

Do Americans Support War Crimes Prosecutions?*

Kelebogile Zvobgo
William & Mary
kzvobgo@wm.edu

Alan J. Simmons
University of Illinois Springfield
asimm2@uis.edu

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Abstract

Do Americans support war crimes investigations and prosecutions? Historically, the United States has considered itself a torchbearer of international criminal justice, leading the establishment of tribunals in Nuremberg, Tokyo, the Hague, and Arusha. The United States even participated in the drafting of the Rome Statute, which established the International Criminal Court (ICC). Yet the nation was not a subject of an international criminal tribunal – until the ICC’s Afghanistan investigation, which covers, among others, the Afghan National Security Forces, the Taliban, and U.S. military and intelligence personnel. Previous scholarship shows Americans support the ICC and U.S. membership. However, almost all of this research precedes the Afghanistan investigation, leaving open two important questions: (1) to what extent does the U.S. public support ICC investigations and possible prosecutions of U.S. personnel and (2) what discursive frames (i.e., arguments) support or undermine the ICC’s work? Extending research on U.S. foreign policy public opinion, we propose that human rights arguments will increase and national interest arguments will decrease support for the ICC’s work in Afghanistan. We test this proposition using an online survey experiment. The upshot is Americans are fairly fixed in their opinions and the vast majority support investigations and prosecutions.

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Introduction

In the aftermath of the Second World War, the United States and the Allied Powers established in Nuremberg, Germany and Tokyo, Japan the first international criminal tribunals of the modern era. The trials, which lasted from 1945 to 1948, were historic, meting out justice for high-level German and Japanese leaders accused of committing war crimes, crimes against humanity, and crimes against peace, and conspiracy to commit these crimes ([Bass 2002](#)).

Nearly fifty years later, in 1993 and 1994, the United States, as part of the United Nations Security Council, installed two new tribunals, this time to prosecute alleged perpetrators of serious crimes in the Balkans and Rwanda ([Haddad 2011](#)). Like their predecessors in Nuremberg and Tokyo, the International Criminal Tribunal for the Former Yugoslavia (ICTY), based in the Hague, the Netherlands, and the International Criminal Tribunal for Rwanda (ICTR), based in Arusha, Tanzania, were reactive, rather than proactive, tools to address grave violations of international criminal law. Nonetheless, the tribunals expanded the promise and power of international justice, prosecuting individuals not only for war crimes and crimes against humanity but also for genocide. The ICTY and ICTR also addressed, in theory if not in practice, all parties to the respective conflicts, not just the winners ([Peskin 2005](#)). Still, more could be done.

In 1998, after years of deliberation and negotiation, 120 countries adopted the Rome Statute, establishing the International Criminal Court (ICC). This court would be permanent, rather than temporary, and it would have jurisdiction over any member country that did not deliver accountability for perpetrators of atrocity crimes.¹ The United States was active in the Rome Statute's drafting but was conspicuously absent from the treaty's ratification and entry into force ([Smith 2012](#)).

While the United States has considered itself a torchbearer of international criminal justice, its support has always been conditional. The country has supported international tribunals that could not investigate Americans (as in Nuremberg and Tokyo, and at the ICTR) or that were not likely to do so (as with the ICTY).² The ICC, with its claims of near-universal jurisdiction, was simply a bridge too far for U.S.

¹ In addition, the Court would have jurisdiction over non-member nationals accused of committing serious crimes on the territory of a member state or a non-member state that has accepted jurisdiction via a Rome Statute Article 12(3) declaration. The Court would also have jurisdiction over any state the United Nations Security Council referred to it.

² The ICTY was competent to investigate U.S. personnel engaged in NATO operations that might amount to war crimes and crimes against humanity, for example, the 1999 bombing of Serbia, but the Tribunal declined to do so.

leaders spanning the ideological spectrum. And so the United States did not join this monumental treaty regime.³ In fact, the United States has actively resisted the Court, from President George W. Bush's conditioning of foreign aid on recipient countries not transferring U.S. personnel to the Hague, to Donald Trump's economic and diplomatic sanctions on ICC officials (Zvobgo 2021b). This speaks to a broader trend in U.S. foreign policy as it relates to global governance: the country is "unlikely to support and join international organizations (IOs) [...] unless it can exercise significant control over them" (Zvobgo 2019, 1065).⁴ It is a case of what Ba (2021) describes as "law for thee but not for me."

But as recent scholarship indicates, the U.S. government and the U.S. public are divided on the question of how much influence the country should exercise over international institutions and whether the country should participate in institutions like the ICC. Brutger and Clark (2023) argue and find that U.S. liberals see the country's influence as an impediment to IOs, especially to IOs' ability to be fair. Conservatives disagree: they see U.S. influence as an asset to IOs – and as a benefit to the United States. Meanwhile, Zvobgo (2019) finds that the majority of Americans believe that the United States should become an ICC member, with Democrats more likely to hold this viewpoint than Republicans.

The ICC's investigation into the war in Afghanistan represents an historic first attempt to hold U.S. personnel accountable for suspected atrocity crimes. This development provokes two important questions, in light of prior scholarship: (1) to what extent does the U.S. public support ICC investigations and possible prosecutions of U.S. personnel and (2) what discursive frames (i.e., arguments) support or undermine the ICC's efforts?⁵

We build on the literature on U.S. foreign policy public opinion, first to determine and second to assess discursive frames that have been shown to resonate with Americans when formulating their opinions of IOs in general and the ICC in particular. We expect that human rights arguments will increase and national interest arguments will decrease support for the ICC's Afghanistan investigation as it relates to U.S. personnel. We test this proposition using an online survey experiment that we conducted in June

³ President Clinton signed the Rome Statute during his last days in office but expected (correctly) that the U.S. Senate would not ratify it. Signing the treaty was important, however; it meant that the United States could participate in future negotiations about the ICC's jurisdiction, which the country did at the 2010 Rome Statute review conference in Kampala, Uganda.

⁴ See, also, Amann and Sellers (2002), Cerone (2007), DeLaet (2005), and Sandholtz (2009).

