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To Enemies, Justice: The Legal Mechanism as a Reflection of US Intermestic Relations in the Venezuelan Case before ICC

Dissertação de Mestrado

Thesis presented to the Programa de Pós-graduação em Relações Internacionais, do Instituto de Relações Internacionais da PUC-Rio in partial fulfillment of the requirements for the degree of Mestre em Relações Internacionais.

Advisor: Profa. Andrea Ribeiro Hoffmann

Rio de Janeiro, Fevereiro de 2025.

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Abstract:

Lamour, Lívia Rosas. Hoffmann, Andrea Ribeiro (Adviser). **To enemies, justice: the legal mechanism as a reflection of US intermestic relations in the venezuelan case before ICC.** Rio de Janeiro, 2025. 101p. Master's Dissertation - Institute of International Relations, Pontifical Catholic University of Rio de Janeiro.

This work aims to understand how interméstic dynamics shape the United States; position regarding the International Criminal Court (ICC), focusing on the case of Venezuela. The research seeks to explore how U.S. positions on the ICC can be interpreted by analyzing the effects of U.S. actions on the development of international criminal justice. It examines the U.S.'s strategies to influence ICC processes without compromising its sovereignty or subjecting its citizens to the Court jurisdiction. Given the historical interactions between the U.S. and the ICC, the research problem investigates the diverse stances adopted by the U.S., arguing that these cannot be fully understood through a perspective that assumes the State as a unitary actor or foreign policy guided by homogeneous national interests. The study contextualizes this dynamic within the framework of U.S. domestic and international policies, highlighting an interméstic approach that integrates both internal and external pressures in formulating U.S. foreign policy.

Key-words: Intermestic Relations; International Law; Foreign policy.

Resumo:

Lamour, Lívia Rosas. Hoffmann, Andrea Ribeiro (Orientadora). **Aos os inimigos a justiça: O dispositivo legal como reflexo das relações intermésticas dos EUA no caso venezuelano perante o TPI**. Rio de Janeiro, 2025. 101p. Dissertação de Mestrado - Instituto de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro.

Este trabalho busca compreender como os desdobramentos intermésticos moldam o posicionamento dos Estados Unidos frente ao Tribunal Penal Internacional (TPI), com foco no caso da Venezuela. A pesquisa busca responder de que maneira é possível interpretar as posições norte-americanas em relação ao TPI, analisando os efeitos da atuação dos EUA no desenvolvimento da justiça penal internacional. Abordando estratégias utilizadas pelos EUA para influenciar os processos do TPI sem comprometer sua soberania ou submeter seus cidadãos à jurisdição do Tribunal. Diante do histórico de interações entre os EUA e o TPI, o problema de pesquisa examina as distintas posturas adotadas pelos EUA, argumentando que essas não podem ser plenamente entendidas por meio de uma perspectiva que pressupõe o Estado como um ator unitário ou uma política externa orientada por interesses nacionais homogêneos. O estudo situa essa dinâmica no contexto das políticas domésticas e internacionais dos EUA, evidenciando uma abordagem interméstica que integra pressões internas e externas na formulação da política externa norte-americana.

Palavras-Chave: Relações Intermesticas; Direito Internacional; Política Externa.

Summary

1. Introduction

The relationship of the United States to the ICC reflects the foundational tugs between sovereignty and justice. These two poles have marked the establishment and workings of the International Criminal Court, the world's first permanent tribunal set up to prosecute those individuals responsible for genocide, war crimes, and other crimes against humanity. The ICC plays a cornerstone in this worldwide attempt at combating impunity. However, the mission of the court is inherently intractable since it requires striking a balance between, on one hand, universal jurisdiction and accountability and, on the other, the political realities of state sovereignty. This tension becomes even more realized within the United States, that one entity traditionally has set itself as a champion of international justice and a hard-nosed protector of its sovereignty.

The US engagement with the ICC has been complex and ambivalent, oscillating between active participation, strategic opposition, and selective cooperation. Whereas the early stages, including the negotiations and the framework, were significantly shaped by US influence, it ultimately decided not to ratify the Rome Statute. Motivated by a perceived threat to US sovereignty, the possibility of politically motivated persecutions, and the consequences on its military and diplomatic activities worldwide, the move was made. However, the US has shown ad hoc collaboration with the ICC in those cases related to its interests, which shows pragmatism toward international justice. Within this complex dynamic, this dissertation explores several questions concerning how US foreign policy has framed the development of the ICC itself and its allies' disposition vis-à-vis the court. The study attempts to identify how this connection affects international law, state sovereignty, and world governance through significant historical junctures, theoretical perspectives based on the intermestic approach, and case studies. It allows a better understanding of the interlinkages between power politics and the representation of justice internationally.

In this context, international law serves as a strategic instrument through which the U.S. advances its interests, using legal mechanisms to frame adversaries and opponents as subjects of international scrutiny. This approach allows the U.S. to legitimize political and economic strategies under the guise of legal enforcement,

reinforcing its influence in global governance. However, these interests are not monolithic; they are shaped by a complex and dynamic network of actors, including diasporic movements, multinational corporations, political lobbies, and domestic interest groups. These actors, often operating at the intersection of domestic and international spheres, in intermestic processes, contribute to shaping U.S. foreign policy by exerting pressure on decision-makers and influencing legal narratives. As a result, the application of international law by the U.S. is not solely a matter of legal principle but also a reflection of power dynamics, strategic priorities, and the interplay between state and non-state actors in the international system. In the realm of international law and tribunals, the U.S. leverages legal mechanisms to impose punishment under the guise of justice against its political adversaries, while simultaneously reinforcing its discourse of exceptionalism.

This research study tries to fill an important gap in foreign policy scholarship relating to international criminal law. Scholarship tends to generalize state foreign policy toward international law, focusing little or no on internal processes and the role of domestic groups that might contest or shape a country's official stance. By focusing on these domestic actors and their impact on a state's position toward international courts, the research provides an elaborate understanding of the multicausality of foreign policy. In addition, it investigates the extent to which such groups are themselves shaped by the state's stance in order to complete the recursive link between domestic politics and international legal commitments.

The first chapter explores the origins and evolution of the relationship between the United States and the International Criminal Court (ICC), delving into various aspects of this complex interaction. To achieve this, the chapter is structured into three main sections: first, a historiographical review of the process leading to the creation of the International Criminal Court, including the Rome negotiations and their historical background; second, an analysis of U.S. participation in the court’s formation and its influence on the ICC’s structure; and third, an exploration of the developments in the U.S.-ICC relationship from 2002, the year of the court’s establishment, to the present day.

Chapter two delves into the intermestic approach as a theoretical grounding for this research and is titled "North American Interests vis-à-vis the ICC: Delineating Intermestic Relations. "First and foremost, it is necessary to place the intermestic approach within the greater context of foreign policy analysis to outline the particularities of this approach compared to other theoretical frameworks present within the given field of scholarship. It then outlines this perspective with specific application to the analysis of U.S. foreign policy, underlining its relevance for an understanding of the interplay between domestic and international dimensions of policymaking. The chapter concludes with a preliminary overview of ICC cases involving U.S. participation, pinpointing the factors and dynamics that have driven the American position in each. It thus sets the nuanced framework within which the actual in-depth analysis of the U.S.-ICC relationship is conducted.

The third chapter focuses on the case of Venezuela versus the ICC in-depth to analyze the interplay of the multiplicity of actors and the intermestic factors influencing the position of the U.S. It begins by discussing the general panorama of the crisis in Venezuela: its political, economic, and humanitarian dimensions, as well as its international consequences. It then follows the Venezuelan case pending at the ICC, from the denunciation promoted by the Lima Group to the most recent developments. Finally, the chapter identifies and explores the intermestic actors that shape the U.S. position, including domestic political forces, international alliances, and broader geopolitical considerations. This chapter aims to outline the interaction of these factors to provide an in-depth understanding of how U.S. foreign policy is formulated and adapted in response to complex international legal and political contexts.

2. The U.S. and the ICC: Historical Relationship and Process of Development

2.1. Introduction

This chapter aims to provide a broad and multi-layered explanation of the relationship of the United States with the International Criminal Court, from the beginning of the negotiations that brought the Rome Statute into being up to date. It evaluates the first discussion and negotiations for the establishment of the ICC, concentrating on how the U.S. approached the making of the Statute of Rome.

Despite its signature on the Statute, the failure of the U.S. to ratify it is one of the most salient features of its multi-faceted relationship with the ICC. The chapter will explore why such non-ratification has occurred and discuss the various ways the U.S. has taken part in or influenced the activities and policies of the ICC. This analysis aims to understand the reasons behind this non-ratification and to explore the multifaceted ways in which the U.S. has participated in or influenced the ICC's activities and its policies.

It further discusses the evolution and operation of ad hoc criminal tribunals, as well as the place occupied by the ICC within this historical trajectory. This survey inquiries into the way the US position regarding various proposals for international tribunals has unfolded over the last twenty years. Attention is brought to how its positions have come through core issues, such as state sovereignty, the pursuit of peace, and the administration of justice.

In addition, the research assesses the ratification process of the Rome Statute, moving beyond the mere act of signing to explore its implications for U.S. involvement with the ICC. This includes examining the strategic maneuvers employed by the United States to influence ICC policies and decisions, despite its non-ratification of the Statute. The focus is on how the U.S. has used the Court as a binding tool to exert pressure on other states while maintaining a degree of detachment from its legal obligations.

Furthermore, the analysis scrutinizes the U.S. approach to international criminal justice, tracing how the nation has utilized its influence to shape international norms and practices. This includes a detailed look at U.S. engagement with previous international criminal tribunals, its role in the UN Security Council, and how these interactions reflect a broader strategy for advancing American political and legal interests. Through this expanded examination, the work aims to provide a nuanced understanding of the US engagement with the ICC and its influence and impact on the international criminal justice landscape.

2.2. The International Criminal Court initiative

The significance of the individual within the international system has historically been ambiguous. With the dominant influence of actors such as states and international organizations, the role of the individual was long confined to the

domestic sphere. This restriction also applied to individual accountability, which was limited to domestic courts for a long time. However, when an individual's actions violate what is understood as humanity, is it solely the state's responsibility to ensure their accountability?

According to William Schabas (2020, 5), the atrocities committed by Peter von Hagenbach during the occupation of Breisach in 1474 were the first subject of an international trial. After the town was retaken, Hagenbach was charged with war crimes, convicted, and beheaded.

Only after the end of the First World War did the prospect of establishing an international criminal court begin to be seriously considered. During the peace negotiations, the debates over the prosecution of Kaiser Wilhelm II of Germany for waging war was the main point of this first attempt at an International Criminal Prosecution. The Kaiser was extradited to the Netherlands (Schiff, 2008, p. 40). Although it was never implemented, Article 228[1] of the Treaty of Versailles allowed for the establishment of military tribunals by the Allies to prosecute war crimes committed by German soldiers (Schiff, 2008, p. 40).

During World War II, the need to hold individuals directly accountable for human rights violations became evident, regardless of their public leadership positions, which often led to impunity in national courts (Ramos, 2012, p. 253). In 1943, while the conflict was still ongoing, the United Kingdom, France, and the Soviet Union expressed, through the Moscow Declaration[2] of November 1, 1943,

[1] Article 228: The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. If found guilty, such persons shall be sentenced to punishments laid down by law.

[2] At the time of granting of any armistice to any government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done so that they may be judged and punished according to the laws of these liberated countries and of free governments which will be erected therein. Lists will be compiled in all possible detail from all these countries having regard especially invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece, including Crete and other islands, to Norway, Denmark, Netherlands, Belgium, Luxembourg, France, and Italy.

Thus, Germans who take part in the wholesale shooting of Polish officers or the execution of French, Dutch, Belgian, or Norwegian hostages of Cretan peasants or who have shared in slaughters inflicted on the people of Poland or in territories of the Soviet Union which are now being swept clear of the enemy, will know they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged.

their intention to prosecute Axis individuals who had committed crimes against humanity. It was asserted that these individuals would be tried by the courts of the countries where the crimes were committed, and in cases where the crimes had no specific geographical location, military tribunals would be established (Schiff, 2008, p. 42). The United Nations Commission for the Investigation of War Crimes, composed of most of the Allies' representatives and chaired by Sir Cecil Hurst of the United Kingdom, was established to set the stage for post-war prosecution. The Commission developed a 'Draft Convention for the Establishment of a United Nations War Crimes Court,' drawing extensively from the 1937 League of Nations treaty and influenced by the efforts of the London International Assembly, an informal group active during the early years of the war (Schabas, 2020, p. 5).

