — but is attributable to its own positive causes.

A closer look at specific cases can help verify some observable implications of these explanations. The first causal path towards noncompliance is illustrated by Italy, where the QCA analysis suggests that the country's noncompliance was the result of pressure from an influential noncompliance constituency, in this case, the Catholic Church. In June 2001, the ICTR indicted Athanase Seromba, a Rwandan Catholic priest accused of responsibility for atrocities during the genocide, who had fled Rwanda and had been working as a priest under an alias in Florence. In response to the indictment, church officials in Italy proclaimed Seromba's innocence and whisked him into hiding. Despite pressure from the ICTR and human rights groups, the Italian government, led by Silvio Berlusconi, refused to pursue Seromba, which led to a public standoff with ICTR prosecutor Carla del Ponte, who assailed the government and threatened to report it to the UN Security Council (Carroll [10]; Del Ponte [15]: 189–190).

While there is no "smoking gun" linking church pressure to the government's noncompliance, there is nonetheless support for some observable implications of this explanation. First, the Italian Catholic Church was outspoken in its defense of Seromba (*Agence France Presse* 2001). It is thus plausible to conclude that officials from the church — which scholars have long characterized as an especially powerful lobby in Italian politics (Diamanti and Ceccarini [17]) — attempted to use their influence to pressure the government to not arrest Seromba. Second, reports by the media (Carroll [10]), as well as statements made by ICTR prosecutor Carla del Ponte herself (Del Ponte [15]: 189–190) indicated that church pressure was behind the government's position. Third, the Berlusconi government's noncompliance came at a time when it was seeking to consolidate its support among religious Catholic voters. The ICTR indicted Seromba just one month after an Italian parliamentary election in which Berlusconi's *Forza Italia* party garnered a plurality of the religious voters. The result meant that *Forza Italia* was poised to inherit the legacy as the party of religious voters from the recently dissolved Christian Democrats (Donovan [18]). Berlusconi would thus likely have been sensitive to not publicly defying the church. Unlike France, where the influence of democracy undermined the potential effect of national security concerns, in Italy the nature of democratic politics itself — in the form of interest group influence — was exploited to outweigh the otherwise procompliance influence of democracy.

The second causal path towards noncompliance is illustrated by Kenya, where the QCA analysis indicates that high official corruption has contributed to the government's record of noncompliance. Evidence of several observable implications of this explanation offers further support for its validity. First, Kenya, particularly under the 24-year reign of president Daniel Arap Moi (1978–[22]), has long been infamous for widespread public sector corruption. In 1996, Transparency International's Corruption Perception Index ranked Kenya 52nd out of 54 countries in fighting public-sector corruption (Transparency International [75]). Scholars have also characterized Moi's rule as "kleptocratic," citing corruption as "the principle mechanism for regime maintenance" (Barkan [4]: 89). Among the most corrupt institutions in Kenya is the very one that would be responsible for apprehending indictees, the Kenyan National Police, which a 2001 Transparency International report ranked as first among the country's 50 most corrupt national public institutions (Transparency International [76]). According to a diplomatic cable released by Wikileaks, when confronted directly by ICTR officials over Kenya's lack of cooperation in pursuing accused genocide financier and millionaire businessman Félicien Kabuga, foreign minister Raphael Tuju admitted that "corruption within the government and law enforcement agencies could be impeding the investigation" (US Embassy Nairobi [78]: para. 3). Second, there is

evidence that Moi and other regime officials benefited materially from the presence of wealthy Rwandan Hutu elites who fled to Kenya following the Hutu regime's fall and reportedly used their wealth to buy protection and to finance their lavish lifestyles (Swain [71]; Prunier [55]: 200). According to a number of sources, including former ICTR spokesman Kingsley Moghalu, this situation was tolerated and even encouraged by Moi, who relied on the Rwandans' largesse to fund his reelection campaign (Moghalu [46]: 166, 169; Swain [71]).