⁵ Framing is a part of argumentation, where a speaker or writer emphasizes one aspect of an issue for an audience. The speaker or writer's goal is for the audience to formulate an opinion on the issue based primarily on that emphasized aspect (Chong and Druckman 2007a,b; Druckman 2001; Druckman and Nelson 2003).

2021, two months before the U.S. withdrawal from Afghanistan and three months before the ICC's new chief prosecutor, Karim Khan, announced his investigation would not focus on U.S. personnel.

U.S. public opinion in this case appears to be fairly fixed, with our survey participants responding very little to treatments that have in the past been shown to be influential. Fortunately for the international criminal justice regime, the vast majority of Americans surveyed support investigations and prosecutions – an important finding, given a history of exceptionalism, elite concerns with sovereignty, and skepticism about international law and courts among policy makers ([Krcmaric 2023](#)). Prior research suggests that it is not the specter of accountability for perpetrators that worries ordinary Americans; they care about fairness ([Zvobgo 2019](#)). So long as the ICC can demonstrate fairness in investigations and prosecutions, the Court will find an important compliance constituency among the American public.⁶ This could spur cooperation between the U.S. government and the Court vis-à-vis U.S. personnel accused of serious crimes or, at the very least, could prompt the U.S. government to conduct its own investigations and prosecutions, consistent with the principle of complementarity.

Trial and Error: Accountability for U.S. War Crimes

The ICC's preliminary examination into alleged atrocity crimes in Afghanistan since 2003 was opened in 2006 and unsealed in 2007, with the full investigation beginning in 2020, after the chief prosecutor at the time, Fatou Bensouda, demonstrated to judges that Afghanistan and the United States had not undertaken genuine proceedings to address abuse allegations. The investigation theoretically covers, among others, the Afghan National Security Forces, the Taliban, and U.S. military and intelligence personnel.⁷ However, in 2021, the ICC's new chief prosecutor, Karim Khan, announced his office would prioritize investigating the Taliban and the Islamic State-Khorasan (ISIS-K) and *de-prioritize* other parties, notably U.S. military and intelligence personnel ([Besmel 2024](#)).

De-prioritizing the U.S. part of the investigation does not mean closing it. Starting with other conflict actors and abuses also does not mean U.S. personnel may not be liable to accountability at a later date.

⁶ On compliance constituencies, see [Alter \(2014\)](#). On legitimacy beliefs and public support for IOs, see, for example, [Dellmuth and Tallberg \(2023\)](#).

⁷ The investigation is unique for several reasons: it is the ICC's first investigation in Central Asia and only the ICC's second investigation into atrocities perpetrated in the context of inter- and intra-state conflict. In addition, it implicates a major world power that does not accept the Court's jurisdiction: the United States.

But the United States has a long and storied history of subverting attempts to hold its service members and intelligence professionals accountable for suspected crimes ([Zvobgo 2021b](#)).

The Bush administration opposed domestic litigation for suspected U.S. atrocity crimes, intervening in dozens of cases and using the excuse that litigation undermined the power of the Executive Branch to advance U.S. interests abroad. Administration officials described these cases as “dangerous” ([Stephens 2004](#)), even arguing that the Geneva Conventions and the U.S. Uniform Code of Military Justice should not apply to the so-called “War on Terror” ([Goldsmith 2007](#)). The administration likewise opposed international litigation, for a time conditioning U.S. foreign aid on recipient countries signing bilateral immunity agreements.

The Obama administration adjusted the playbook, taking steps to address some concerns about alleged U.S. war crimes and banning “enhanced interrogation” techniques. Still, Obama shelved a U.S. Senate report on torture by U.S. forces. In addition, he announced his administration would not pursue charges for those who ordered, oversaw, or enacted these tactics during the Bush years. Obama instead preferred to “look forward as opposed to looking backwards” on the issue of suspected atrocities ([Johnston and Savage 2009](#)).

The Trump administration on numerous occasions subverted accountability for U.S. military and intelligence personnel convicted of atrocities in Afghanistan and Iraq. In a controversial move, Trump pardoned Michael Behenna, Clint Lorance, and Mathew Golsteyn, and reversed the demotion of Eddie Gallagher, for war crimes under the U.S. Uniform Code of Military Justice ([Philipps 2019](#)). Trump also pardoned four private military contractors convicted of murdering 17 Iraqis and injuring 17 more in a 2007 massacre ([Bulos, Megerian and Wilkinson 2020](#)). The administration also imposed diplomatic and economic sanctions on key ICC personnel and threatened to do the same to individuals and groups who assisted the Afghanistan investigation, including, potentially, human rights non-governmental organizations (HROs).⁸

The Biden administration returned to the Obama playbook, reversing Trump’s sanctions and generally avoiding the issue of international investigations of Americans while not interfering with domestic investigations. In 2023, Biden pursued further rapprochement with the ICC, ordering his administration to begin sharing with prosecutors information about likely Russian atrocity crimes in Ukraine. Hypo-

⁸ U.S. Executive Order 13928.

critically, but not surprisingly, Biden supported the Court investigating Russians, though the Russian Federation, like the United States and its ally Israel, is not a party to the Rome Statute ([Zvobgo 2021a, 2023](#)).

Beyond having an uneasy, if not altogether defiant, attitude toward domestic accountability for alleged war crimes by U.S. personnel ([Kelley 2007](#); [Krcmaric 2023](#)), the Bush, Obama, Trump, and Biden administrations have unequivocally opposed international jurisdiction over U.S. personnel for the purpose of criminal accountability.

Theorizing U.S. Support for War Crimes Accountability

Scholarship on U.S. foreign policy public opinion is well established and growing ([Aldrich et al. 2006](#); [Berinsky 2007](#); [Brutger and Clark 2023](#); [Kenwick and Maxey 2022](#); [Kertzer and Zeitsoff 2017](#); [Larson and Savych 2005](#); [Levendusky and Horowitz 2012](#); [Lupu and Wallace 2019](#); [Morse and Pratt 2022](#); [Tomz 2007](#); [Tomz, Weeks and Yarhi-Milo 2020](#)), with an emphasis on the use of force and trade. But research on U.S. public opinion on international courts is relatively new.