In this context, at the end of the war, Ad Hoc tribunals were established to address specific human rights violations by individuals, such as the Nuremberg and Tokyo Tribunals. These tribunals were responsible for prosecuting war crimes and human rights violations committed by the Axis powers during World War II. The Nuremberg Tribunal, established in 1945, aimed to prosecute crimes committed by Nazis during the conflict. According to Article 6[3] of the London Agreement, the crimes to be judged included crimes against peace, war crimes, and crimes against humanity. The American presence at the Pacific theatre coordinated the Tokyo Tribunal. US General Douglas MacArthur, who managed interim power over occupied Japan, created the IMT for the Far East in 1946. This Court was

[3] Article 6: The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: (a) Crimes against peace, namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a standard plan or conspiracy for the accomplishment of any of the foregoing; (b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity; (c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a standard plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in the execution of such plan.

empowered to try war criminals for conspiracy, crimes against peace, war crimes, and crimes against humanity (CHRIS 2015, 1076).

With the success of the Nuremberg Tribunal, Rafael Lemkin proposed the creation of an international convention to identify and punish crimes of genocide. The efforts were successful when, in December 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted. In an initial draft of the Convention, there were models for creating a criminal court based on the League of Nations proposal from 1937 to 1944. However, these models were withdrawn because there was an understanding that it was up to the states where the violation occurred to judge and punish the crimes (SCHIFF, 2008, p.43).

During the Cold War period, particularly from 1976 onward, international law and human rights became tools used by both sides of the conflict to criticize and intervene in each other's affairs. During his presidency, Jimmy Carter made human rights a central international policy focus (Stahn, 2019, p. 47). He used this agenda to condemn authoritarian governments in Latin America that had previously received American support. Another significant development between the 1970s and 1980s was the emergence of civil society as an active participant in the advocacy and defense of human rights, a process described as the Third Generation of Human Rights (Campos, 1989, p. 199). The expansion of feminist, Black, and LGBTQ+ movements brought issues previously confined to everyday life into the arena of human rights negotiations and debates. The growing influence of these movements led, in 1973, to the UN General Assembly's adoption of a resolution classifying apartheid, the segregationist regime in South Africa, as a crime against humanity. However, despite significant advancements in the civil rights field during the 1970s and 1980s, progress toward establishing the Court proposed by the International Law Commission remained limited. The rivalry between the capitalist and socialist blocs turned every issue into an ideological battleground (Stahn, 2019, p. 48).

At the end of the Cold War and the world's readjustment to the new parameters of human rights, there was a return of Ad Hoc Tribunals, such as the Tribunal for Yugoslavia (SCHIFF, 2008, p. 48). Yugoslavia at the time was going through a period of instability since the death of Marshall dictator Josip Bros Tito,

and it was no longer in the interests of the Western powers to maintain the country as an outpost in the fight against socialism, which led to the gradual abandonment of the country by the powers. The country's declining geostrategic importance and political crisis led to the outbreak of a civil war within Yugoslavia. Yugoslavia's territory comprised Slovenia, Croatia, Bosnia-Herzegovina, Serbia, and regions such as Kosovo and Vaiovodia. The union of different ethnic groups under the same state led to racial clashes that imploded after the death of Bros Tito (Bazelaire, 2004). An important feature of this conflict is its ethnic basis, with the term "ethnic cleansing" being used as the primary justification for the conflict that took place mainly between Bosniaks, Serbs, and Croats. Although it was not possible to determine if a single party was responsible, the Serbian side was indicated as responsible for committing more human rights violations. In 1993, based on the Nuremberg Law, the Ad Hoc Tribunal was set up to investigate the crimes against humanity during the conflict. A unanimous vote of the UN Security Council established the Court. The creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) was the first initiative of a UN subsidiary body with a judicial nature, holding perpetrators of human rights violations criminally responsible and not just the state.

In 1994, a civil conflict broke out in Rwanda over ethnic issues between two different peoples, the Hutus and the Tutsis. The conflict had its beginnings in 1990, when the Rwandan Patriotic Front (FPR), a paramilitary group made up mainly of Tutsis exiled in Uganda, clashed with the Rwandan government. The conflict between the FPR and the government reinforced prejudice against the Tutsi population within Rwanda's elite, which initiated the idea of a final solution within the highest circles of the country's society (MELVERNE.L,2004, p.12). Among the FPR's demands were an end to ethnic persecution, as well as an end to compulsory ethnic identity cards and the return of the exiled Tutsi population to Rwanda. As the conflict evolved within the country and the (FPR expanded its territory, the media controlled by the country's elite sought to create the image of the great enemy to be fought, instigating hatred of the Tutsi population. By 1994, the FPR had conquered a large part of Rwanda's territory and, after the bombing of the presidential plane and the death of President Juvenal Habyramana in April 1994, the perpetrators of which have not been discovered, a massacre of the Tutsi population exploded in the

country, with the backing of the government and the army, which encouraged the killings (Melvern, 2004, p. 14). Investigative journalist Linda Melvern stated in her book Conspiracy to Murder that a large part of the genocide took place on army premises. Among the victims of the genocide, which lasted until the end of the war, were the Tutsi population, Twas, and moderate or opposition Hutus. The conflict officially ended in July 1994, with an average death toll of 800,0009. Faced with the horrors of the conflict, televised to the whole world, the Security Council, on the initiative of the United States, proposed the establishment of a Criminal Tribunal for Rwanda (ICTR) along the lines of the Tribunal for the former Yugoslavia. In this ad hoc tribunal, individuals who had committed serious human rights violations could be held accountable. The aim of the International Criminal Tribunal for Rwanda (ICTR), according to resolution 95510, was to prosecute individuals responsible for genocide and other violations of international humanitarian law based on the Convention for the Prevention of Genocide (1948) and the Geneva Conventions (1949). The seat of the ICTY was shared with the ICTY in The Hague, and the Court was divided into a Trial Chamber, an Appeals Chamber, a Prosecutor's Office, and a Secretariat. In both cases, it is important to mention that the process of globalization, in force at the time through television and radio, allowed the horrors of these conflicts to reach the civilian population in all parts of the globe more quickly, which generated general dissatisfaction and demand for measures from the UN. According to Carsten Staha (STAHN, 2019, p. 255), the success of these two tribunals came about for different reasons. In the case of the ICTY, the influence of bodies such as the North Atlantic Treaty Organization (NATO), the United Nations Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium (UNTAES) influenced the acceptance of the Tribunal and cooperation in putting its decisions into practice. Economic pressure from the US, the UK, and bodies such as the World Bank meant that the policy established by the ICTY was readily accepted in exchange for investment in Balkan territory. On the other hand, the success of the ICTY was based on the West's guilt for not stopping the genocide when it was asked to.

At the height of the Cold War, discussions regarding establishing an international criminal court, initially proposed by the International Law Commission (ILC), were abandoned due to the escalating tensions between the

United States and the Soviet Union. It was only after the 1980s convergence of West and East bloc rhetoric about human rights universality that the ILC was permitted to restart the considerations of an international criminal court. During this preliminary work, a wide range of crimes were considered to fall within the jurisdiction of the Court under consideration, significantly including the international drug trade as experienced by Caribbean states.

In 1989, during a UN General Assembly meeting, Trinidad and Tobago Prime Minister Arthur Robinson proposed the "establishment of an international criminal court with jurisdiction to prosecute and punish individuals and entities who engage in, inter alia, the illicit trafficking in narcotic drugs across national borders." Robinson was a lawyer and, from 1972 to 87, was the executive director of an NGO called the Foundation for the Establishment of the International Criminal Court. The draft motion was created with the support of longtime ICC advocate Robert Woetzel, former Nuremberg prosecutor Benjamin Ferencz, and international criminal law expert Professor M. Cherif Bassiouni, proposing that the ICC idea be studied by the International Law Commission (ILC).

At the beginning of the 1990s, the General Assembly adopted the motion requesting the ILC "to address the question of establishing an international criminal court or other international criminal trial mechanism with jurisdiction over persons alleged to have committed crimes that may be covered under such a code, including persons engaged in illicit trafficking in narcotic drugs across national frontiers (Rosenne S, 2000, p.401).

During the committee meetings, interest groups emerged and organized themselves to achieve their objectives regarding the Court's creation. A preparatory committee for the ICC was established at the end of the ad hoc committee's work. This committee divided into working groups to address issues such as the list and definition of crimes, general principles of criminal law, complementarity and trigger mechanisms, procedures, international cooperation, judicial assistance, penalties, the Court's composition and administration, and the Court's relationship with the United Nations (SCHABAS, 2001, p. 13). The committee discussed these issues over three years (1996-1998) during meetings, with the final occurring between March and April 1998. During this meeting, the negotiating agenda for the

Rome Conference was established, setting the stage for the final terms and negotiations for the ICC's creation. Among the interest groups created during the previous negotiations and during the Rome convention were the Security Council group, led by the US, and the like-minded group. The like-minded group was a bloc made up of countries with common interests, including the principle of the Court's automatic jurisdiction over crimes of genocide, war crimes, and crimes against humanity; the elimination of the Security Council's veto; the establishment of an independent prosecutor with the power to initiate own motu proceedings; and the prohibition of reservations (SCHABAS, 2001, p. 15). Throughout the negotiations, these groups occupied opposing positions in the debates.

In addition to extra, unofficial "intersessional" sessions to assist in preparing for the PrepCom meetings, the PrepCom met twice in 1996 and three times in 1997. In 1998, during the last inter-sessional meeting, the proposals for a draft considered at the final PrepCom meeting in April, whose product was then submitted to the Statute Conference, were consolidated. On June 15, 1998, the Food and Agriculture Organization's headquarters hosted the Conference on the Statute ("The Statute – Justice versus Sovereignty" 2014, 68). Delegates from almost 160 states attended. Numerous international organizations were represented, in addition to hundreds of NGO representatives who took part directly and through the Coalition for the International Criminal Court (CICC). Most attendees were upbeat and hoped the meeting would pass a bill successfully.

The ILC proposal on the ICC draft includes jurisdiction over genocide, aggression, violations of laws and customs applicable in armed conflicts, and crimes against humanity, and the crimes listed in the previous conventions were included in the annex to the draft. The proposal was submitted to the General Assembly as a report to be discussed by the Preparatory Committee (PrepCom)to further develop the draft Statute, with the idea that there would follow a plenipotentiary conference.

The ICC negotiations sought a balance between sovereignty and internationalism. The Rome negotiations revolved around the state's recognition of the prosecution of atrocities against humanity and sovereignty. In this context, Chris

Mahony points out how the positions taken toward sovereignty reflect states' power in the system, which will be further debated.

The heavily bracketed PrepCom draft was transformed into part of the final ICC legal system at the June 15–July 18 Conference. Observers attribute the success of the discussions to the Chair of the Committee of the Whole ("The Statute – Justice versus Sovereignty" 2014, 68), Canadian Ambassador Philippe Kirsch, Chair of the Drafting Committee M. Cherif Bassiouni, chairs of working groups, and several individual state delegates. NGOs encouraged the delegates to, and in certain circumstances, offered position statements, research, and analysis that were immediately included in the talks, and they served as a vital channel for information exchange throughout the Conference.

Throughout the discussions, the United States—which subsequently turned out to be the Court's most firm opponent—played a crucial and, for the most part, enthusiastic role (Conso, 2005, p. 317). At the Conference, the United States delegation was vast (MAHONY, 2015, p. 1084). Its legal experts subsequently supplied important components of the Statute and the Court's Rules of Evidence and Procedure. In hindsight, it is unlikely that the US would accept any statute that satisfied the goals of the LMS and other states that sought an independent court. Nevertheless, many compromises negotiated during the Conference needed US support.

The idea underlying the ICC Statute is that when criminals act alone to commit their most heinous crimes, they ultimately violate the rule of law. This idea was eventually adopted from the Nuremberg precedents. Nobody can justify committing such a crime, and the ability to pursue such illegal activity is essential to the integrity of a legal system. The negotiation of the Statute took place during a period of institutionalization of international norms and the creation of international organizations in the aftermath of the Cold War. The driving forces behind this movement were the desire to establish a causal link between the deterrent impact of international crimes and the ability to adjudicate them.

2.2.1. Rome Statute Negotiations

A wild rage of the draft proposed in the preparatory conventions (PrepCon) was the subject of intensive negotiations. The Statute's seven parts were carefully

chosen and negotiated by the actors present in the convention, which included States, International Organizations, and Non-state actors. One of the most controversial parts of the Statute was part 2, which addressed the jurisdiction, admissibility, and applicable law, including the list and definition of crimes. In addition to planning the work on every section of the act, the negotiations between the chairman and the Committee of the Whole focused primarily on finding solutions to issues with part 2. Regarding specific topics or categories, the involved states united and formed diverse coalitions (Kirsch & Holmes, 1999, p. 5).

The states participating in the negotiations were willing to compromise on including certain crimes within the court's jurisdiction if it was limited, for example, by requiring state consent on a case-by-case basis or by permitting states to opt in or opt out of certain crimes.