Some authors have suggested that the Kenyan government's noncompliance can be explained by president Moi's desire to undermine his regional rival Ugandan President Yoweri Museveni, who was aligned with the new Tutsi-led Rwandan government (Magnarella [43]: 51; Prunier [55]: 12). But if this was the case, it does not explain Kenya's willingness to pursue some suspects but not others. Under pressure from Western states, Kenya has eventually provided assistance to the court in arresting some indictees, yet its government and police have reportedly continued to shelter Kabuga, one of the most sought after — and wealthiest — indictees. On at least two occasions, ICTR officials were reportedly closing in on Kabuga, yet Kabuga was reportedly tipped off in time to escape (Moghalu [46]: 165–168; Swain [71]). Interpersonal rivalry also does not explain why Kenyan resistance to pursuing Kabuga continued after relations between Kenya and Rwanda improved (Prunier [55]: 200) and Moi was replaced with a new president, Mwai Kibaki. In contrast, my explanation suggests that Kenyan protection of Kabuga remained consistent because Kabuga remained able to use his vast wealth to exploit the endemic corruption of Kenyan national institutions and to secure his protection.

## Conclusion

Using a sample of 26 states that were in a position to comply with the ICTR, I have conducted the first systematic analysis of third-party state compliance and noncompliance with ICT arrest warrants. Taken as a whole, my findings reveal that third-party states that are liberal democracies are likely to comply with arrest-warrant obligations, unless there is a powerful noncompliance constituency that is in a position to exploit the institutional features (electoral accountability) that normally dispose these states towards compliance. The findings also show that states that are highly dependent on foreign aid are also likely to comply, even in face of the countervailing influence of high official corruption. Absent foreign aid dependency, high official corruption is a strong predictor of noncompliance, but states that are highly dependent on aid nonetheless appear able to overcome the problems of corruption to avoid risking the loss of vital foreign assistance.

Beyond the question of compliance with ICTs, these findings also contribute in two ways to a broader research agenda on compliance with international human rights obligations. First, these findings lend further support to the generalizability of some compliance mechanisms that have received attention in the literatures on human rights law and courts. On balance, liberal democracy disposes states towards compliance (Neumayer 2005; Hillebrecht [30]), but, as other studies have shown, that effect is conditional on the absence of particular countervailing factors (Wallace [81]), in this case, powerful noncompliance constituencies. This conditional effect of democracy may help account for the disagreement in the compliance literature over whether liberal democracies are indeed more disposed towards compliance and suggests the need to account for such conditional effects in future compliance research. Second, economic leverage is particularly effective in compelling compliance (Hafner-Burton [29]), and my findings lend support to the notion that the mere anticipation of economic sanctions can

induce compliance (Prorok and Appel [52]). Finally, noncompliance constituencies can work much like their procompliance counterparts by exploiting their access to policymakers to effect noncompliance despite the existence of countervailing norms (Dai [14]; Cardenas [ 8]).

Second, my analysis shows the value of attending to the distinct causes of positive and negative outcomes (Cardenas [ 8]). The explanations for compliance with the ICTR tell only part of the story. Assuming that states defied the court merely due to a lack of democratic norms or adequate material incentives fails to reveal the positive reasons why states would risk the condemnation that comes from noncompliance. By not assuming noncompliance as the default outcome but problematizing it as distinct outcome, we can better understand, for example, the conditional effects of democracy on compliance and thus construct fuller explanations for how states behave in relation to human rights obligations.

This study's findings also have important implications for our understanding of why states may or may not comply with the ICC, the most important ICT in operation today. While the ICC has so far indicted far fewer suspects than the ICTR, some of its most high-profile failures in apprehending suspects — such as President al-Bashir or Lord's Resistance Army leader Joseph Kony — have turned on the behavior of third-party states. One implication of my findings is that the sources of states' behavior towards ICTs are often domestic. While defiance towards the ICC among African states is often explained as a response to the perceived bias of the court against African states, my findings suggest that these explanations may mask the important domestic political factors — whether noncompliance constituencies or high corruption — that lead states to noncompliance. For example, official corruption may explain Mauritania's decision to extradite former Libyan intelligence chief Abdullah al-Senussi to Libya in exchange for its payment of \$200 million (about 5% of Mauritania's GDP) instead of transferring him to the ICC, which indicted him for crimes against humanity (Escritt and Sahaib [21]). Meanwhile, an emphasis on domestic politics can help us understand the willingness of some African ICC member states, such as Botswana and, if less consistently, South Africa, to defy African Union resolutions and to pledge to maintain support for ICC arrest warrants, given that these states are known to value their appearance as defenders of rights and democratic values. A second implication of my findings is that the more that third-party states are materially dependent on powerful backers of the court, like Western European states, the more likely potential countervailing pressures for noncompliance will be undermined and the more likely these third-party states will comply with their legal obligations. However, as research on target-state compliance has demonstrated, the effect of dependence is conditional on the perceived resolve of powerful states to actually follow through with threats and to punish violators with sanctions or other material costs (Grotsky [28]).