U.S. Public Opinion on International Courts

[Simmons \(2017\)](#) and [Guisinger and Saunders \(2017\)](#) investigate the influence of national chauvinism and partisanship on U.S. public attitudes toward military tribunals and the International Centre for Settlement of Investment Disputes, respectively. [Voeten \(2020\)](#) likewise studies populism and backlash against the World Trade Organization's dispute settlement process. [Cohen and Powers \(2024\)](#), for their part, investigate public reactions to the International Court of Justice when it says the United States has not upheld its treaty commitments.⁹

Research on U.S. public attitudes toward the ICC is scant and, with rare exception,¹⁰ predates the ICC's formal investigation into alleged crimes by U.S. military and intelligence personnel in Afghanistan ([Dellmuth et al. 2022](#); [Zvobgo 2019](#); [Zvobgo and Chaudoin Forthcoming](#)). Critically, this work does not

⁹ [Cohen and Powers \(2024\)](#) also investigate reactions to the same message but from different senders, namely the injured state, a bipartisan group of U.S. lawmakers, and the United Nations.

¹⁰ In a recent study, [Zvobgo and Chaudoin \(Forthcoming\)](#) assess the effect of procedural fairness arguments in inducing U.S. public support for the ICC's Afghanistan investigation and in inducing support for U.S. domestic investigations. Like us, they find null results for their main treatment.

ask and answer the question of what factors support and undermine public opinion on atrocity crimes investigations and prosecutions at the ICC, in U.S. domestic courts, and in foreign domestic courts. This is a sizable gap in scholarship that our work begins to address.

Understanding U.S. public attitudes toward war crimes accountability, and especially at the ICC, has never been more important. No longer is international jurisdiction over U.S. military and intelligence operations a mere thought experiment. In addition, a multitude of HROs and major U.S. allies like France, Germany, and the United Kingdom have stood up for the ICC, condemning U.S. threats, intimidation, and attempts at interference, and challenging the country to consider the bigger picture: the ICC is a court of last resort, tasked with confronting the most serious international crimes ([Broache and Reed 2023](#)). Since public opinion can shape U.S. foreign policy ([Page and Shapiro 1983](#)) and influence commitment to and compliance with international laws and norms ([Simmons 2009](#); [Vreeland 2003](#)), it is vital that we study it, especially in this highly contentious context.

U.S. Public Opinion on the ICC

What arguments resonate with Americans when forming their views on the ICC? The American Bar Association (ABA), which from [2014](#) to [2018](#), fielded surveys measuring U.S. public opinion on the Court, finds that Americans are generally supportive of the Court and do not oppose it for the mere fact that it can investigate U.S. personnel under particular circumstances.¹¹ This finding is affirmed by [Chapman and Chaudoin \(2020\)](#) who find, contrary to their expectations, that even Americans with a military background hold similar views as the general public.¹² The ABA's research is further corroborated by [Zvobgo \(2019\)](#) who, in addition to measuring base levels of support for the ICC and U.S. membership, evaluates Americans' sensitivity to human rights and national interest arguments. The author finds that human rights and national interest arguments, respectively, have significant positive and negative effects on the public's support for ICC membership.

Much scholarship within the realist tradition of International Relations sees the public as *anti-realist*.

¹¹ Scholars should not simply attribute the gap between public opinion and government policy to Americans being less concerned with or less informed about foreign policy matters than domestic policy matters. Gaps between public opinion and government policy are also not unique to the foreign policy realm. Consider the issue of gun safety. Despite enjoying mass public support, the government has not enacted common-sense gun safety measures.

¹² See the supplementary appendix to Chapman and Chaudoin's article "Public Reactions to International Legal Institutions." See, also, [Gronke et al. \(2010\)](#).

Essentially, morality and ideology motivate the (under-informed) public, which desires the world to look like the United States. It is possible, then, that human rights arguments would be persuasive to Americans, whereas national interest arguments would not. Yet there is also research that shows the public *can* be realist, for instance, works by [Brewer \(2006\)](#) and [Drezner \(2008\)](#).

Human rights and national interests are not inherently in tension, to be sure. National interests are socially constructed and subject to contestation ([Weldes 1996](#)), and there are strong arguments for human rights to be understood as a matter of national interest (cf. [Nye Jr 1999](#); [Burke-White 2004](#); [Duroy 2023](#)). But historically, in a U.S. context, these ideas and ideals have often been juxtaposed against each other ([Zvobgo 2019](#)).

Setting aside briefly the question of which arguments Americans are likely to receive well, does public opinion matter? A wealth of scholarly evidence demonstrates as much ([Aldrich et al. 2006](#); [Chu and Recchia 2022](#); [De Mesquita and Siverson 1995](#); [Larson and Savych 2005](#); [Tomz, Weeks and Yarhi-Milo 2020](#); [Zvobgo and Chaudoin Forthcoming](#)).¹³ Elites, especially in democracies, care about public opinion and, where they can, they seek to shape it in their favor, including in the foreign policy realm ([Bearce and Scott 2019](#); [Brutger and Clark 2023](#); [Casler and Clark 2021](#); [Chaudoin 2023](#); [Guisinger and Saunders 2017](#); [Page and Shapiro 1983](#)). What is more, publics and their perceptions of international law and international institutions can facilitate state commitment and compliance ([Alter 2014](#); [Vreeland 2003](#); [Nooruddin and Simmons 2006](#); [Simmons 2009](#)). U.S. public opinion on the ICC, and whether and how it can shift, is thus an important question.¹⁴

In developing our theory and empirical strategy, we draw primarily on [Zvobgo \(2019\)](#) and [Simmons \(2017\)](#) who propose that human rights arguments and national interest arguments are resonant and influential in this foreign policy realm. Both Zvobgo's and Simmons's studies helpfully extend the literature on U.S. foreign policy public opinion, which has demonstrated, for instance, that Americans can show

¹³ Some scholarship, like [Kreps \(2010\)](#), holds that elites operate in an environment set up to privilege their views and marginalize the public's.