On the other hand, an automatic jurisdiction upon ratification or of a system close to universal jurisdiction provoked some delegations to argue for a limited range of crimes, narrower definitions, and higher thresholds.

As those who favored the Security Council's precedence pointed out, there would be occasions when the two may not always coincide, at least not at the exact moment. The Security Council may need to talk with war criminals who are legally indictable and may even need to offer them complete amnesty in the framework of final peace accords to ensure peace. It seemed impossible for an irrational prosecutor to prowl around at such times, upending even the most delicate discussions. Therefore, the Security Council had to be able to prevent any such Court intrusion, even if only momentarily, if it was "seized" with a problem, as the term of art puts it(Kirsch & Holmes, 1999, p. 4).

The possibility of reservation was also a point of debate. The first part of the convention was marked by a series of official statements that only expressed the state's position without any negotiation possibility. In bilateral and private meetings, states began to propose concessions and negotiate a compromise between the opposing players. For the most part well-known public positions were repeated in private with little elaboration, let alone indications of flexibility. At the same time, considerable pressure was exercised with the view of having the chairman and bureau submit a new paper to the convention but without any agreement on what

that paper should contain. By this time, groups with the same goals start to defend their objectives in the negotiations. Especially regarding the jurisdiction of the Court. Two major groups could be observed in this dynamic.

Within the established dynamics between the groups, two main actors stand out. The first, the Like-Minded Group (LMG), composed of emerging and middle powers, sought to advocate for a strong, independent court free from the influence of the UN Security Council. Those advocates of an independent court with broad jurisdiction were against any compromises that limited the Court to proceeding against individuals who were either citizens of a state that had joined the Statute or had committed crimes on the territory of such a state. They criticized the Statute for giving the Security Council a potential role in assigning cases to the Court and suspending its activities(Kirsch & Holmes, 1999, p. 5).

The Security Council's permanent members (P-5) constituted a second group. Their agreement was particularly apparent on two issues: the Council's robust function in relation to the Court and the removal of nuclear weapons from the list of weapons that the legislation forbids. The P-5 also intended the court's authority and exercise to be closely limited, except for the United Kingdom, which had joined the LMG just before the summit. According to Chris Mahony, the UK shift was part of a broader US strategy, in collaboration with the UK and Germany, to influence the court's Court structure without being directly involved. Defenders of state sovereignty argued that the Statute left too much independence to the Court and its Prosecutor, that jurisdiction should require approval by the state of a suspect's nationality in all cases, and that there was insufficient oversight and political control of the Court.

Besides the LMG, other states were also against the Security Council's influence on the Court and in favor of nuclear weapons as prohibited by the Statute. Still, those same states generally supported a court with somewhat limited authority, endorsing stances similar to the P-5.

Beyond these jurisdiction patterns, the meeting was marked by diverse perspectives transcending political and geographic divides. For instance, several governments believed that the Security Council could not be trusted to dispense justice impartially and that caution should be exercised to prevent the court's

independence from being compromised without rejecting the Council's role in the Court. Most developing countries supported banning nuclear weapons and adding aggression to the list of fundamental crimes covered by the Statute. While some believed that crimes like terrorism and drug trafficking should be under State jurisdiction, others desired to include them as crimes under ICC jurisdiction, like Egypt, Algeria, Turkey, Sri Lanka, and the Caribbean republics (Kirsch & Holmes, 1999, p. 5).

There were also significant disagreements regarding jurisdictional matters, such as how the court'sCourt's jurisdiction could be activated, whether states should ratify the court'sCourt's jurisdiction over crimes immediately or need further, case-by-case consent, and, most importantly, which states, if any, needed to acknowledge the court'sCourt's jurisdiction before the Court could exercise it.8 It was on this matter that the disagreements became intractable, and the consensus finally crumbled, forcing a vote after the meeting. (Kirsch and Holmes 1999, 5).

2.2.2. Ratification pattern

Presently, 124 countries have ratified the Rome Statute of the International Criminal Court (ICC) as of February 2024, showing that this document was widely accepted globally. The above includes almost all South American nations, most European countries, some from Africa and Oceania, while many Asian countries, particularly China and India, are still not a party to it, often citing national sovereignty and the possibility of politically instigated investigations as reasons. A notable development is that the United States signed but later withdrew; hence, it will not be ratifying it, having appended signatures in 2000. By February 2024 there were two countries, Burundi and the Philippines, had revoked their consent (withdrawal effective in 2017 and 2019, respectively), thereby joining other thirty-one nations who have only signed without ratifying the statute, including notable states like Israel, Russia, and the United States, which have declared they no longer intend to ratify the treaty.

This trend shows a complex web of legal, political, and strategic factors affecting states' attitudes toward the ICC and international criminal justice.

States that ratify the Rome Statute are required to introduce domestic laws in their countries to prosecute the crimes stated in the statute and support the ICC

in its investigations and legal actions. The International Criminal Court acts only when national jurisdictions do not want to prosecute serious crimes.

The wide-ranging ratification of the Rome Statute demonstrates a worldwide determination to hold those responsible for international crimes accountable. However, member states' varying levels of engagement and cooperation with the ICC underpin continued complexities in international criminal justice.

2.3. U.S. Relations with ICC

Throughout the 1980s and 1990s, the United States led debates about the future of international criminal law and the legacy of the Nuremberg Tribunals. Primary arbiters. As the hegemons of the time, the US started outlining their views with the end of the Cold War. The US's ability to influence weaker states increased with the increase in US financial investments between 1974 and 1989. On March 2, 1989, the US House of Representatives passed a resolution calling for “the creation of a [i]nternational [c]riminal [c]ourt with jurisdiction over internationally recognized crimes of terrorism, illicit international narcotics trafficking, genocide, and torture, as those crimes are defined in various international conventions” (CHRIS 2015, 1073).

The United States' dominance in the Security Council in 1991 and 1992 resulted in increased authority for the body, as it was granted permission to conduct peacekeeping operations in Somalia and to take military action in Iraq. In the post-Cold War international order, U.N. peacekeeping emerged as a significant Security Council reaction to periods of instability and widespread breaches of human rights. The United Nations and the North Atlantic Treaty Alliance (NATO) entered the Balkan War in 1993. For the conflict, the United States envisioned an international tribunal with jurisdiction granted by the Security Council. A tribunal formed by the Security Council alarmed the other five permanent council members (the P5) because they feared the expenses in terms of materials and sovereignty.

Strong nations' policy preferences for an international criminal court were reflected in the ad hoc tribunals, giving the Security Council authority over the application of international criminal justice. These choices jeopardized the interests of weak state governments. The United Nations provided financing for the ad hoc

Tribunals' formation under Chapter VII of the U.N. Charter and gave them the authority to force cooperation from U.N. member nations. Both courts violated the sovereign rights of weak states by imposing international criminal jurisdiction over them. The UNGA only required that the Security Council give a draft of international criminal court legislation as a top priority when it used its Chapter VII authority under the UN Charter to create and establish the ICTY in 1993.

2.3.1. The U.S participation in Rome negotiations

After a long period of negotiations and the signing of the Statute, the US government has not ratified it. This section explores the dynamics and motives behind US actions. It argues that despite giving up the tools of control over ad hoc and hybrid tribunals and resisting joining the International Criminal Court (ICC), the US government has been able to preserve the policy preferences crucial to the development of international criminal law and its application (CHRIS 2015, 1073).

Despite this, the Allies granted the United States sole court-martial authority over its armed personnel abroad throughout World Wars I and II. However, following World War II, our NATO members refused to give American soldiers stationed in Europe sole sovereignty during peacetime. To address this issue, the NATO Status of Forces Agreement was negotiated. According to the jurisdiction-sharing provisions, the sending state will have the primary jurisdiction to trial its military members for "offenses arising out of any act or omission done in the performance of official duty" or against another armed forces member.

The US was one of the leading forces behind the Nuremberg and Tokyo Trials and one of the major sponsors of the Rwandan former Yugoslavia Tribunal. Several attorneys from the US delegation in Rome were among the dozens of attorneys from the Justice Department, the Pentagon, and other government agencies who had been sent to work at the Prosecutor's office in The Hague on a temporary basis. During her tenure as UN ambassador, Secretary of State Madeleine Albright—a child witness to the Holocaust in Europe herself—had been a major proponent of the ad hoc courts. One of the rhetorical focal points of her time at the State Department had been the capture and punishment of war criminals. Furthermore, President Bill Clinton had vehemently advocated for a permanent war crimes tribunal on several occasions in the years prior, most notably in March 1998

at a speech to government leaders and genocide survivors in Kigali, Rwanda (Lawrence Weschler,2001). David Scheffer, Albright's ambassador-at-large for war crimes problems, led the forty-strong US delegation. The timing of US engagement in shaping the emergence of post-Cold War international crimes prosecution was important, the idea of the US as a human rights advocate increased US legitimacy during its hegemonic condition.

The US perception of International Criminal Law commitments differed from those of European countries, which, although they had close objectives, had opposite approaches (Groenleer, 2016, p. 926). The US was the last of the permanent members of the UN Security Council to ratify the Genocide Convention, over forty years after its adoption, and with significant disclaimers. It has signed the Additional Protocols I and II to the Geneva Conventions, which provide safeguards for people and property in contemporary battle, but it has not yet ratified them (Groenleer, 2016, p. 927).

During the conference, the US delegation seemed increasingly gripped by a single overriding concern. According to Lawrence Weschler, the concern over prosecution of American citizens was the primary concern guiding the US position in the negotiations and also in the Pentagon. Senator Jesse Helms, the Republican head of the Foreign Relations Committee, had already let it be known that any treaty emerging from Rome that left open even the slightest possibility of any Americans ever, under any circumstance, being subjected to judgment or even oversight by the Court would be “dead on arrival” at his committee. The American armed forces' “ unique peacekeeping role” was mentioned as part of the American exceptionalism inclusion in the Statute negotiations. At first, the US delegation issued a provision mandating that the Court only be allowed to take up cases specifically referred to by the Security Council—where the United States has a veto. In this way, US citizens would benefit from a permanent version of the ad hoc courts, the authority of which would all flow from the Security Council. In addition to their apparent self-interest, the other four Permanent Five also tended to support this strategy because they were concerned about the Security Council's primary duty to secure and uphold international peace, as stated in Chapter VII of the U.N. Charter (Lawrence Weschler,2001).

American influence within international power dynamics was undeniable; at the time, the United States constituted approximately one-third of the global economy and around thirty-five percent of global military expenditure.

The Rome negotiations and the International Criminal Court have represented the conflict between justice and peace ever since they were first held (CHRIS 2015, 1084). These two ideas reflect opposing viewpoints in a post-conflict context yet not being outwardly antagonistic. The triggering jurisdiction mechanisms, the range of crimes that can be prosecuted and their definitions, the specificity of case selection criteria, the priority accorded to governments, the prosecution's ability to force state cooperation, the prosecution's financial independence, and the hiring procedure for prosecution staff are critical indicators that jeopardize the independence of case selection. The United States coordinated its position with other p5 members on key issues, such as the Security Council's rights to vet and trigger jurisdiction, especially the United Kingdom. At the same time, the vast US delegation presented the primary impediment to case selection independence; the US position at Rome was based on two main goals: first, the protection of non-parties focused while arguing for a regime holding parties accountable. The second goal was compromised by the first in that complementarity would advance the first, but not the second. Using its close ties during the convention, the US was able to influence how it would go forward with the ICC. By keeping information sharing, terrorism, and drug-related undercover operations outside of the International Criminal Court's jurisdiction, the United States and important state allies, especially in Latin America, attempted to hide their involvement in these crimes. The United Kingdom and Canada were also members of the US alliance with the Latin American and Caribbean Group of States (GRULAC) on this matter. An alliance provided a group of cooperating states considerable sway over the nomination of the prosecutor, the hiring of key prosecution personnel, and the ICC's first case selection procedure. Argentine ambassador Sylvia Fernandez de Gurmendi was a significant force behind the collaboration of GRULAC, the United States, Canada, and the United Kingdom. The Anglosphere weakened, and de Gurmendi's contribution to the GRULAC vote and the ICC's early case selection became more crucial when it became evident that

the United States would not move forward with the Rome Statute (CHRIS 2015, 1084).

The discussion on the participation of the Security Council in the choice of cases and the jurisdiction of the Court was resolved with a proposal to require the unanimity of the Council to block a case. In this way, the participation of the Security Council states would be present but would not control the whole. More specifically, it was proposed that a system where a simple majority vote of the Security Council could, at any time, prevent any further action by the Court in each case for a renewable period of up to twelve months. This proposal did not please the US government, which maintained its concern that an arbitrary trial could imprison a US citizen. (Lawrence Weschler, 2001)

During a speech at DePaul University College of Law, John. B. Bellinger (2008) points out that 2002 Secretary of State Marc Grossman, speaking for the Bush Administration, informed the UN Secretary-General of the United States' decision not to become a party to the Rome Statute. While some interpreted this move as a confrontational rejection of the ICC, its primary purpose was to clarify that the US did not wish to have any legal obligations from its signature of the Rome Statute that could conflict with the treaty's "object and purpose." This step was taken to prevent the ICC from claiming jurisdiction over US persons and clearly define the US position regarding the Rome Statute.