By providing support for a number of hypotheses on one medium-sized sample, my study represents a first step towards research on third-party state compliance with ICTs. Nevertheless, my analysis remains limited in a number of ways, and future research is needed to address these limits and to further assess the validity of my findings. First, while the ICC and the ICTR share a common enforcement problem, they differ in at least one important respect: commitment. While all states are obligated to cooperate with the ICTR, only states that have ratified the ICC's Rome Statute are legally obligated to assist it. Thus, with the ICC, it is more difficult to assess whether states' compliance behavior is endogenous to their commitments to it or a function of the types of factors I discuss

here.[14] What is clear, however, is that some ICC member states have nonetheless violated their legal obligations despite their commitments. Thus, future research should assess whether the factors highlighted here can also explain not only the behavior of third-party states in relation to other so-called "ad hoc" tribunals, like the ICTY, but also whether the dynamics around these tribunals differ from those around a treaty-based court like the ICC.

Second, while one advantage of QCA is its ability to make systematic inferences on a medium-sized sample, such an approach is limited in two important ways. First, like statistical models, the QCA analysis takes place at a high level of abstraction, making it difficult to verify the existence of the actual mechanisms entailed by the supported theories. Second, the QCA analysis is essentially static; it speaks to whether states initially complied or not, but not why noncompliant states came to change their behavior. There are some indications that monetary rewards offered by the United States helped elicit cooperation with the ICTR from previously noncompliant states, like the Democratic Republic of the Congo (DRC; Moghalu [46]: 172–173). Yet, it is unclear under what conditions and through what types of mechanisms these inducements work. Further research should seek to conduct in-depth case studies that can verify and further uncover the mechanisms at work as well as to explain change over time.

## Notes

### *Acknowledgments*

I am grateful to Diana Kapiszewski, Wayne Sandholtz, and Charles Anthony Smith for their helpful comments on earlier drafts of this article.

### *Footnotes*

1. *1 The North Atlantic Treaty Organization (NATO) forces in the former Yugoslavia did eventually pursue and arrest some indicted ICTY suspects, but these were stabilization forces already stationed in these territories and not deployed specifically for this purpose. See Kerr ([38]: Chap. 7). Thus, the involvement of foreign or international forces in the arrest of suspects is the exception, not the norm.*
2. *2 For the purpose of this study, the concept of "compliance with ICTs" refers to states' legal obligations to pursue, to arrest, and to transfer suspects indicted by ICTs and believed to be in their territories.*
3. *3 For a list of ICTY indictees and the locations where they were apprehended, see data compiled by the American University Washington College of Law War Crimes Research Office: War Crimes Research Office (2006).*
4. *4 It may seem intuitive to attribute states' failures to pursue indicted suspects to weak state capacity. Nevertheless, I follow other authors (e.g., McClendon [44]: 350) in assuming that state capacity is usually not a dominant factor in ICT noncompliance. This is not to say that capacity is irrelevant, but it is often the case that once previously noncompliant states decide to pursue suspects, they arrest them relatively quickly.*
5. *5 For details regarding the negotiations that preceded the establishment of the ICTR, see Peskin ([51]: 156–169).*
6. *6 Two individuals were indicted for crimes unrelated to participation in the actual conflict. Léonidas Nshogoza, a defense investigator, was indicted for contempt and surrendered to the*

court in Tanzania. See *The Prosecutor v. Léonidas Nshogoza* (2008). A witness, known by the pseudonym "GAA," was indicted for providing false testimony to the court and arrested in Rwanda. See *The Prosecutor v. GAA* (2007). I exclude these two indictees from my analysis.