¹⁴ Recent U.S. presidents, including and perhaps especially Donald Trump, have brought international institutions, including the ICC, into the public square and sought to shape public opinion. If presidents make efforts to speak to the public and shape its views, then we as scholars of international relations should take public opinion more seriously and examine it more closely.

deference to IOs like the United Nations.¹⁵

Human Rights versus National Interests

Arguments predicated on the defense and promotion of human rights globally should persuade Americans to support war crimes investigations and prosecutions. The goal, after all, is to provide accountability where it has been missing. What is more, human rights are a core value in U.S. and world politics, if perhaps not universally respected at all times and in all places (Busby 2010; Donnelly 2013; Ruggie 2009).

Hypothesis 1 (International Human Rights)

Exposure to human rights arguments will result in increased support for war crimes investigations and prosecutions.

Historically, national interests have been invoked to create allowances for military and intelligence operations intended to further U.S. foreign policy, regardless of these operations' legality or morality (Gronke et al. 2010; Rejali 2009).¹⁶ Individuals exposed to national interest arguments may thus be less likely to support the premise of remedial actions, especially by a supranational authority like the ICC. The intuition for this argument builds on works by Brewer (2006) and Herrmann, Tetlock and Visser (1999).

Brewer (2006) finds that Americans view other countries more (less) favorably when they perceive those countries as interested in cooperating (competing) with the United States. This logic can extend to IOs like the ICC whose objectives may or may not align with U.S. interests. Herrmann, Tetlock and Visser (1999), for their part, show that Americans will support costly actions like the use of force to defend U.S. interests. Opposing international investigations would seem to be a much less costly action. Arguments predicated on national interests should thus dissuade Americans from supporting war crimes investigations and prosecutions.

¹⁵ Wallace (2017), for example, finds that Americans are more likely to support humanitarian interventions sanctioned by the United Nations than those not sanctioned by the organization. Americans can also prioritize international law over military and strategic interests. As an illustration, Kreps and Wallace (2016) find that Americans are less likely to support drone strikes when they are informed that the practice violates state sovereignty.

¹⁶ We limit the scope of our concept of the "national interest" to accomplish two related goals: (1) aid comparison to past research and (2) contribute to knowledge cumulation. But, from a policy perspective, U.S. national interests can and should be conceptualized to encompass human rights.

Hypothesis 2 (National Interests)

Exposure to national interest arguments will result in reduced support for war crimes investigations and prosecutions.

Human rights and national interest arguments resemble arguments from both sides of a now decades-old political debate on war crimes accountability ([Bolton 2002](#); [Clinton 2000](#); [Council on Foreign Relations 1999](#)) and they are helpful for assessing normative and instrumental reasons for supporting or opposing investigations and prosecutions.

Turning to the less-often discussed question of *where* to conduct war crimes investigations and prosecutions, since both the ICC and the United States are competent to investigate and prosecute serious crimes, there should be increased support for both of them doing so among individuals exposed to human rights arguments. With that said, we expect that these individuals will be more likely to prefer the ICC to U.S. courts since U.S. courts have *not* seriously investigated and prosecuted U.S. war crimes suspects.

Hypothesis 3 (International Human Rights and International Court Action)

Exposure to human rights arguments will result in greater support for war crimes investigations and prosecutions by the ICC relative to U.S. courts.

National interest arguments may also decrease support for investigations and prosecutions – in general and by U.S. authorities in particular. Essentially, national interests may provide a back-door out of accountability. Nevertheless, we expect that individuals exposed to national interest arguments will be more likely to prefer U.S. courts to the ICC since domestic courts are, in expectation, more likely than the ICC to take U.S. foreign policy interests into consideration.

Hypothesis 4 (National Interests and National Court Action)

Exposure to national interest arguments will result in greater support for war crimes investigations and prosecutions by U.S. courts relative to the ICC.

Finally, we argue that political ideology should be an important moderator. Liberals tend to espouse egalitarian norms, whereas conservatives tend to espouse social dominance norms ([Brutger 2021](#); [Brutger and Clark 2023](#); [Hiel and Mervielde 2002](#); [Jost 2017](#); [Rathbun 2007](#)). These two sets of norms are, respectively, embodied in human rights arguments and national interest arguments. Thus, we propose that

liberals will respond more strongly than conservatives to the human rights argument, and conservatives will respond more strongly than liberals to the national interest argument.

Hypothesis 5a (Political Ideology and Moderation)

Liberals will be more supportive of war crimes investigations and prosecutions than conservatives when exposed to human rights arguments.

Hypothesis 5b (Political Ideology and Moderation)

Conservatives will be less supportive of war crimes investigations and prosecutions than liberals when exposed to national interest arguments.

We examine additional hypotheses pre-registered with Evidence in Governance and Politics (EGAP) in the supplemental appendix.

Research Design

To evaluate our expectations, we administered an online survey experiment in June 2021, randomly assigning a nationally representative sample of approximately 1,000 U.S. adults recruited via Marketing Systems Group to eight experimental conditions. We conducted our survey before the U.S. withdrawal from Afghanistan and before Karim Khan announced his investigation's pivot toward the Taliban and ISIS-K for suspected atrocities and away from the Afghan National Security Forces and U.S. military and intelligence personnel.

As with all methodologies, survey experiments have a number of benefits and drawbacks. The main benefit is random assignment to the treatment and control conditions. Since respondents in different treatment groups are, in expectation, similar on observable and unobservable characteristics, we can compare groups and reasonably attribute cross-group differences to the treatments. The main drawback is external validity. People likely behave differently in an online survey environment than they do in the real world. Survey experiments also reduce complex issues into short vignettes, and address a limited number of potentially interesting outcomes. Notwithstanding, we believe the strengths of an experimental approach outstrip the weaknesses. Our work also builds on years of observational and experimental research by practitioners and academics on U.S. ICC public opinion – work that has been carefully done and that has produced remarkably consistent results.