Grossman's explanation and the Bush Administration's stance echoed concerns similar to those of the previous Clinton Administration. These concerns included the possibility of politicized ICC prosecutions of US military members, the potential diminishment of the UN Security Council's authority, and inadequate external oversight of the ICC Prosecutor (Bellinger, 2008).

2.3.2. US remarks on the Rome Statute

The United States enumerated various reasons for failing to sign the Rome Statute that established the ICC. Included among these is the issue of jurisdiction over nationals of non-parties, which the US sees as an affront to its sovereignty, and politicized prosecutions whereby the court could be used against American citizens as a means to an end. The lack of accountability of the ICC prosecutor has also been a big issue, as some fear that this could result in unrestrained power in the court.

The US has also claimed that the ICC usurps the UN Security Council's role in the maintenance of international peace and security. Finally, the US has criticized the Rome Statute for what it perceives as insufficient due process guarantees, which it claims may violate the rights of persons brought before the court. These concerns have led the US to withhold its ratification of the statute despite its general support for international justice.

Although it is understood that only nations that ratify treaties are obliged to comply with them, in view of articles 34 and 35 of the Vienna Convention, the ICC extends its jurisdiction to citizens of non-party nations, thus binding non-party nations. The US argues that if individuals are accused of conduct related to the execution of official policies, the difference between asserting jurisdiction over individuals and over the nation itself becomes less clear. The threat of prosecution, however, could inhibit the conduct of US officials in implementing US foreign policy. In this way, it is argued that the ICC can be seen as a violation of states' sovereignty.

The United States suggested addressing this issue by establishing a mandatory role for the UN Security Council in determining when the ICC should exercise jurisdiction. However, most other countries rejected this proposal, arguing that it would replicate the inconsistent prosecution of war crimes and crimes against humanity seen in the current ad hoc tribunal system.

Another point raised by the US delegation and later echoed by Congress in its decision not to ratify the Rome Statute was the concern over politicized prosecutions. The US argued that flaws in the ICC could enable certain countries to bring baseless charges against American citizens. Given the United States' prominent role in global affairs, Americans might be more vulnerable to such charges than citizens of other nations. The US also contended that its citizens are more likely to be targeted for prosecution even though many other countries participating in peacekeeping operations willingly subject their soldiers and officials to the ICC's jurisdiction. Additionally, the US expressed concerns that the ICC might overturn legitimate decisions made by American prosecutors to end investigations or decline to prosecute specific individuals. The US feared that

unfriendly nations, which often label American foreign policy initiatives as "criminal," could use the ICC to advance such allegations.

The United States claims there is no possibility of oversight over the Office of the Prosecutor by any separate political authority, as it has unchecked discretion to initiate cases, which could lead to “politicized prosecutions.” US negotiators at the Rome Conference advocated for a role for the UN Security Council to check potentially "overzealous" prosecutors and prevent politicized prosecutions. However, the majority of nations represented at the Rome Conference believed that the UN Security Council, with its structure and permanent members, would pose an even greater risk of “politicizing” ICC prosecutions, thereby ensuring impunity for some crimes while prosecuting others based on the national interests of powerful countries.

According to the United States, the ICC Statute grants the International Criminal Court the authority to define and punish the crime of “aggression,” a responsibility that, under the U.N. Charter, belongs exclusively to the UN Security Council. The lack of consensus among nations regarding the definition of aggression implies that any definition adopted by most ICC member states might not be sufficiently established in international law to be considered binding as jus cogens. While the UN General Assembly passed a resolution in 1974 addressing the definition of aggression, it has been invoked by the Security Council only once. This definition lists potential offenses that could be considered acts of aggression but ultimately leaves the determination to the discretion of the Security Council. Lastly, the US contends that the ICC would deny accused Americans the right to due process, including the right to a jury trial, that the US Constitution protects.

2.3.3. The American Service-members act.

Following the decision not to ratify the Rome Statute, the U.S. Congress enacted several measures to hinder the effective operation of the ICC, including prohibiting the use of funds to support the Court. The 107th Congress passed the American Servicemembers’ Protection Act of 2002 (ASPA) as Title II of the 2002 Supplemental Appropriations Act, which was signed into law by the President on August 2, 2002. In 2008, during the 108th Congress, a provision was included in the Consolidated Appropriations Act, P.L. 108-447, which prohibits the use of funds

under the Economic Support Fund to assist countries that are members of the ICC and have not entered into a so-called “Article 98” agreement with the United States. Known as the Nethercutt Amendment, this provision was reauthorized during the 109th Congress as part of the FY2006 Consolidated Appropriations Act (H.R. 3057/P.L. 109-102). A similar provision was included in H.R. 5522, the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2007, passed by the House of Representatives.

In 2002, both the House of Representatives and the Senate included the American Servicemembers’ Protection Act (ASPA) in the supplemental appropriations bill for the fiscal year ending September 30, 2002, H.R. 4775, 107th Congress. The Senate version, signed into law by the President on August 2, 2002, included a provision ensuring that the ASPA would not obstruct U.S. cooperation with the ICC if the tribunal prosecuted high-profile figures such as Saddam Hussein or Osama bin Laden.

Originally introduced as S. 2726 in the 106th Congress, the ASPA aims to protect U.S. Armed Forces members and other covered individuals from the ICC's jurisdiction. The Act prohibits federal, state, and local governments from cooperating with the ICC, including responding to requests for cooperation or providing specific assistance like arrest and extradition. It also prevents ICC agents from conducting investigative activities on U.S. soil.

Effective July 1, 2003, the ASPA additionally barred military assistance to any ICC member country, except NATO members and major non-NATO allies, unless the president granted a waiver or a general waiver was in effect. The Act defines military assistance broadly and allows the President to waive the prohibition if such assistance is deemed crucial to national interest or if the recipient country has a formal Article 98 agreement to prevent ICC actions against U.S. personnel.

As a part of the legislation, Section 2008 authorizes the President to use "all means necessary and appropriate" to secure the release of covered individuals from the United States and allied nations, upon request from the detainee’s government, who are detained or imprisoned by or on behalf of the ICC. By not defining what constitutes necessary means, the law allows for broad discretion in its application. This section also permits the President to direct any federal agency to provide legal

representation, other legal assistance, and exculpatory evidence for U.S. or allied individuals who are arrested, detained, investigated, prosecuted, or imprisoned by the ICC.

At the same time, the law also aims to limit other countries' support for the ICC. The Consolidated Appropriations Act for FY2005 (H.R. 4818/P.L. 108-447) prohibited Economic Support Funds (ESF) assistance to any country that is a party to the ICC and has not entered into an Article 98 agreement with the United States, with exceptions for NATO members and major non-NATO allies. The President is authorized to waive this prohibition for NATO members and significant non-NATO allies without prior notice to Congress if necessary for U.S. national security interests.

2.3.4. US positions towards the ICC from 2001 to 2024: out yet close

As the ICC commences operations, its relationship with the US has become increasingly contentious. While the US has sought to obstruct the Court's activities in various ways, it has simultaneously supported cases where American interests are served.

The United States' refusal to ratify the Rome Statute and any actions that may undermine the International Criminal Court (ICC) have raised concerns among human rights organizations. These groups argue that such positions could result in the United States losing its moral authority and diminishing its global influence, including its capacity to shape the development of international humanitarian law.

The US perception of leveraging UN peacekeeping missions to secure immunity from the ICC could further strain relations with allies that support the Court. Additionally, suspending military and economic aid to ICC member states might be viewed as an attempt to pressure these countries either to reject the Rome Statute or enter into an Article 98 agreement. Such actions could undermine the ICC and contradict the Administration’s professed commitment to respect the sovereignty of nations that choose to join the Court. By seemingly insisting on special exemptions from ICC jurisdiction, the United States may reinforce the view of its unilateral stance on global issues and its reluctance to adhere to the same legal standards expected of other nations. This perception weakened US efforts to build international coalitions for the anti-terrorism campaign and operations in Iraq, as

well as for future global initiatives. The examples of Guinea, Kenya, Uganda, Libya, Colombia, and Kenya show how case selection for international crimes has evolved. These cases show a range of US concerns in national security, support for domestic procedures, complementarity compliance, and association with the ICC and will be further addressed.

In the years following the establishment of the ICC, the United States maintained its distance and hostility toward the Court. Only after the UN Security Council referred the Darfur, Sudan case to the ICC did the US begin to take a position on some instances before the Court. Out of an average of 28 cases, the United States has openly expressed its support in approximately seven cases and has directly intervened in two. These cases, with the exception of those involving Venezuela, which are analysed in depth in the third chapter, are briefly presented below, and further discussed in the next chapter.

The Darfur case was the first case in which the US expressed direct interest. The ICC is investigating genocide, war crimes, and crimes against humanity committed in Darfur, Sudan, since July 1, 2002. The United Nations Security Council referred the case to the ICC in 2005. Omar Al Bashir, the former president of Sudan, was the first sitting president to be charged with genocide by the ICC. Several other individuals have also been charged, and the case continues, with some arrest warrants remaining unenforced. The US originally proposed the creation of an ad hoc tribunal by the Security Council, maintaining its opposition to the ICC. However, in the face of rejection by other Security Council members, the US did not veto the proposal to refer the case to the ICC.

Subsequently, both the Uganda and Congo cases saw direct US involvement. In Uganda, the International Criminal Court (ICC) has conducted investigations focusing on alleged war crimes and crimes against humanity committed during the armed conflict, primarily between the Lord's Resistance Army (LRA) and Ugandan national authorities, especially in Northern Uganda, since July 1, 2002. The Ugandan government referred the situation to the ICC, leading to investigations that began in July 2004. The alleged crimes include murder, enslavement, sexual enslavement, rape, and the forced enlistment of children. In 2005, the ICC issued its first arrest warrants against top LRA members,

including Joseph Kony and Dominic Ongwen. While Ongwen surrendered in 2015, Kony and others remain at large. As of December 2023, the ICC has concluded the investigation phase in Uganda, resulting in two cases, one ongoing trial, and multiple arrest warrants. The United States has actively supported efforts to bring LRA leaders to justice. In April 2013, then-Secretary of State John Kerry announced an expansion of the War Crimes Rewards Program, offering up to $5 million for information leading to the arrest of LRA leaders, including Joseph Kony and Dominic Ongwen. The US facilitated Ongwen's voluntary surrender and transfer to the ICC in 2015 and welcomed the 2021 ICC verdict against him. The US continues to support justice and accountability for LRA atrocities, offering monetary rewards for information leading to the arrest of Joseph Kony and other LRA leaders.

The ICC investigation in the Democratic Republic of the Congo (DRC) has primarily focused on alleged war crimes and crimes against humanity committed in eastern DRC, particularly in the Ituri region and North and South Kivu Provinces, since 1 July 2002. The investigation, which began in June 2004, highlighted serious violations including mass murder, rape, torture, and the illegal use of child soldiers. Notable cases resulting from this investigation include the convictions of Thomas Lubanga Dyilo, Germain Katanga, and Bosco Ntaganda, as well as the acquittal of Mathieu Ngudjolo Chui.

In January 2013, the US facilitated the transfer of Congolese warlord Bosco Ntaganda to the ICC after he voluntarily surrendered. The US Embassy in Kigali coordinated the logistics of his transfer to The Hague. In November 2021, the US welcomed the ICC Appeals Chamber's decision to confirm Ntaganda's conviction, which was seen as a significant step towards justice for the atrocities committed in eastern DRC. The US has also expressed its commitment to furthering justice in cases of war crimes and continues to offer rewards for information leading to the arrest of war criminals.

In other cases, like Libya, Myanmar, Mali, and the Central African Republic, the US express its support for the prosecution of the perpetrators. The ICC investigation into Libya, prompted by a UN Security Council referral in March 2011, focused on widespread and systematic attacks against civilians during the

2011 conflict, including murder, torture, and persecution. The investigation led to cases against Muammar Gaddafi (whose warrant was withdrawn after his death), Abdullah Al-Senussi (whose case was declared inadmissible), and other suspects. The ICC's role in Libya was the second referral by the UN Security Council and involved crimes against humanity and war crimes. The US, along with France and the UK, welcomed the Libyan National Army's investigation into unlawful killings and supported accountability for violations of international law. The US has called for thorough investigations and accountability for all sides involved in the conflict, reaffirmed support for the UN-facilitated political dialogue, and emphasized the importance of respecting international law.