7. 7 The text of Article 28 (UN Security Council 1994) reads: "States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to: a) The identification and location of persons;b) The taking of testimony and the production of evidence;c) The service of documents;d) The arrest or detention of persons;e) The surrender or the transfer of the accused to the International Tribunal for Rwanda."
8. 8 Not all formal democracies — states with popularly elected governments — are liberal democracies. Following *Slaughter*, I define the latter as also requiring the presence of and a commitment to "separation of powers, constitutional guarantees of civil and political rights, juridical equality, and a functioning judicial system dedicated to the rule of law" ([31]: 511).
9. 9 For a detailed treatment of QCA procedure, see *Schneider and Wagemann* ([66]).
10. It may sometimes be possible for regression analyses to approximate causal asymmetry using interaction terms, but this approach is problematic. First, regression-based interaction terms and set-theoretic causal configurations rest on different conceptual foundations, as the former models the multiplicative effect of one variable on another, while the latter refers to the logical intersection of particular sets. Second, causal configurations in QCA solutions often contain three or more conditions, and such high-order interactions are highly problematic — both technically and conceptually — for regression analysis. See *Schneider and Wagemann* ([66]: 87–88).
11. Data are taken from the ICTR website: (ICTR n.d.). The highest number of indictees arrested by any one state was 15 arrested by Kenya over five years. Several states arrested only a single indictee.
12. I also removed one case from my sample, Angola, because of conflicting reports regarding its connection to one arrest. Though the ICTR officially reported that one indictee was arrested in Angola, there were conflicting reports that the individual was actually residing and arrested in DRC. See *Prunier* ([55]: 44n97).
13. This lack of empirical diversity also helps explain why despite the presence of democracy in the solution for Model 1, the noncompliance constituencies solution in Model 2 contains no terms referring to democracy — whether its presence or absence. Nevertheless, the fact that noncompliant Italy scores positive on both democracy and noncompliance constituencies is not inconsistent with the solution in Model 1 that found an effect of democracy on compliance. As I discussed earlier, the set-theoretic foundation of QCA allows for the possibility that the same condition contributes to both the occurrence and nonoccurrence of an outcome depending on its combination with other conditions.
14. For discussion of the problem of endogeneity in compliance research, see *Downs et al.* ([19]).
15. Data used in the study can be obtained for purposes of replication at:  
<https://dataverse.harvard.edu/dataverse/jhr>.
16. Supplemental data for this article can be accessed on the publisher's website.

## References

- AGENCE FRANCE PRESSE (AFP). (2001, July 17) *Catholic Church defends Rwandan priest sought for genocide*. Agence France Presse. [Online]. Available: <http://academic.lexisnexis.com> [30 November 2015].
- AKHAVAN, Payam. (2001) *Beyond impunity: Can international criminal justice prevent future atrocities?* *The American Journal of International Law*, 95(1), 7–31.
- ANDRE RWAMAKUBA V. THE PROSECUTOR. (2007, May 15) *Annex A to defense brief appeal concerning appropriate remedy*. ICTR-98-44C-A [28 February 2007].
- BARKAN, Joel D. (2004) *Kenya after Moi*. *Foreign Affairs*, 83(1), 87–100.
- BARRY, Colin M., CLAY, K. Chad, and FLYNN, Michael E. (2013) *Avoiding the spotlight: Human rights shaming and foreign direct investment*. *International Studies Quarterly*, 57(3), 532–544.
- BASS, Gary J. (2000) *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton, NJ: Princeton University Press).
- BUENO DE MESQUITA, Bruce, SMITH, Alastair, SIVERSON, Randolph, and MORROW, James D. (2004) *The Logic of Political Survival* (Cambridge, MA: MIT Press).
- CARDENAS, Sonia. (2007) *Conflict and Compliance: State Responses to International Human Rights Pressure* (Philadelphia: University of Pennsylvania Press).
- CARPENTER, R. Charli. (2007) *Studying issue (non)-adoption in transnational advocacy networks*. *International Organization*, 61(3), 643–667.
- CARROLL, Rory. (2000, July 15) *Church hides Rwandan priest in Tuscany*. *The Guardian*. [Online]. Available: <http://www.theguardian.com/world/2001/jul/16/rorycarroll> [29 November 2015].
- CHAYES, Abram, and CHAYES, Antonia H. (1993) *On compliance*. *International Organization*, 47(2), 175–205.
- CHECKEL, Jeffrey T. (1999) *Norms, institutions, and national identity in contemporary Europe*. *International Studies Quarterly*, 43(1), 84–114.
- CORTELL, Andrew P., and DAVIS, James W. (1996) *How do international institutions matter?: The domestic impact of international rules and norms*. *International Studies Quarterly*, 40(4), 451–478.
- DAI, Xinyuan. (2005) *Why comply?: The domestic constituency mechanism*. *International Organization*, 59(2), 363–398.
- DEL PONTE, Carla. (2009) *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity: A Memoir* (New York: Other Press, LLC).
- DES FORGES, Alison. (1999) *"Leave None to Tell the Story": Genocide in Rwanda* (New York: Human Rights Watch).
- DIAMANTI, Ilvo, and CECCARINI, Luigi. (2007) *Catholics and politics after the Christian Democrats: The influential minority*. *Journal of Modern Italian Studies*, 12(1), 37–59.
- DONOVAN, Mark. (2003) *The Italian state: No longer Catholic, no longer Christian*. *West European Politics*, 26(1), 95–116.
- DOWNS, George W., ROCKE, David M., and BARSOOM, Peter N. (1996) *Is the good news about compliance good news about cooperation?* *International Organization*, 50(3), 379–406.
- DREHER, Axel. (2006) *Does globalization affect growth?: Evidence from a new index of globalization*. *Applied Economics*, 38(10), 1091–1110.