Survey Experiment

To start, half of the sample was given background information on the ICC (see the appendix) to ensure that observed differences in treatment groups were not the product of *any* information about ICC actions – to which respondents could respond favorably or unfavorably – but, rather, were the result of *specific* information, i.e., arguments for and against ICC investigations and prosecutions.¹⁷ Next, respondents were assigned to one of four conditions: human rights, national interests, human rights and national interests (competing), and control. See Table 1. The results of tests of additional hypotheses pre-registered with EGAP, including those related to the competing frames condition, are discussed in the appendix.

Table 1: Treatment Groups

Frame	Information	No Information
Human Rights	Group 1	Group 5
National Interest	Group 2	Group 6
Competing	Group 3	Group 7
Control	Group 4 (info. baseline)	Group 8 (true baseline)

Treatment vignettes are presented in full below.

Common Base for Human Rights, National Interest, and Competing Treatments

In March of 2020, the Office of the Prosecutor at the International Criminal Court (ICC) opened a formal investigation into suspected war crimes and crimes against humanity in Afghanistan since 2003, which is the year that Afghanistan became an ICC member. From 2003 onward, any allegations of serious crimes in Afghanistan, whether by Afghan or foreign actors, are open to investigation by the ICC.

The ICC Prosecutor is investigating alleged abuses by both anti-government and pro-government forces, including members of the Taliban, the Afghan National Security Forces, the United States military and the CIA.

On the U.S. side of the investigation, the information gathered so far indicates that U.S. personnel used torture during interrogations. Torture is considered a war crime under both U.S. law and international law. The U.S. has not conducted any investigations or prosecutions against those who appear most responsible.

¹⁷ Readers may be concerned about a possible priming effect since the ICC’s mission is objectively good, even noble. This concern is not without basis but is easily allayed through cross-group comparisons.

Human Rights Treatment

Investigating individuals accused of serious crimes and, where appropriate, bringing charges and prosecuting them is needed to defend and promote human rights around the world.

National Interest Treatment

The decision to investigate, charge, and prosecute individuals for serious crimes should be up to each country. Options are needed to defend national sovereignty and national interests around the world.

The competing treatment is a simple combination of the human rights and national interest treatments separated by the conjunction “But.”

Outcome Measures

Our first outcome of interest is measured by the dependent variable *Support Any Investigation*, with responses ranging from “strongly support” to “strongly oppose.” We construct binary and ordinal indicators.¹⁸ The binary indicator equals 1 if respondents choose “strongly support” or “somewhat support,” otherwise zero. The ordinal indicator ranges from 1 (“strongly oppose”) to 5 (“strongly support”). We use the binary measure in the main analysis and the ordinal, five-point measure in a supplementary analysis in the appendix. Our second and third dependent variables, *Support ICC Investigation*¹⁹ and *Support U.S. Investigation*,²⁰ are constructed and measured as above.

Caveats

We recognize that the treatments could have been stronger. We could have rephrased the human rights treatment vignette to start with “Investigating Americans accused of serious crimes...” instead of “Investigating individuals accused of serious crimes...” though this was implied. We also could have rephrased the national interest treatment as “The decision to investigate, charge, and prosecute Americans [...] should be up to the United States. Options are needed to defend U.S. national sovereignty...” though this was also implied. Nonetheless, we believe the treatments we administered, especially in light of the common base, were sufficiently strong. Our post-treatment questions were also pointed, asking

¹⁸ The exact wording of the question was: How much do you support any court (domestic or international) investigating and, where appropriate, prosecuting U.S. military and intelligence personnel for suspected war crimes and crimes against humanity in Afghanistan since 2003?

¹⁹ The exact wording of the question was: How much do you support the International Criminal Court (ICC) investigating and, where appropriate, prosecuting U.S. military and intelligence personnel for suspected war crimes and crimes against humanity in Afghanistan since 2003?

²⁰ The exact wording of the question was: How much do you support U.S. domestic courts investigating and, where appropriate, prosecuting U.S. military and intelligence personnel for suspected war crimes and crimes against humanity in Afghanistan since 2003?

respondents how much they support courts in general and then, specifically, the ICC and domestic courts investigating U.S. personnel for suspected war crimes in Afghanistan since 2003.

In addition, we acknowledge that we do not separate “investigations” and “prosecutions.” While the ICC has investigated U.S. personnel, there have been no prosecutions to date. We prioritized external validity in the survey design, so we did not discuss prosecutions alone. But future research may seek to use less-abstract experimental vignettes, depicting, for example, a hypothetical service member who is under ICC scrutiny. We also did not discuss investigations alone, as we were concerned that this would weaken our treatments. Many investigations do not lead anywhere, so we wanted to highlight the possibility of prosecutions as an outcome.

We also realize that treatment frames like ours can function as ideological signaling devices. Some people may think of “human rights” positively, while others view it with suspicion, perhaps perceiving it as a cudgel of the political left. Inversely, some people may think of “national interests” positively, while others approach it with hesitancy, considering it a dog whistle for foreign policy run amok. For this reason, we collected demographic data to try and mitigate bias in our estimates produced not by the substance of our treatments but by additional meanings respondents might attach to them.

Sample Statistics and Randomization

Table 2 provides sample statistics. Our sample is slightly more white and more educated than the broader U.S. population ([U.S. Census Bureau 2019](#)). Respondents have an overall high level of support for accountability for suspected U.S. abuses in Afghanistan: 64 percent support accountability at a domestic or international court, 63 percent at the ICC, and 67 percent in U.S. courts.

These are important, first-of-their-kind descriptive findings. They are all the more notable amid recent political polarization, populism, and backlash against international norms and institutions, as well as historical American exceptionalism. Also notable is 50 percent of the sample has prior knowledge of the ICC, the same result as the one in [Zvobgo \(2019\)](#) – which also coheres with the ABA’s ICC Project findings.²¹ More noteworthy still is nearly one-quarter of the sample has prior knowledge of the ICC’s Afghanistan investigation.²²

²¹ The exact question wording was: Before today, had you heard of the International Criminal Court?

²² The exact question wording was: Before today, had you heard of the International Criminal Court’s investigation into U.S. personnel in Afghanistan?