In Myanmar, the ICC addresses alleged crimes against humanity committed against the Rohingya population, particularly during the 2016-2017 violence in Rakhine State. The investigation covers crimes such as deportation and persecution, with some alleged crimes having occurred on Bangladeshi territory, a state party to the Rome Statute. The investigation was authorized to cover crimes from 1 June 2010 onward, reflecting a focus on the forcible deportation of the Rohingya. The US supports various international justice mechanisms addressing the Rohingya crisis, including the ICC's investigation into deportation crimes and the International Court of Justice's case brought by The Gambia for genocide. The US endorses a UN Security Council referral to the ICC but acknowledges the likelihood of opposition from China and Russia. The US also supports the UN Independent Investigative Mechanism for Myanmar and contributes to efforts for justice and accountability through funding and diplomatic support.

The ICC investigation into Mali focuses on war crimes and crimes against humanity committed during the 2012 conflict involving armed groups such as Ansar Dine and the Tuareg separatists. The investigation has led to cases against individuals like Ahmad Al Faqi Al Mahdi, who was convicted for destroying cultural heritage sites in Timbuktu. The US has generally supported the ICC’s efforts in Mali, particularly about the prosecution of individuals responsible for serious crimes. While specific statements on Mali might not be as prominent as other cases, the US endorses the ICC’s role in addressing war crimes and supporting international justice in conflict zones.

Another case where the US commented on the ICC investigations was Colombia—the first Latin-American case to be investigated by the ICC prosecutor. The ICC investigation into Colombia has primarily focused on alleged war crimes and crimes against humanity committed during the long-running conflict involving various armed groups, including FARC (Revolutionary Armed Forces of Colombia) and paramilitary groups. The investigation, which opened in 2004, includes allegations of murder, torture, sexual violence, and forced displacement. The ICC's involvement aimed to address these serious crimes and ensure accountability for perpetrators. Unlike the other cases, the preliminary examination conducted by the Office of the Prosecutor in 2012 confirmed that there were sufficient resources to build a case within the ICC. According to the Office, the information provided was adequate to establish a reasonable basis to believe that crimes against humanity, as defined under Article 7 of the Statute, were committed in Colombia by various actors since November 1, 2002. These include murders under Article 7(1)(a); forced population displacement under Article 7(1)(d); imprisonment or other severe deprivation of physical liberty under Article 7(1)(e); torture under Article 7(1)(f); and rape and other forms of sexual violence under Article 7(1)(g) of the Statute. (Court, Report on Preliminary Examination Activities, 2020, p. 26)

With significant support from the US (CHRIS 2015, 1117), the Colombian government has pursued a strategic engagement with the ICC prosecution, resulting in the development of the Colombian Justice and Peace Unit (CJPU). This domestic initiative was designed to address crimes falling under ICC jurisdiction while safeguarding influential political figures from prosecution. The US government notably supported this coordination with the ICC's Office of the Prosecutor (OTP).

The US provided extensive military and non-military aid to Colombia, funded through both public and covert budgets (CHRIS 2015, 1117). This assistance reinforced Colombia as a strategic ally and potentially facilitated the continuation of criminal activities. Allegations surfaced that US military personnel and contractors were involved in the sexual abuse of children in Colombia between 2003 and 2007, indicating a problematic aspect of US involvement.

A German-commissioned report on Colombia’s 2005 Justice and Peace Law (JPL) highlighted that the law allowed for significant sentence reductions for

government and allied forces, while left-wing groups faced more severe penalties (CHRIS 2015, 1117). This approach was seen as a strategic move to meet ICC complementarity[4] standards while protecting powerful actors from full accountability. Despite US opposition to the ICC, the OTP has adapted to Colombia's calculated approach, which continues to be supported by both the ICC and Colombia's Constitutional Court. This situation underscores the impact of US influence and the strategic manipulation of ICC proceedings (CHRIS 2015, 1117).

Building on the complex interplay observed in earlier cases, such as those in Uganda and Congo, the ICC's examination of the situation in Afghanistan further underscores the significant involvement and interest of the United States in the court's activities. The Office of the Prosecutor (OTP) initiated its preliminary examination of Afghanistan in 2006. By 2013, the OTP had established a reasonable basis to believe that crimes against humanity and war crimes had been committed (Fee 2023). The release of the Senate Select Committee's report on CIA interrogation methods in December 2014 added crucial context. In November 2017, the ICC Prosecutor requested authorization to investigate alleged crimes related to the Afghan conflict, identifying the Taliban, Afghan Forces, and US Forces, including the CIA, as key parties of interest. This case highlights ongoing US engagement with the ICC, reflecting both the challenges and the stakes involved in international justice efforts.

In March 2018, President Trump appointed John Bolton as National Security Adviser and Mike Pompeo as Secretary of State, both of whom adopted a strongly adversarial stance toward the ICC. Bolton criticized the ICC as a threat to US sovereignty and promised to use "any means necessary" to prevent ICC investigations into US personnel, including sanctions and diplomatic pressures. This hostility was evident in Bolton's September 2018 speech and Trump's subsequent UN General Assembly address, which rejected the ICC's legitimacy. The ICC reaffirmed its independence (Fee 2023, 58). In March 2019, Pompeo announced visa restrictions and potential sanctions against ICC staff involved in

[4] According to the Rome Statute, the ICC functions as a complementary jurisdiction, intervening only when a state is unable or unwilling to prosecute crimes within its jurisdiction. The principle of complementarity argues that national prosecution of international crimes takes precedence over international prosecution, as long as the national process is legitimate (Schiff 2014, p.77).

investigating US actions, culminating in the revocation of Prosecutor Fatou Bensouda's visa in April 2019. Despite these pressures, the ICC's Pre-Trial Chamber II rejected the request to investigate Afghanistan, citing limited prospects for success and potential bias. The decision, coupled with Judge Mindua's opinion, suggested that US opposition had influenced the judicial process, leading to a partial grant of the Prosecutor's request for an appeal.

Under the Biden administration, the decision to lift sanctions and rescind Executive Order 13928 marked a diplomatic shift from the previous administration's outright hostility towards the ICC. Various organizations and stakeholders generally welcomed this change as a positive step towards restoring US credibility in supporting international justice. While removing sanctions was seen as an improvement, it did not signify a full US commitment to the ICC, as the administration maintains that ICC jurisdiction over US nationals should only follow ratification of the Rome Statute. Critics argue that while the US is no longer actively obstructing the ICC, it has yet to take substantial steps to support or engage with the court fully.

With the new prosecutor, Karim Khan, the approach to the Afghanistan investigation has been marked by a decision to deprioritize elements of the investigation, particularly those implicating US forces, despite the previous findings and ongoing concerns over jurisdiction. This selective focus has sparked controversy, with critics arguing that it undermines the ICC's impartiality and could damage its legitimacy, particularly among Afghan communities and human rights advocates. While Khan’s prioritization aims to address the gravest crimes, his approach has been viewed by some as politically influenced and potentially skewed towards favoring US interests, raising questions about the ICC's commitment to a balanced and independent investigation.

With the Russia-Ukraine conflict, the support for the International Criminal Court (ICC) comes from an unlikely source: a bipartisan, unanimous resolution by the US Senate. “Encourages member states to petition the ICC or other appropriate international tribunal to take any appropriate steps to investigate war crimes and crimes against humanity committed by the Russian Armed Forces and their proxies and President Putin's military commanders, at the direction of President Vladimir

Putin," according to a portion of Senate Resolution 546 (S.Res.546), which was introduced by Lindsey Graham (R-SC). Twelve Republicans, twelve Democrats, and one Independent supported S.Res.546, approved by voice vote in the Senate.

2.4. Partial Conclusions

The United States' relationship with the International Criminal Court (ICC) is a mix of power plays, national self-interests, and divergent views on global justice. In shaping international law, especially about the post-Cold War period, it has positioned itself as a dominant actor; this was its position as it advocated for a framework that would protect its sovereignty while allowing it to maintain its military operations. The Rome Statute negotiations exposed significant splits over whether a robust international judicial mechanism could be created or whether American citizens should remain immune from prosecution.

Since the negotiations of the Rome Statute and the present day, the United States' stance toward the International Criminal Court (ICC) has remained ambiguous. Despite the absence of a definitive intention to ratify or participate in the Rome Statute, the U.S. has strategically utilized the ICC to influence and bind other states to its principles. This approach allows the U.S. to position itself as a global advocate for justice and accountability for atrocities while avoiding formal commitment to the court's jurisdiction and accountability mechanisms. By leveraging the ICC's framework to press other nations on their conduct, the United States maintains a role in shaping international norms without being subject to the court's legal and procedural constraints. This strategy reflects a broader pattern of American diplomacy where the U.S. champions human rights and accountability on the global stage while minimizing its exposure. At the same time, the United States strategically maintains a network of allied countries as members of the International Criminal Court (ICC), which facilitates the advancement of its interests. By leveraging the positions and influence of these allied governments—such as the United Kingdom, Canada, and Colombia—the U.S. can shape the ICC's activities and decisions in ways that align with its objectives. This approach allows the U.S. to exert indirect influence over the Court's operations and policies, enhancing its ability to pursue national interests while avoiding direct legal obligations and accountability mechanisms that might otherwise apply. Through

this network of allies, the U.S. effectively utilizes its own and its allies' positions to further its strategic goals within the framework of the ICC.

3. North American Interests vis-à-vis the ICC: Outlining Intermestic Relations

3.1. Introduction

The US stance on the International Criminal Court (ICC) cannot be analyzed in isolation. However, it must be understood within the broader context of US foreign policy towards international law and the global normative system. The relationship between a nation and international legal institutions like the ICC is complex and multifaceted, shaped by various domestic and international factors. To fully grasp the intricacies of this position, it is essential to examine US foreign policy, including the historical evolution of its attitudes toward international law and how these policies are strategically employed to pursue American interests on the global stage.

This chapter analyzes the various ways in which foreign policy engages with international law, highlighting the different layers of influence, both domestic and international. Foreign policy does not operate in a vacuum; it is influenced by various actors, including political leaders, interest groups, and public opinion. Understanding these influences is crucial for comprehensively analyzing how the United States interacts with international legal frameworks, particularly with the ICC.

To achieve this, the chapter will present literature on foreign policy approaches to situate the ‘intermestic’ approach used in this dissertation. Each approach offers a different lens through which to analyze foreign policy, as discussed below; the intermestic approach is the most suitable to understand US foreign policy towards the ICC and its legal cases, as it focuses on the simultaneous domestic and international political and social processes and influences.

Accordingly, the chapter will delve into the domestic influences on US foreign policy decisions, particularly regarding the ICC. This includes analyzing how domestic political considerations, such as the opinions of Congress, interest groups, and the public, impact the US position on the Court. A more in-depth

analysis will focus specifically on US interactions with the ICC. This section will examine key cases where the US either participated in or took a clear stance on ICC matters, analyzing the implications of these actions for US foreign policy and the credibility of the ICC as an international legal institution.

Additionally, the chapter will explore the underlying American interests related to the conflicts and individuals investigated by the ICC. This analysis will help illuminate how US foreign policy is influenced by national security, geopolitical strategy, and domestic political pressures, providing a nuanced understanding of the complex dynamics in the US relationship with the ICC. Ultimately, this chapter seeks to contribute to a deeper understanding of how foreign policy and international law intersect and the implications of these interactions for both the United States and the broader international community.

3.2. Foreign policy and international law

Several approaches in the discipline of International Relations study the behavior of countries in the international system. One way to approach it is following the three analytical levels or "images," introduced by Kenneth Waltz in the 1950s: the systemic level, the state (or domestic) level, and the individual level. The systemic level emphasizes a state's position within the broader international system, focusing on how power dynamics and the global distribution of power influence state behavior (Noone, 2019, p. 168). The state or domestic level shifts attention to the internal factors that shape foreign policy, including political, cultural, and social dynamics within the state. Lastly, the individual level analyzes key policymakers' personal motivations and decisions, recognizing leadership's role in shaping foreign policy outcomes.

3.2.1. The study of Foreign Policy

Waltz's framework underscores the complexity of foreign policy development, arguing that relying on a single level of analysis is insufficient to explain state behavior fully. Realism, the dominant theory in international relations, has traditionally prioritized the systemic level, suggesting that the structure of the international system, particularly the balance of power, constrains state actions.

The literature on foreign policy is vast; different approaches depart from different metatheoretical premises and prioritize some variables and processes over others. It is impossible to review all these approaches here (for a recent compendium, see, for instance, Mello & Ostermann 2023, and for US foreign policy, Hook & Jones 2012). However, given the empirical study of this study, i.e., US foreign policy, international law, and the ICC, it is particularly relevant to define foreign policy not merely as a response to international pressures but also as a product of internal state political and normative dynamics as well as individual decision-making (Noone, 2019, p. 168). It is argued that the study of foreign policy requires a comprehensive framework of analysis that accounts for the diverse actors involved in its decision-making processes. This includes their various forms of participation and the wide range of political interactions that shape these processes, such as influence, cooperation, resistance, and conflict. Understanding these dynamics is essential for a nuanced approach to the relationship between foreign policy and international law, as it reveals the complexity of decision-making and the multiple forces that contribute to the formulation and execution of state actions on the global stage.