- ESCRITT, Thomas, and SHUAIB, Ali. (2013) *Libya Paid Mauritania \$200 Million to Extradite Ex-Spy Chief: Lawyer*. [Online]. Available: <http://www.reuters.com/article/2013/01/15/us-libya-icc-senussi-idUSBRE90E10620130115> [15 January 2013].
- FARBER, Daniel A. (2002) *Rights as signals*. *The Journal of Legal Studies*, 31(1), 83–98.
- FREEDOM HOUSE. (2013) *Freedom in the World* (Washington, DC: Freedom House).
- GHOSN, Faten, and BENNETT, Scott. (2003) *Codebook for the Dyadic Militarized Interstate Dispute Data, Version 3.10*. [Online]. Available: <http://correlatesofwar.org> [30 November 2015].
- GINSBURG, Tom. (2006) *Locking in democracy: Constitutions, commitment, and international law*. *New York University Journal of International Law and Politics*, 38(4), 707–760.
- GOERTZ, Gary, and MAHONEY, James. (2012) *A Tale of Two Cultures: Qualitative and Quantitative Research in the Social Sciences* (Princeton, NJ: Princeton University Press).
- GOODLIFFE, Jay, HAWKINS, Darren, HORNE, Christine, and NIELSON, Daniel L. (2012) *Dependence networks and the international criminal court*. *International Studies Quarterly*, 56(1), 131–147.
- GRODSKY, Brian. (2011) *Exploring the Schelling conjecture in reverse: "International constraints" and cooperation with the International Criminal Tribunal for the Former Yugoslavia*. *European Journal of International Relations*, 17(1), 121–143.
- HAFNER-BURTON, Emilie M. (2005) *Trading human rights: How preferential trade agreements influence government repression*. *International Organization*, 59(3), 593–629.
- HILLEBRECHT, Courtney. (2014) *The power of human rights tribunals: Compliance with the European Court of Human Rights and domestic policy change*. *European Journal of International Relations*, 20(4), 1100–1123.
- HUMAN RIGHTS WATCH. (1995) *Rwanda/Zaire: Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide* (New York: Human Rights Watch).
- INAMBAAO, Chrispin. (1997, August 19) *Government U-turn on genocide suspect*. *The Namibian*. [Online]. Available: <http://academic.lexisnexis.com> [30 November 2015].
- INTERNATIONAL CRIMINAL COURT. (2010) *Decision informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute about Omar Al-Bashir's presence in the territory of the Republic of Kenya*. ICC-02/05-01/09 [27 August 2010].
- INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA. (n.d.) *Status of cases*. [Online]. Available: <http://41.220.139.198/Cases/StatusofCases/tabid/204/Default.aspx> [30 November 2015].
- JACKSON, Robert H., and ROSBERG, Carl G. (1982) *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant* (Berkeley: University of California Press).
- KAUFMANN, Daniel, KRAAY, Aart, and MASTRUZZI, Massimo. (2010) *The Worldwide Governance Indicators: Methodology and Analytical Issues*, World Bank Policy Research Working Paper No. 5430 (Washington, DC: World Bank). [Online]. Available: <http://ssrn.com/abstract=1682130> [30 November 2010].
- KELLEY, Judith. (2007) *Who keeps international commitments and why?: The International Criminal Court and bilateral nonsurrender agreements*. *American Political Science Review*, 101(3), 573–589.
- KERR, Rachel. (2004) *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics, and Diplomacy* (Oxford: Oxford University Press).