We tested for covariate balance between groups using the procedure detailed in [Hansen and Bowers \(2008\)](#). Sample randomization is not a perfect procedure, so we wanted to ensure that the treatment groups were balanced with respect to respondent demographics. The overall χ^2 statistics and associated p -values for each treatment group are: human rights, 8.06 ($p = 0.427$); national interest, 11 ($p = 0.2$); competing, 5 ($p = 0.758$); and null, 10.2 ($p = 0.253$). We do not find strong evidence of imbalance.

Table 2: Summary Statistics of Participant Characteristics

	<i>Mean</i>	<i>Min</i>	<i>Max</i>	<i>N</i>
Human Rights	0.24	0	1	1002
National Interests	0.26	0	1	1002
Competing	0.25	0	1	1002
Information	0.49	0	1	1002
Support Any Court Inv. (binary)	0.64	0	1	1002
Support ICC Inv. (binary)	0.63	0	1	1002
Support U.S. Courts Inv. (binary)	0.67	0	1	1002
Prior knowledge of ICC	0.50	0	1	1002
Prior knowledge of Afg. inv.	0.23	0	1	1002
White	0.64	0	1	1002
Woman	0.51	0	1	1002
Liberal	0.31	0	1	1002
Conservative	0.30	0	1	1002
Bachelor's degree	0.44	0	1	1002
Under 40	0.44	0	1	1002

Experimental Results

We assess treatment effects by comparing mean levels of support across treatment conditions and through a series of regressions for each potential forum for accountability (a domestic or international court, the ICC, or U.S. courts). Figure 1 summarizes our results. Table 3 presents parsimonious ordinary least squares (OLS) regressions with the dependent variable measured as binary. Logit regressions are available in the appendix, as are ordered logit regressions with the dependent variable measured on a five-point scale.

Across our main treatment conditions and court options, there are no discernible, statistically significant differences, as shown by consistently overlapping confidence intervals in Figure 1 and the absence of asterisks indicating statistical significance at the 5-percent error level in Table 3. We do not find that exposure to human rights arguments increases support for war crimes investigations and prosecutions (Hypothesis 1) or that exposure to national interest arguments decreases support (Hypothesis 2). It

seems there are ceiling and floor effects at play, where support (opposition) cannot be moved up or down.

Hypothesis 3 states that exposure to human rights arguments will result in greater support for ICC action, relative to U.S. court action. Meanwhile Hypothesis 4 states that exposure to national interest arguments will result in greater support for U.S. court action relative to ICC action. Building on Figure 1 and Table 3, Figure 2 shows U.S. courts rank first, regardless of treatment condition, with respondents in the human rights condition preferring U.S. courts at a slightly higher rate than respondents in the national interest condition. These differences are not consistent with Hypotheses 3 and 4, but tentatively support the idea of “positive complementarity,” that the specter of international accountability can motivate support for action at the domestic level (Dancy and Montal 2017; Nouwen 2013; Zvobgo and Chaudoin Forthcoming).

Building on this, and per Table 3, the information treatment – which we did not hypothesize about but included to bridge our work with past studies – also does not strongly influence support for investigations and prosecutions in general and by the ICC in particular, but it does positively influence support for U.S. investigations and prosecutions. Future research should theorize and (re)evaluate this difference in results. On its face, this finding supports, if preliminarily, positive complementarity: the public, when better informed about the ICC, seems to want U.S. authorities to take back the control they ceded to the Hague.

Table 3: Framing Effects on Support for Accountability, by Court (Parsimonious Models)

	Support Any Inv. (1)	Support ICC Inv. (2)	Support U.S. Inv. (3)
Human Rights	-0.077 (0.04)	-0.053 (0.04)	-0.037 (0.04)
National Interests	0.046 (0.04)	0.023 (0.04)	0.006 (0.04)
Competing	0.021 (0.04)	0.013 (0.04)	0.069 (0.04)
Information	0.036 (0.03)	0.016 (0.03)	0.074* (0.03)
Constant	0.619* (0.03)	0.625* (0.03)	0.625* (0.03)
Observations	1002	1002	1002

Notes: (1) OLS models. (2) SE in parentheses. (3) * $p < 0.05$.