3.2.2. Two level game and the domestic approach

During the 1980s, Eric Putnam presented the concept of a two-level game in foreign policy analysis. According to Henry Noone (2019, 167), Putnam's approach incorporates Waltz's three levels of analysis, proposing that the Chief of Government (COG), or head of state, functions concurrently at the domestic level (internal political pressures) and the system level (international negotiations). Such a game-theoretical approach promotes an increasingly sophisticated and nuanced explanation of foreign policy decision-making by highlighting the COG's twin task of balancing foreign negotiations and home objectives. According to Putnam's approach, negotiations co-occur at two levels: the international level, where states seek to reach agreements, and the domestic level, where national governments must secure support from domestic stakeholders. Putnam highlighted that the agreement reached was not merely the result of international bargaining but was significantly influenced by internal political forces within each country (Noone 2019, 167). He emphasized that a powerful minority within each government supported the policy being negotiated internationally, not solely for global reasons but because it aligned

with their domestic interests. Often facing opposition, these domestic actors leveraged international pressure to push through an agreement that they believed advanced their national objectives. This illustrates how domestic politics and international negotiations are deeply intertwined, supporting the broader relevance of conducting foreign policy analysis across multiple theoretical levels.

While presenting its argument, Putnam applied the two-level analysis to international negotiations. The first level is composed of a bargaining process between negotiators. This level happens internationally and is the responsibility of the state's representatives at the international helm. The second level refers to each group discussing internally whether to ratify the agreement (Putnam, 1988, p. 436).

According to Putnam, each national political leader engages simultaneously in two interconnected arenas: the international and the domestic. On the international stage, they negotiate with foreign counterparts supported by diplomats and advisors, while domestically, they must contend with party figures, interest groups, agency representatives, and political advisors. The challenge of the two-level analysis lies in the potential conflict between the strategic rationale of the international front—such as conceding territory or altering economic policies—and what is politically feasible at home. A decision beneficial in one arena might provoke strong resistance in the other. Nevertheless, aligning outcomes between the two levels is essential for successful diplomacy. While rhetorical discrepancies may be tolerated, failure to harmonize international agreements with domestic interests can lead to political fallout or stalled negotiations (Putnam, 1988, p. 434). Occasionally, a skillful leader can navigate both levels effectively, using the interplay between international and domestic pressures to secure outcomes that would otherwise be unachievable.

Conceição-Heldt and Mello (2017, 5) emphasize the complexity of understanding the relationship between domestic politics and international relations. They note the importance of analyzing how the domestic political landscape influences international cooperation or defection. It is crucial to identify which domestic actors play significant roles in shaping foreign policy and understanding the origins of their interests and preferences. The extent to which domestic politics affect foreign policy outcomes and broader global governance

warrants careful examination. Furthermore, understanding how domestic and international politics interact in practice requires an analysis of multiple levels—international, domestic, and transnational—each involving a diverse range of actors and institutions. Integrating domestic politics into foreign policy analysis is essential because foreign policy decisions cannot be fully understood without considering their domestic foundations.

Including domestic politics in foreign policy analysis raises important questions about the relevance and influence of internal political dynamics on a country's international stance. Conceição-Heldt and Mello (2017, 3) argue that understanding foreign policy without considering domestic factors is impossible. At the domestic level, a wide range of actors—politicians, bureaucrats, interest groups, NGOs, think tanks, and voters—interact within political institutions, such as parliaments and ministries, shaping foreign policy decisions. Simultaneously, transnational actors like multinational corporations, advocacy groups, and terrorist organizations also exert pressure on domestic and foreign policies; this debate over the appropriate level of analysis—whether domestic, international, or transnational—has sparked extensive research in international relations. Since Putnam's seminal two-level game theory, scholars have continued to explore the interaction between domestic political institutions and international negotiations. Key questions include which level of analysis best explains foreign policy, how domestic institutions influence bargaining strategies on the global stage, and how interactions between domestic and international levels play out in practice. Domestic institutions, such as the balance of power between executive and legislative branches, the presence of veto players, public opinion, and audience costs, often constrain or enable foreign policy choices, impacting the success of international agreements.

Another key aspect of the two-level game concerns which actors influence foreign policy most. This debate often centers on whether the focus should be on domestic actors—such as heads of state, parliaments, or bureaucracies—or international and transnational players like multinational corporations or advocacy groups. Understanding the interaction between these actors and the levels at which they operate provides valuable insights into formulating and implementing foreign policy in an increasingly interconnected world.

Considering international and domestic dynamics is also key to the concept of foreign policy as public policy (Milani & Pinheiro, 2017). According to Milani (2013, 15), the simultaneous convergence of several factors—such as the end of bipolar competition, the diversification of coalitions, processes of globalization and economic liberalization, systemic financial crises, technological advancements in information, and the transnational activities of activist networks and social movements—has led to a shift in contemporary conceptions of the state's role in international affairs and its foreign policy practices. These changes have not only created new opportunities for states to engage on the global stage but have also introduced new constraints. As a result, states must navigate a more complex and interconnected international environment, where traditional power dynamics coexist with non-state actors and global economic forces, all of which influence foreign policy decisions and actions.

In foreign policy and international law, separating the internal from the external has historically allowed realists to argue, philosophically and epistemologically, for a closed-state model—depicting the state as a house with doors and windows firmly shut. In this view, domestic economic, social, cultural, and political relations were disregarded mainly by foreign policy analysts (Milani, 2013, p. 15). However, recent transformations in the global landscape, including economic liberalization, technological advances, and the increasing influence of non-state actors, necessitate a new analytical approach. This calls for re-examining foreign policy through renewed theoretical categories and interpretative frameworks that better reflect the complexities of contemporary international relations.

In this context, international law becomes integral to foreign policy, influencing both domestic and international arenas. Rather than treating foreign policy as a function solely of state interests, the modern analysis must account for the interaction between states and a variety of other actors—NGOs, multinational corporations, transnational movements—whose agency has become significant in shaping international legal frameworks and domestic policy outcomes. Milani suggests that the resurgence of analytical perspectives on foreign policy, particularly in International Relations (IR), acknowledges that foreign policy is no longer the exclusive domain of the state but rather a dynamic process shaped by

diverse stakeholders (Milani, 2013, p. 16). As the foundational premises of realism fail to account for these contemporary shifts, new approaches are required to address the evolving role of the state and non-state actors in shaping the nexus between foreign policy and international law.

The intellectual broadening of foreign policy studies requires breaking away from the traditional association of foreign policy with the more rigid versions of realism, which assume that state behavior can only be understood or guided by the concept of national interest (Milani, 2013, p. 23). By viewing foreign policy as public policy, we move it into politics, recognizing that its formulation and implementation are part of broader governmental decision-making processes. These processes are shaped by coalitions, negotiations, disputes, and agreements among various interest groups, reflecting the dynamic nature of politics itself.

As a result, foreign policy is no longer seen as a static expression of self-evident or permanent national interests, insulated from the contingencies of political and partisan dynamics. Instead, it is understood as subject to the same influences and negotiations as any other public policy. Over time, once government-driven policies may evolve into state policies, shaped by factors such as their actual or perceived effectiveness, ideological constructions, or even stagnation due to the lack of alternatives. This shift highlights the complex interplay between domestic politics and foreign policy, challenging the notion of a fixed national interest and emphasizing the role of political processes in shaping international legal and policy decisions (Milani, 2013, p. 23).

Similarly, the discussion has expanded to include the subnational and local dimensions of foreign policy, aiming to understand the initiatives taken by regional and local governments. This broader perspective acknowledges that foreign policy is not solely the domain of national governments but also involves actions and decisions made at lower levels of governance. Moreover, attention has been drawn to the formal and informal mechanisms through which the Legislative branch expresses its interest and exerts influence on foreign policy matters (Milani, 2013, p. 20). These mechanisms highlight the interaction between domestic political actors and international affairs, demonstrating that foreign policy is shaped by more contributors than traditionally recognized. By incorporating these subnational and

legislative dynamics, foreign policy analysis becomes more comprehensive, reflecting the diverse sources of influence and decision-making processes that affect a state's international engagements. Putnam, the two-level game, addresses the impact of the international within the domestic, and later by the intermestic approach.

3.2.3. The intermestic approach

The intermestic approach analyzes political relations with inherent interdependence and interconnectedness between domestic and international spheres. Conceived by Bayless Manning in 1977, this perspective recognizes that various issues transcend the traditional dichotomy between the internal and external, requiring a more comprehensive analytical lens to understand their nuances and impacts. Integrating the intermestic perspective into international law allows for a more thorough analysis of the factors influencing state behavior in the international legal arena. By considering how domestic politics, interests, and power dynamics interact with international legal frameworks, a deeper understanding of the complexities involved in creating, interpreting, and applying international laws and treaties can be achieved. Due to its impact, US policy, whether domestic or international, naturally has transnational repercussions (Long, 2017, p.5). Intermestic processes account for domestic politics as an integral part of foreign policy formation, as highlighted by Abraham F. Lowenthal.

From the intermestic perspective on policy change, the widespread adoption of market ideologies in the late 1970s and early 1980s exemplifies the global spread of liberal economic concepts through knowledge networks (KNETs). This phenomenon, described by Helleiner (1990) as "knowledge transnationalization," unfolded through various means, including scholarships that enabled postgraduate students from developing nations to study at universities in the US and Europe, where neoliberal thinking was dominant. These graduates eventually formed an epistemic community, driving market-based reforms in their home countries and promoting economic policies grounded in neo-classical principles. Similarly, international financial organizations, like the World Bank, offered training

programs aimed at technocrats and activists, further facilitating the introduction of these policies.

The intermestic approach to policy change emphasizes not only the role of idea formation but also highlights the importance of relational aspects, such as cross-national networking, as part of the learning process rather than the result of hegemonic imposition. Networking is driven by the interdependence of actors who share similar perspectives or beliefs and seek resources from others to achieve their objectives. These networks can be formal or informal across national borders (Adam & Kriesi, 2007). The distribution of power within these networks can be centralized within government institutions (state-centered) or dispersed among various national and non-national actors while still acknowledging the government's role (state-society-centered) (Kurniawati, 2017, p. 164).

At its core, the intermestic approach rests on three key arguments: the critical role of ideas, the importance of cross-national networking, and the conceptualization of policy change as a learning process. Ideas guide actors in defining objectives, prioritizing them, identifying strategies, and determining allies and opponents (Adler, 1986). The complexity and variety of choices in policymaking often result in multiple potential outcomes or equilibria (Goldstein & Keohane, 1993). Given the uncertainty in aligning actors' interests with the appropriate policies, ideas become crucial in shaping those interests and guiding decision-making. Ideas provide a normative framework and justification, helping actors clarify the relationship between their goals and the means to achieve them. As such, the outcomes and structures that emerge from policy changes are often grounded in underlying ideas, which can reshape existing interests and create new ones. The transnational flow of ideas, facilitated by epistemic communities, plays a significant role in the intermestic approach, as these ideas move across borders and influence both domestic and international contexts, akin to a capillary process (Kurniawati 2017, p. 164).

3.3. The US and it intermestic approach to international law

Since " Intermestic " emerged as an analytical approach to analyzing foreign policy, the US has been a central focus of analysis. In his work, Bayless Manning (1977,308) justifies the application of an Intermestic framework to the US by

emphasizing its position as one of the world's leading economic and military powers. Manning compares the US to a "Gulliver" navigating a world of "Lilliputian" states (Manning 1977,308), suggesting that the US cannot achieve its goals merely by asserting them. Instead, negotiation has become a vital component in pursuing its objectives. However, given that US foreign policy has not historically prioritized negotiation processes, an Intermestic analysis is essential to understanding how international negotiations are shaped and implemented across different levels of domestic power. This highlights the undeniable influence of domestic interests on the US approach to the international system governed by the rule of law.

Domestic forces heavily influence topics such as the oil market, political embargoes, and the defense of democracy worldwide. In his analysis, Manning examines the domestic impact of the oil embargo in the international arena, illustrating how a crisis that originated in the sphere of international relations quickly triggered a wide array of domestic responses. In this context, the press, Congress, and public opinion played a crucial role in shaping the course of the crisis.

In this sense, the intertwining between the domestic and the international is crucial to understanding specific foreign policy agendas promoted by international actors, specifically the US, in this analysis. Putnam already recognized this process in his analysis of the win-sets, ace scenario, where all the levels presented are satisfied or less disturbed by the outcome (Manning 1977, 308).

3.3.1. US foreign policy and international law

US hegemony evolved since the end of the Second World War to become the sole power after the end of the Cold War. Whether its power peaked in the 1990s is discussed in the literature by authors such as Ikenberry (1989) and Huntington (1991). However, it is undeniable that US policies shape international politics and international law even today.