- KIM, Hun J., and SIKKINK, Kathryn. (2010) *Explaining the deterrence effect of human rights prosecutions for transitional countries*. *International Studies Quarterly*, 54(4), 939–963.
- KOENIG-ARCHIBUGI, Mathias. (2004) *Explaining government preferences for institutional change in EU foreign and security policy*. *International Organization*, 58(1), 137–174.
- LAMONT, Christopher K. (2010) *International Criminal Justice and the Politics of Compliance* (Surrey: Ashgate).
- LEFTIE, Peter, and KELLY, Kevin. (2010, August 28) *Storm over al-Bashir's surprise visit*. *The Daily Nation*. [Online]. Available: <http://academic.lexisnexis.com> [30 November 2015].
- MAGNARELLA, Paul J. (2000) *Justice in Africa: Rwanda's Genocide, Its Courts and UN Criminal Tribunal* (Aldershot: Ashgate).
- MCCLENDON, Gwyneth C. (2009) *Building the rule of international criminal law: The role of judges and prosecutors in the apprehension of war criminals*. *Human Rights Review*, 10(3), 349–372.
- MEERNIK, James. (2008) *It's time to stop running: A model of the apprehension of suspected war criminals*. *International Studies Perspectives*, 9(2), 165–182.
- MOGHALU, Kingsley. (2005) *Rwanda's Genocide: The Politics of Global Justice* (New York: Palgrave Macmillan).
- NAMUNANE, Bernard. (2010, October 26) *Presidents' talks moved as ICC pursues al-Bashir*. *The Daily Nation*. [Online]. Available: <http://academic.lexisnexis.com> [30 November 2015].
- NEUMAYER, Eric. (2005) *Do international human rights treaties improve respect for human rights?* *Journal of Conflict Resolution*, 49(6), 925–953.
- NOORUDDIN, Irfan, and PAYTON, Autumn L. (2010) *Dynamics of influence in international politics: The ICC, BIAs, and economic sanctions*. *Journal of Peace Research*, 47(6), 711–721.
- OLSEN, Tricia D., PAYNE, Leigh A., and REITER, Andrew G. (2010) *The justice balance: When transitional justice improves human rights and democracy*. *Human Rights Quarterly*, 32(4), 980–1007.
- PESKIN, Victor. (2008) *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press).
- PROROK, Alyssa K., and APPEL, Benjamin J. (2014) *Compliance with international humanitarian law: Democratic third parties and civilian targeting in interstate war*. *Journal of Conflict Resolution*, 58(4), 713–740.
- THE PROSECUTOR V. GAA. (2007) *Amended indictment*. ICTY-07-90-R77-I. [Online]. Available: <http://www.unictr.org/en/cases/ictr-07-90-r77> [30 November 2007].
- THE PROSECUTOR V. LÉONIDAS NSHOGOZA. (2008) *Indictment*. ICTR-07-91-I. [Online]. Available: <http://www.unictr.org/en/cases/ictr-07-91> [7 January 2008].
- PRUNIER, Gerard. (2009) *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe*. (Oxford: Oxford University Press).
- RAGIN, Charles C. (1987) *The Comparative Method: Moving Beyond Qualitative and Quantitative Strategies* (Berkeley: University of California Press).
- RAGIN, Charles C. (2008) *Redesigning Social Inquiry: Fuzzy Sets and Beyond* (Chicago: University of Chicago Press).
- RAGIN, Charles C. (2009) *Qualitative comparative analysis using fuzzy sets (fsQCA)*. In *Configurational Comparative Methods: Qualitative Comparative Analysis (QCA) and Related Techniques*, Benoît Rihoux and Charles C. Ragin (eds.) (Los Angeles: Sage).