Figure 1: Treatment Effects with 95 percent Confidence Intervals, by Court

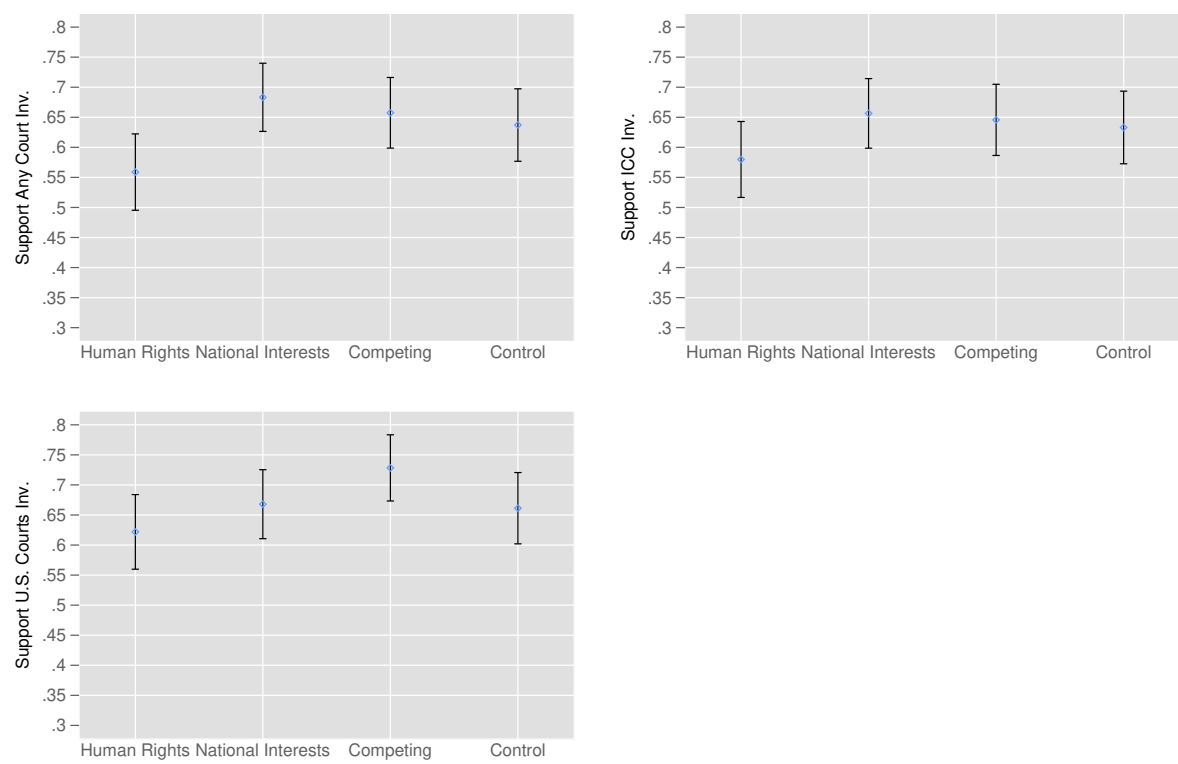
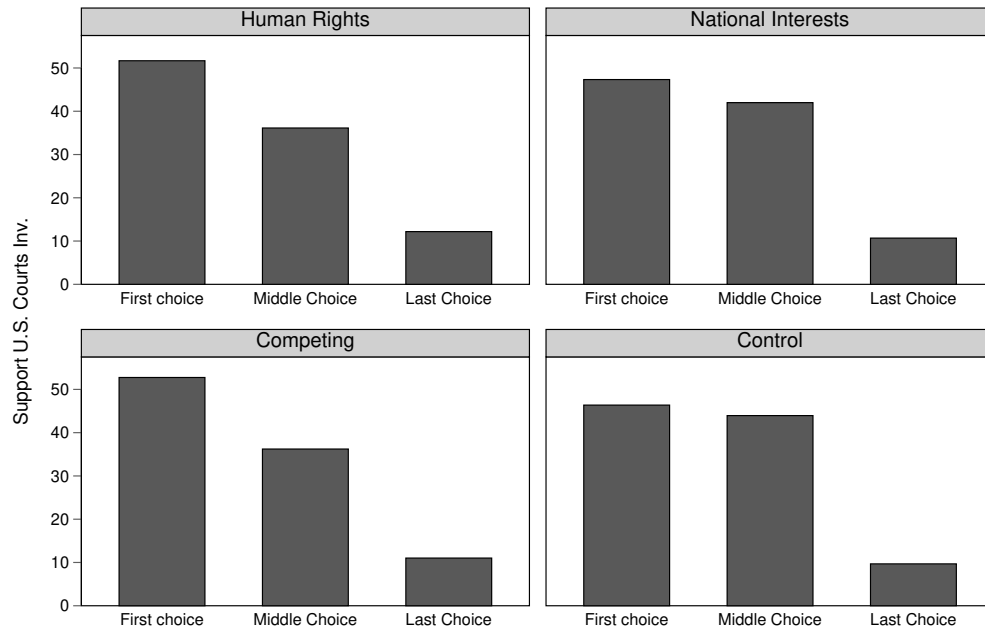


Figure 2: Venue Ranking: U.S. Courts, by Treatment Group



Finally, we assess whether ideology moderates treatment effects. We add to the models presented in Table 3 dichotomous indicators for political liberals and conservatives and their interactions with the treatment indicators. Liberals are consistently more likely to support accountability across venues, while conservatives are consistently less likely to do so. On balance, though, liberals do not respond more positively to the human rights treatment and conservatives do not respond more negatively to the national interest treatment, as seen in Table 4 – results inconsistent with Hypotheses 5(a) and 5(b). Interestingly, for *Support U.S. Investigation*, the interaction term for the national interest treatment and political conservatism is positively signed and statistically significant. It is possible conservatives in this condition view investigations and prosecutions as an opportunity to vindicate the service of U.S. personnel, but on their home turf. It is also possible that conservatives in this condition, regardless of what they believe to be the guilt or non-guilt of U.S. personnel, expect U.S. investigations and prosecutions to cut in favor of Americans, as so many have in the past – yet another hint at positive complementarity in action, though perhaps not as Rome Statute drafters envisioned. There is also always the possibility of presidential pardons for judgements by U.S. courts, as seen in the first Trump administration.

Table 4: Framing Effects on Support for Accountability, by Court (with interactions for ideology)

	Support Any Inv.		Support ICC Inv.		Support U.S. Inv.	
	(1)	(2)	(3)	(4)	(5)	(6)
Human Rights	-0.075 (0.04)	-0.108 (0.07)	-0.050 (0.04)	-0.064 (0.07)	-0.035 (0.04)	-0.072 (0.07)
National Interests	0.053 (0.04)	0.044 (0.07)	0.032 (0.04)	-0.039 (0.07)	0.012 (0.04)	-0.046 (0.07)
Competing	0.028 (0.04)	0.042 (0.07)	0.022 (0.04)	-0.020 (0.07)	0.074 (0.04)	0.078 (0.07)
Information	0.026 (0.03)	0.028 (0.03)	0.006 (0.03)	0.006 (0.03)	0.066* (0.03)	0.067* (0.03)
Liberal	0.209* (0.03)	0.191* (0.07)	0.248* (0.03)	0.202* (0.07)	0.160* (0.03)	0.159* (0.07)
Conservative	-0.150* (0.04)	-0.149* (0.07)	-0.155* (0.04)	-0.216* (0.07)	-0.102* (0.04)	-0.177* (0.07)
Human Rights::Liberal		0.090 (0.10)		0.023 (0.10)		0.043 (0.10)
Human Rights::Conservative		0.010 (0.10)		0.018 (0.10)		0.072 (0.10)
National Interests::Liberal		-0.054 (0.10)		0.046 (0.10)		-0.004 (0.10)
National Interests::Conservative		0.083 (0.10)		0.191 (0.10)		0.199* (0.10)
Competing::Liberal		0.042 (0.10)		0.107 (0.10)		-0.045 (0.10)
Competing::Conservative		-0.091 (0.10)		0.025 (0.10)		0.028 (0.10)
Constant	0.600* (0.04)	0.605* (0.05)	0.594* (0.04)	0.629* (0.05)	0.606* (0.04)	0.629* (0.05)
Observations	1002	1002	1002	1002	1002	1002

Notes: (1) OLS models. (2) SE in parentheses. (3) * $p < 0.05$.