A key element to understanding US foreign policy and international law is the concept of ‘exceptionalism.’ According to Malcolm Jorgensen, American

exceptionalism can be defined as the notion that the United States was born in and continues to embody qualitative differences from other nations. When analyzing US foreign policy, exceptionalism is frequently invoked within a broader narrative framework. The concept is linked to the writings of Alexis de Tocqueville in the nineteenth century and the belief that the establishment of the American political system signified a decisive break from the traditions and values of Europe.

In discussions of US foreign policy towards international law, legal scholars have frequently critiqued the concept of American exceptionalism, arguing that the United States seeks "exceptions" to international legal obligations, essentially advocating for "international law for others, but not for itself." While this concept is widely discussed, interpretations differ regarding whether it is necessary to analyze the beliefs that shape US decision-making from the outcomes perceived as exceptions. An example of this distinction is highlighted in the memoirs of David Scheffer, a former U.S. Ambassador-at-Large for War Crimes, who reflects on his struggles to secure US support for creating the International Criminal Court (ICC) (Jorgensen, 2020, p. 26). According to Jorgensen (2020,28), John Murphy's analysis of US exceptionalism addresses the paradox that, while the United States was instrumental in establishing key international institutions in the 20th century, it increasingly struggles to comply with the rule of law in international affairs. Murphy attributes this to a combination of triumphalism, exceptionalism, and provincialism, which impede US support for international legal norms. He defines exceptionalism as the belief that, due to its unique status as a superpower, the United States bears special responsibilities and deserves privileges (Jorgensen, 2020, p. 26). However, as Anne-Marie Slaughter points out, while Murphy's framework is insightful, it does not fully explain the specific reasoning behind US decisions in individual cases.

Hilary Charlesworth´s definition of exceptionalism focuses on the notion that, while other nations must adhere to international legal norms, the United States is exempt from such obligations. According to Charlesworth, this belief is grounded in the idea that the U.S. is already a model international citizen and that its domestic legal system is sufficient to ensure accountability. Additionally, there is a perception

that international law could be politicized and unfairly used against the US. For Charlesworth, such exceptionalism is fundamentally incompatible with the rule of law (Jorgensen, 2020, p. 29).

A key question in understanding US foreign policy towards international law (IL) is: What specific factors lead to America's seemingly contradictory behavior regarding IL, particularly the disconnect between its stated commitment to the rule of law and the actual outcomes of its policies? Are these contradictions rooted in exceptionalist beliefs, and does this justify using the term "exceptionalism"? Scholars like Ignatieff and Koh offer typologies that attempt to explain this behavior, but these frameworks often conceal the complex and interconnected causes at play, sometimes making the concept of exceptionalism more obscure than clarifying. Ignatieff, for instance, suggests four potential explanations for America's distinctive IL policy: a realist explanation based on its exceptional global power, a cultural explanation linked to a belief in a Providential destiny, an institutional explanation reflecting the unique structure of the US government; and finally, a political explanation related to the conservatism and individualism ingrained in American political culture (Jorgensen, 2020, p. 30).

While institutional explanations offer insight into the unique outcomes of US-IL policy, they ultimately depend on exceptionalist and ideological factors to explain the apparent contradictions. The authority to develop and implement IL policy resides mainly within the executive branch. However, it is constrained by the federal system, which divides power among branches of government and grants certain prerogatives to individual states. This "invitation to struggle" for control over US foreign policy results in IL being shaped not by a single coherent approach but by amplifying or suppressing ideas through fragmented and decentralized political institutions. However, institutional explanations alone beg the question: What differing beliefs drive the competition for influence among US policymakers? Moravcsik, in Ignatieff's volume, attributes the failure of the US to ratify key human rights treaties to a small but influential group of senators who are particularly skeptical of liberal multilateralism, often representing conservative rural states. While institutional barriers such as supermajority treaty ratification

rules play a role, the core issue remains the ideological beliefs of legal policymakers, which precede institutional factors (Jorgensen, 2020, p. 31).

Koh expands on Ignatieff's typology by adding a fifth element: the concept of exceptional global leadership. This captures the variable influence of exceptionalist ideas on US IL policy more accurately. Koh contrasts a "power-based" form of American exceptionalism, which disregards IL, with a "good exceptionalism" rooted in universal values like democracy, human rights, and the rule of law. This distinction emphasizes that the key to understanding US IL policy lies in examining the competing exceptionalist beliefs that guide policymakers and how these interact with US power. As a result, the focus shifts from analyzing policy outcomes to investigating the underlying exceptionalist ideas and how they intersect with other factors driving distinct US IL behavior (Jorgensen, 2020, p. 31).

According to Malcolm Jorgensen (2020, 33), three significant explanations for the United States' unique approach to IL warrant closer analysis to understand better the role of exceptionalism in shaping its policies. First, as a hegemonic power, the US has the capability and incentive to reshape or bypass IL. This behavior is typical of great powers, not necessarily tied to exceptionalist beliefs. Second, the distinctive institutionalized jurisprudence within US legal academia and practice significantly influences its approach to IL, separate from power dynamics or cultural beliefs. In particular, American IL jurisprudence often views international law as a policymaking process rather than a set of rigid rules. Third, cultural explanations point to the direct influence of exceptionalist ideas, rooted in American political culture, on the country's commitment to legal norms. In exploring these explanations, it is essential to isolate the independent effects of each factor while understanding how they interact as complementary forces shaping distinctive US legal policy.

A significant feature of American IL jurisprudence is its skepticism toward interpretations of IL that are detached from political and social contexts. Instead, the US approach is heavily influenced by policy-oriented schools of thought, such as the New Haven School, which emerged in response to the perceived shortcomings of legal positivism. This policy-driven approach has become the dominant form of IL scholarship and practice in the US, and its various iterations

continue to shape debates in the field. These institutional and intellectual traditions further distinguish US policy towards IL from that of other nations, adding complexity to the analysis of its behavior in the international legal arena.

A second explanation for the unique nature of US foreign policy toward international law lies in the institutionalized legal framework prevalent in American legal academia and practice. This approach is not merely the result of US power or cultural beliefs. However, it reflects a deep-seated skepticism toward interpreting international law as a fixed set of rules detached from its social and political context. Influenced heavily by "policy-oriented" perspectives, US legal scholars and practitioners view international law as a fluid, evolving process tied to political objectives and shifting circumstances. This perspective, notably exemplified by the New Haven School, challenges the traditional legal positivism more common in other international frameworks, emphasizing that legal rules reflect broader social trends and decisions shaped by political contexts (Jorgensen, 2020, p. 46).

The key advancement of this approach is its departure from the notion of law as merely formal diplomacy or strict rules, arguing instead for its integration into more extensive political mechanisms aimed at achieving specific policy goals. This "deformalized" view of law asserts that legal principles about the political and social environments that influence them must be understood. The New Haven School, for example, incorporates ideals such as "world public order" and "human dignity," which are closely tied to long-standing American notions of its global responsibility. Though this approach has faced criticism—most notably from Professor Falk, who condemned its narrow focus—it remains highly influential in US legal circles, with both right- and left-leaning interpretations converging on a shared projection of American values on the global stage (Jorgensen, 2020, p. 48).

This predominant jurisprudence reinforces the exceptionalist character of US foreign policy, allowing for the dismissal of international legal interpretations that contradict American ideals. By framing international legal authority through the lens of exceptionalism, US policymakers can reject global norms as politically undesirable and legally questionable. This blending of legal thought and national ideology underscores how deeply rooted exceptionalist beliefs are within US international law, shaping its distinct approach.

3.3.2. The domestic influence in US´s approach to the International Criminal Court

According to Bosco (2014), the U.S. government's stance on the ICC has shifted over the years; initially, it sought to engage with international criminal justice, but only under terms that allowed it to maintain control over how justice would be applied. This aligns with the concept of exceptionalism and the historical approach to promote the international rule of law but resist institutional constraints that could limit its actions, favoring instead a flexible approach that prioritizes its national values over global legal norms (Bosco, 2014).

The essence of this exceptionalism became a point of contention, as legal advocates aimed not to accuse the U.S. of blatantly violating international law but to challenge the inconsistencies within its exceptionalist narrative. While the U.S. presented itself as a champion of international justice, its insistence on controlling the terms of its participation in the ICC appeared self-serving to many. This tension came to a head in 2004 following the Abu Ghraib prisoner abuse scandal. The United Nations Security Council (UNSC) had previously granted immunity to U.S. peacekeepers, citing America's role in upholding liberal values. However, as the scandal unfolded, critics pointed out that U.S. privileges in international legal matters were disproportionate and no longer justified. This shifted the conversation from abstract legalist principles to questions of American hypocrisy, and U.S. demands for ICC immunity were subsequently withdrawn. The Abu Ghraib incident demonstrated that when America's actions contradicted its exceptionalist claims, its foreign policy became vulnerable to challenges on its terms (Bosco, 2014).

The ICC continues to intersect with various U.S. foreign policy interests, regionally and thematically. Historically, the U.S. has shown bipartisan support for atrocity prevention, accountability for international crimes, and upholding the rule of law. These principles suggest potential benefits in normalizing the U.S. relationship with the ICC, as it could enhance America's ability to assist in investigations and promote accountability in cases where the Court is the only viable mechanism. For example, when the UNSC refers a case to the ICC or the Court collaborates with territorial or nationality states, the traditional U.S. concerns

about ICC jurisdiction are less pronounced. ICC involvement can align with U.S. interests in promoting international justice in such scenarios.

ICC's engagement in Afghanistan and Palestine has raised new challenges. The official opening of an investigation into the Afghanistan conflict in 2020, which implicates U.S. servicemembers, has intensified long-standing American concerns about foreign jurisdictions over its military personnel. Similarly, the potential investigation of Israeli officials in connection with the Palestine situation (derived from the 2023 Hamas attack) poses a dilemma for the U.S., as it involves a close ally and raises broader concerns about the ICC interfering in conflicts that the U.S. believes should be resolved through negotiation rather than legal action. These issues underscore the ongoing friction between America's commitment to accountability and its reluctance to submit to international judicial processes that might constrain its actions or those of its allies.

To sum up, the U.S. approach to the ICC is deeply influenced by domestic considerations, particularly the concept of exceptionalism, which shapes how the U.S. engages with international legal institutions. While the U.S. has shown a willingness to support international justice in theory, its actual participation in the ICC remains conditional, driven by concerns over sovereignty, military jurisdiction, and strategic interests. The American response to the ICC is thus a reflection of its broader foreign policy stance, where the pursuit of global justice is tempered by the desire to maintain control over the terms of engagement.

3.4. American Foreign Policy in ICC legal cases

This section examines specific cases in which the United States has shown an interest in situations under the International Criminal Court (ICC) jurisdiction, highlighting how U.S. actions have influenced the development and impact of these cases. While the U.S. is not a party to the Rome Statute, its selective engagement in certain ICC cases has involved diplomatic support, logistical assistance, public advocacy, and, in some instances, financial incentives, all of which have had repercussions on the Court's operations and its pursuit of justice.

The cases covered include Colombia, Ukraine, the Central African Republic, Mali, Myanmar, Uganda, the Democratic Republic of Congo, Sudan, and Libya. Each of these situations represents an instance where U.S. actions, either

through direct involvement or indirect influence, played a role in advancing specific cases, particularly in the apprehension or prosecution of individuals indicted by the ICC.

By engaging selectively, the U.S. has supported and shaped international justice processes, reinforcing certain accountability efforts while influencing perceptions of the ICC's legitimacy. The analysis of these cases will show how the U.S.'s pragmatic approach has impacted the ICC's mission and overall perception within the broader framework of international law.

3.4.1. Colombian Case

Since June 2004, the International Criminal Court (ICC) has kept Colombia[5] under preliminary examination due to alleged war crimes and crimes against humanity associated with the country's internal armed conflict. This ongoing examination responded to numerous communications regarding violations under Article 15 of the Rome Statute. Key issues included accusations against government forces, paramilitary groups, and rebel factions for crimes such as murder, torture, sexual violence, and the forcible recruitment of children in combat. As Colombian authorities gradually increased their internal judicial actions addressing these issues, the ICC maintained its examination, assessing whether Colombia's national proceedings genuinely pursued accountability, particularly for the highest-ranking perpetrators. In 2012, an interim report recognized Colombia's progress but highlighted substantial gaps concerning senior officials and specific crime categories. After years of monitoring, the ICC noted significant national advances in 2021, ultimately deciding to close the examination, based on assurances of Colombia's long-term commitment to justice, formalized in a cooperation agreement between the Prosecutor's Office and the Colombian government in October 2021.

3.4.1.1. US participation

The United States has strategically supported Colombia's domestic accountability processes, effectively delaying the need for a full ICC investigation.