- RAGIN, Charles C., DRASS, Kriss A., and DAVEY, Sean. (2006) *Fuzzy-Set/Qualitative Comparative Analysis 2.0* (Tucson, AZ: Department of Sociology, University of Arizona).
- RITTER, Emily H., and WOLFORD, Scott. (2012) Bargaining and the effectiveness of international criminal regimes. *Journal of Theoretical Politics*, 24(2), 149–171.
- ROPER, Steven D., and BARRIA, Lilian A. (2008) State co-operation and International Criminal Court bargaining influence in the arrest and the surrender of suspects. *Leiden Journal of International Law*, 21(2), 457–476.
- SAIDEMAN, Stephen M. (2002) Discrimination in international relations: Analyzing external support for ethnic groups. *Journal of Peace Research*, 39(1), 27–50.
- SANDHOLTZ, Wayne, and GRAY, Mark M. (2003) International integration and national corruption. *International Organization*, 57(4), 761–800.
- SCHARF, Michael P. (2000) The tools for enforcing international criminal justice in the new millennium: Lessons from the Yugoslavia tribunal. *DePaul Law Review*, 49(4), 925–980.
- SCHEFFER, David. (2012) *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press).
- SCHNEIDER, Carsten Q., and WAGEMANN, Claudius. (2012) *Set-Theoretic Methods for the Social Sciences: A Guide to Qualitative Comparative Analysis* (Cambridge: Cambridge University Press).
- SIKKINK, Kathryn, and WALLING, Carrie B. (2007) The impact of human rights trials in Latin America. *Journal of Peace Research*, 44(4), 427–445.
- SLAUGHTER, Anne-Marie. (1995) International law in a world of liberal states. *European Journal of International Law*, 6(1), 503–538.
- STRAUS, Scott. (2006) *The Order of Genocide: Race, Power, And War in Rwanda* (Ithaca, NY: Cornell University Press).
- SUBOTIC, Jelena. (2009) *Hijacked Justice: Dealing with the Past in the Balkans* (Ithaca, NY: Cornell University Press).
- SWAIN, Jon. (2007, April 1) Africa's Pol Pot. *Sunday Times* (London), p. 24.
- THEMNÉR, Lotta, and WALLENSTEEN, Peter. (2012) Armed conflict, 1946–2011. *Journal of Peace Research*, 49(4), 565–575.
- THOMAS, Daniel C. (2001) *The Helsinki Effect: International Norms, Human Rights, and the Demise of Communism* (Princeton, NJ: Princeton University Press).
- TOMZ, Michael. (2008) *Reputation and the Effect of International Law on Preferences and Beliefs*, Working paper (Stanford, CA: Stanford University). [Online]. Available: <http://web.stanford.edu/~8764;tomz/working/Tomz-IntLaw-2008-02-11a.pdf> [12 February 2015].
- TRANSPARENCY INTERNATIONAL. (1996) *Transparency International Corruption Perception Index 1996* (Göttingen, Germany: Universität Göttingen).
- TRANSPARENCY INTERNATIONAL. (2001) *The Kenya Urban Bribery Index* (Göttingen, Germany: Universität Göttingen).
- UN SECURITY COUNCIL. (1994) *Statute of the International Tribunal for Rwanda*. UN Doc. S/RES/955.
- US EMBASSY NAIROBI. (2007) Looking for Kabuga: Possible signs of increased Kenyan government cooperation with ICTR. Wikileaks cable 07NAIROBI4630. [Online]. Available: <http://www.wikileaks.org/plusd/cables/07NAIROBI4630%5fa.html> [3 December 2007].

- VALENTINO, Benjamin, and HUTH, Paul, and CROCO, Sarah. (2006) *Covenants without the sword: International law and the protection of civilians in times of war*. *World Politics*, 58(3), 339–377.
- VON STADEN, Andreas. (2012) *Rational Choice Within Normative Constraints: Compliance by Liberal Democracies with the Judgments of the European Court of Human Rights*, Working paper. [Online]. Available: <http://ssrn.com/abstract=2000024> [18 February 2015].
- WALLACE, Geoffrey P. R. (2012) *Welcome guests, or inescapable victims?: The causes of prisoner abuse in war*. *Journal of Conflict Resolution*, 56(6), 955–981.
- WAR CRIMES RESEARCH OFFICE. (2006) *ICTY indictee details* (Washington, DC: American University Washington College of Law). [Online]. Available: <https://www.wcl.american.edu/warcrimes/documents/2006-11-30ICTYMasterList.pdf> [30 November 2015].
- WHITAKER, Beth E. (2010) *Compliance among weak states: Africa and the counter-terrorism regime*. *Review of International Studies*, 36(3), 639–662.
- WORLD BANK. (2011) *World Development Indicators* (Washington, DC: World Bank).
- WORLDPUBLICOPINION.ORG. (2009) *Muslim and African Nations on Bashir Indictment and Darfur*. [Online]. Available: <http://www.worldpublicopinion.org/pipa/pdf/jul09/WPO%5fDarfur%5fJul09%5fquaire.pdf> [12 February 2014].