Supplemental analyses in the appendix reveal that regular attention to the news and prior knowledge of the ICC's Afghanistan investigation increase support for accountability for U.S. personnel. Meanwhile, trust in the U.S. military decreases support for accountability. IO attitudes also influence support for accountability at a range of justice venues. Overall, the results suggest that public opinion is shaped by existing views and preferences, not discursive frames around an IO and international cooperation. Argumentation may need to evolve to sway a seemingly unswayable public ([Zvobgo and Chaudoin Forthcoming](#)).

Discussion

Considering similar arguments as the ones we used have been found to be effective in shaping U.S. public opinion of international courts (e.g., [Guisinger and Saunders \[2017\]](#) and [Cohen and Powers \[2024\]](#)), including the ICC, what explains our largely null results? One potential academic explanation is that prior studies were concerned primarily with scenarios that only hypothetically implicated the United States in international criminal justice. For instance, [Zvobgo \(2019\)](#) only examined support for U.S. membership in the Court, not accountability for U.S. personnel at the Court.

A second potential explanation, this one political, is that, over the past 25 years, U.S. presidents from both the Republican and Democratic parties have opposed investigations and prosecutions for U.S. personnel at the ICC. Like their leaders, or perhaps *because of* their leaders, Americans' views may now be entrenched. Considering the importance of elite cues for public opinion, especially in foreign policy ([Berinsky 2007, 2009](#); [Brulle, Carmichael and Jenkins 2012](#); [Gabel and Scheve 2007](#); [Morse and Pratt 2022](#); [Shapiro 1998](#); [Zaller 1990, 1992](#)), elites may have shaped public opinion to the point that many of our survey respondents were not sensitive to the arguments we presented them. And yet, on average, we see upwards of 60 percent of our sample of Americans supporting some kind of criminal accountability for U.S. military and intelligence personnel.

A third potential explanation is that public support for the war in Afghanistan may be confounding our results. While support for the war peaked at 93 percent in 2002, support decreased to 47 percent by 2021 ([Philipps 2021](#)). What is more, just before our survey entered the field in June 2021, support for President Biden's decision to move forward with the withdrawal of American forces in Afghanistan was at 62 percent ([Malloy and Schwartz 2021](#)). Following the withdrawal in August, nearly two-thirds of

Americans reported that the war “was not worth it” ([AP-NORC 2021](#)). Together, these surveys suggest a low level of interest in the conflict among the public and a strong desire to be finished with it. This desire may extend to criminal accountability and would be consistent with some views on justice in post-conflict settings, especially among potentially guilty parties and communities. Perhaps like President Obama, Americans simply want to “look forward.”

A fourth potential explanation is ceiling effects. Among our respondents, there was a very high average level of support (upwards of 60 percent across conditions and courts) for investigating and, where appropriate, prosecuting members of the U.S. military and intelligence communities for potential atrocities in Afghanistan. So it might not have been possible for the human rights treatment to increase already-high support. However, an existing high degree of support for investigations and prosecutions would suggest greater opportunity for respondents in the national interest treatment to revise their opinions downward, but we did not see this, potentially indicating a floor effect. So, perhaps, people who in the past may have been swayed by either human rights or national interest arguments have since formed their opinions on the matter (or related matters like the war in Afghanistan itself) and thus could not be swayed by our experimental treatments.

Some of these explanations are potentially complementary while others are not. Our data do not allow us to single out a most-likely explanation. We had a set of pre-registered hypotheses for which we did not find support. We have some hunches as to why our results are not as we expected, and we have discussed them; but we can only speculate. In the spirit of research transparency and integrity, we concede that we do not know the precise cause of our results. But this is something for future research to explore.

Conclusion

This study explored the interplay between domestic politics and international relations, specifically how messages aimed at domestic audiences about two competing ideals shape attitudes around international justice. We examined the influence of human rights and national interest arguments on support for domestic and international criminal investigations and prosecutions of U.S. military and intelligence personnel for alleged atrocities committed in Afghanistan from 2003 to 2021. We found that Americans are generally insensitive to arguments for and against accountability for U.S. personnel at the ICC and

in U.S. domestic courts. We also found that political ideology does not moderate the effectiveness of these arguments.

In all of this, it is important to emphasize Americans' high level of knowledge of the ICC. It is also important to recognize high levels of support for investigations and prosecutions of U.S. military and intelligence personnel for suspected atrocities in the war in Afghanistan – upwards of 60 percent for action by U.S. courts or the ICC. These results suggest that international justice matters at home and there is even support for ICC actions among people in a non-member state. The findings also challenge narratives about American exceptionalism, concerns with sovereignty, and skepticism about international law and courts among policy makers (and even scholars).

Given the politicized nature of rhetoric about international cooperation in the United States, future research may seek to explore the role of the messenger, in addition to the message. Would a human rights argument be more effective coming from a co-partisan elite? Would having a military veteran or human rights activist as a messenger have an impact? And can the media influence the effectiveness of different messages?

Future research may also investigate different ICC targets. U.S. allies would be an interesting target to study. The U.S. government opposes ICC jurisdiction over its ally Israel, but might Americans in this instance be sensitive to human rights and national interest arguments for and against ICC actions, respectively? Future research could also potentially dig up hypocrisy in U.S. foreign policy by asking survey participants if they support atrocity crimes prosecutions for Russian personnel in Ukraine, given that Russia and the United States have near-identical objections to ICC jurisdiction: they are both non-member states.

Last, is this only an American story? Or would British and French citizens, for example, react similarly if their military and intelligence agencies came under ICC scrutiny? Understanding better the factors that drive support or opposition for accountability for atrocity crimes is vital, as both conflicts and attempts at justice continue around the world.

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