[5] Further information on the Colombia case before ICC:

Through robust financial and technical assistance, the US aided Colombia in establishing a comprehensive but carefully managed judicial system under the Justice and Peace Law and the Special Jurisdiction for Peace. However, this US support, part of initiatives like the Justice Reform Program, has faced criticism, as it is perceived to shield elite actors from prosecution despite international expectations. Moreover, Article 124 of the Rome Statute, initially invoked by Colombia to delay specific ICC investigations, notably excluded crimes against humanity, which remain under ICC scrutiny. This arrangement, while allowing for some domestic accountability, has strategically managed to prevent the ICC from pursuing broader investigations that might implicate high-ranking Colombian officials, maintaining a balance aligned with US interests.

The United States has provided substantial military and intelligence support to Colombia, an investment exemplified by Plan Colombia, a multibillion-dollar initiative aimed primarily at curbing organized crime and insurgency. Secretive measures, including NSA surveillance, combined with overt military support, have bolstered the Colombian government's control over domestic issues and reduced the ICC's involvement. This approach aligns with US interests, seeking stability in Colombia while retaining influence over the ICC's case selection in situations where the involvement of US allies could trigger contentious investigations (Mahony, 2015, p. 232).

3.4.2. Ukraine

Although Ukraine is not a State Party to the Rome Statute, it has twice accepted the ICC's jurisdiction to investigate alleged crimes under its provisions. The initial declaration by Ukraine's[6] government accepted ICC jurisdiction over crimes committed between November 2013 and February 2014, covering violent clashes and human rights violations associated with political unrest. This was extended indefinitely in 2014 to include ongoing alleged violations, notably following the escalation of conflict with Russia in eastern Ukraine and, later, the Russian invasion in 2022.

[6]Further information on the Ukraine case before ICC https://www.icc-cpi.int/situations/ukraine

In response, in March 2022, a coordinated group of State Parties submitted a joint referral to the ICC, prompting the Prosecutor to open a formal investigation into crimes potentially encompassing war crimes, crimes against humanity, and genocide. Arrest warrants were issued for multiple Russian officials, including high-ranking military leaders and President Vladimir Putin, for charges such as the unlawful transfer of civilians and attacks on civilian infrastructure. This investigation continues as new reports of alleged crimes are actively reviewed by the ICC, with additional warrants issued as recently as 2024.

3.4.2.1. US participation

The United States initially favoured creating a domestic tribunal for prosecuting crimes committed during Russia's actions in Ukraine, mainly focusing on aggression. However, as the conflict intensified, US support for the ICC's jurisdiction grew, driven by public statements condemning Russian actions as atrocities and crimes under international law. President Biden leveraged these allegations to secure congressional support for increased military and financial aid to Ukraine. Furthermore, bipartisan US legislative actions and Senate resolutions endorsed accountability for Russian officials, with assistance from the ICC for its Ukrainian investigations, supporting victim and witness protection programs (Hafetz, 2024, p. 381).

In 2023, a group of bipartisan senators urged President Biden to share U.S.-held intelligence with the ICC (2023), specifically to support cases involving Russian war crimes. Legislative changes in late 2022 expanded the scope of US domestic war crimes jurisdiction to strengthen cooperation with the ICC, aligning with Ukraine's prosecution needs. This shift indicates a significant step toward greater US cooperation with the ICC, in contrast to previous reluctance. Russia's ongoing actions in Ukraine have motivated the US to mobilize additional diplomatic and financial resources to back international legal accountability efforts (Savage, 2023).

3.4.3. Central African Republic case

The ICC has maintained investigations in the Central African Republic (CAR) across two distinct conflicts, CAR I and CAR II. The first investigation

(CAR I)[7] focused on alleged war crimes and crimes against humanity committed during the conflict that peaked between 2002 and 2003. This led to the prosecution of Jean-Pierre Bemba Gombo for crimes including murder, rape, and pillaging. Subsequently, CAR II addressed a renewed wave of violence from 2012 onwards, involving violent clashes between Séléka (predominantly Muslim) and anti-Balaka (predominantly Christian) militias. This second investigation responded to widespread reports of atrocities and a United Nations warning about a high risk of genocide in the region. As of December 2022, ICC Prosecutor Karim Khan confirmed the conclusion of investigations for both cases, resulting in several trials and active warrants, including charges against high-level individuals for crimes such as murder, sexual violence, and persecution.

3.4.3.1. US participation

US engagement in CAR has historically been limited, with diplomatic operations only partially reestablished in 2014. However, the US has emerged as the primary humanitarian donor, contributing over $400 million in aid since 2013. US military advisors deployed in CAR since 2011 initially focused on combating the Lord's Resistance Army, with US involvement expanding as violence escalated. Through its Special Representative for CAR, the US has endorsed the ICC's role in addressing CAR's humanitarian crisis and supported efforts to strengthen CAR's national judicial capacities (Service, 2016).

Jane Stromseth, formerly the Deputy to the U.S. Ambassador-at-Large for War Crimes Issues in the Office of Global Criminal Justice at the US Department of State (2013 to 2015) and a member of the US Department of State's Advisory Council on International Law. Points out the relevance of the cooperation between the ICC and domestic tribunals in the CAR cases (Stromseth, 2017). US Statement of the United States also highlighted the US support for those cooperations at the 21st Session of the Assembly of States Parties of the International Criminal Court. In its statement, the American representative Beth Van Schaack reinforce the US commitment to strengthening the capacity of national and hybrid courts to

[7] Further information on the Central African Republic case (I and II) before ICC: https://www.icc-cpi.int/car; https://www.icc-cpi.int/carII

investigate and prosecute mass atrocities, using the CAR cases as an example (Schaack, 2022).

3.4.4. Mali Case

The ICC's investigations in Mali[8] center on alleged war crimes committed since January 2012, predominantly in the northern regions of Gao, Kidal, and Timbuktu, as well as incidents in the south, including Bamako and Sévaré. In January 2013, the Office of the Prosecutor launched its investigation, supported by an Article 53(1) Report that describes two pivotal 2012 events: a northern rebellion by armed groups beginning on January 17, leading to the seizure of northern Mali, and a military coup on March 22, which ousted President Amadou Toumani Touré. The rebellion involved extensive violence, including the deliberate destruction of religious shrines in Timbuktu, assaults on military bases in the north, the mass execution of detainees at Aguelhok, and numerous instances of looting and rape. Additional reports documented torture and enforced disappearances tied to the coup. Based on this evidence, the ICC Prosecutor identified reasonable grounds to believe that war crimes were committed in Mali, such as murder, mutilation, torture, attacks on protected objects, unauthorized executions, pillaging, and rape.

3.4.4.1. US participation

In 2014, then-President Barack Obama invoked US sovereignty to authorize the deployment of US forces to support the UN's peacekeeping mission in Mali under the American Service-Members' Protection Act, thereby ensuring immunity from ICC jurisdiction for US personnel, per an Article 98 agreement with Mali. This crisis has been a recurring topic in the US Congress, where representatives have advocated for African-led solutions. More recently, the US has used Mali as a case illustrating the ICC's potential to contribute positively to stability and accountability in conflict zones (Smith, 2023, p. 18). The crisis in Mali has been discussed in the US Congress, pointing to the need for an African-led solution.

3.4.5. Myanmar Case

The ICC has jurisdiction over alleged crimes against humanity, including the persecution and forced deportation of the Rohingya, which occurred partly on

[8] Further information on the Mali before ICC: https://www.icc-cpi.int/mali

Bangladeshi territory (a Rome Statute State Party) or within other ICC[9] jurisdiction areas. The investigation covers crimes potentially dating back to June 1, 2010, when the Rome Statute entered into force for Bangladesh, and any crimes with a link to the situation post-2016 and 2017, when violence against Rohingya communities intensified in Myanmar's Rakhine State. In its 2019 decision, the Court authorized investigations of any related future crimes. This ongoing ICC investigation complements other international justice initiatives, such as the Gambia's 2019 ICJ case against Myanmar for genocide, a case supported by the Organization of Islamic Cooperation (OIC).

3.4.5.1. US participation

The United States has actively supported efforts to address human rights abuses in Myanmar, with Ambassador Beth Van Schaack endorsing The Gambia's ICJ case and US diplomatic channels sharing information to aid in prosecuting genocide claims. The US has advocated for a UN Security Council referral of the Myanmar situation to the ICC, recognizing, however, that China and Russia would likely block such a referral. Since 2018, US support for the United Nations Independent Investigative Mechanism for Myanmar (IIMM) has further bolstered evidence collection and analysis on atrocities in Myanmar, particularly after the 2021 military coup. Funding for the IIMM is supplemented by US State Department assistance, and the US collaborates with various UN mechanisms and civil society organizations to document crimes, support victims, and promote accountability for the Rohingya and other vulnerable populations (Statement for the Record from Ambassador Beth Van Schaack).

3.4.6. Sudan Case

Sudan is not a signatory to the Rome Statute; nonetheless, the International Criminal Court (ICC) can assert its jurisdiction over crimes committed in Darfur since 1 July 2002, following the referral of the situation by the United Nations Security Council (UNSC) through Resolution 1593 (2005) on 31 March 2005. The ICC's investigations into Darfur[10] target allegations of genocide, war crimes, and

[9] Further information on the Myanmar before ICC: https://www.icc-cpi.int/bangladesh-myanmar

[10] Further information on the Darfur case before ICC: http://icc-cpi.int/darfur

crimes against humanity. The UNSC noted that the situation in Sudan threatened international peace and security, leading to the referral based on findings from the International Commission of Inquiry regarding violations of international humanitarian and human rights law in the region. This Commission was established to investigate such violations, ascertain whether acts of genocide occurred, and identify those responsible for accountability. Reports highlighted severe humanitarian crises, including around 1.65 million internally displaced individuals in Darfur and over 200,000 refugees in neighboring Chad, alongside extensive destruction of villages. The ICC opened its investigation in June 2005, resulting in multiple cases involving various suspects, including Sudanese government officials and militia leaders. Allegations encompass genocide, defined by acts such as killing and causing serious harm to groups, as well as intentionally creating living conditions aimed at physical destruction. War crimes include murder, attacks on civilians, property destruction, rape, pillaging, and assaults on peacekeeping forces, while crimes against humanity consist of murder, persecution, forced population transfers, and torture. The Darfur situation marks the ICC's inaugural case referred by the UNSC, representing the first investigation concerning a non-state Party and the first to address genocide allegations. Former President Omar Al Bashir of Sudan stands out as the first sitting leader wanted by the ICC, being charged with genocide; however, the arrest warrants issued against him have yet to be executed, and he remains at large.

3.4.6.1. US participation

In a press statement, the US urges all states to cooperate with the ICC to deliver the justice promised to the people of Darfur. The United States joins international and regional parties, demanding an immediate end to the fighting, unimpeded humanitarian access, and for all combatants to adhere to international humanitarian and human rights laws. The United States strongly objects to any form of external interference and military support for the belligerent parties, which will only intensify and prolong the conflict and contribute to regional instability.

A group of NGOs, including Human Rights Watch, Act for Sudan, the African Centre for Justice and Peace Studies, Amnesty International USA, the Center for Development of International Law, Citizens for Global Solutions, the

Darfur Women Action Group, Human Rights First, iACT, the Never Again Coalition, Operation Broken Silence, the Raoul Wallenberg Centre for Human Rights, The Sentry, the Sudan Human Rights Network, Sudan Unlimited, the World Federalist Movement – Institute for Global Policy, and World Without Genocide, sent a letter to the US Department of Justice (2024). The letter requested that the Department publicly release any unclassified written guidance issued by the Office of Legal Counsel regarding the conditions under which the US government could lawfully support the International Criminal Court (ICC) investigation into atrocities, such as those recently committed in Sudan's Darfur region. In this context, the US cooperation in the Sudan case was acknowledged.

3.4.7. Libya Case

In 2011, the United Nations Security Council referred Libya's case to the ICC, condemning the Libyan[11] government's violent repression of civilian protests and systematic human rights abuses under the regime of Muammar Gaddafi. The UNSC noted the severity of crimes against the Libyan civilian population, including extrajudicial killings, attacks on protesters, and an armed conflict marked by assaults on civilians, potentially amounting to crimes against humanity. The ICC's Pre-Trial Chamber I later confirmed that these widespread attacks justified an ICC intervention. Key cases involved prominent Libyan officials, with proceedings against Abdullah Al-Senussi eventually deemed inadmissible in 2014. The ICC also issued a warrant for Saif al-Islam Gaddafi, which remains pending.

3.4.7.1. US participation

The US supports accountability efforts in Libya through the ICC and the UN's Independent Fact-Finding Mission (FFM). Despite challenges, the US advocates for justice, specifically for victims of crimes against humanity, such as those committed by the al-Kaniyat militia. The US has called on Libya to cooperate with the ICC, particularly regarding the long-pending warrant for Saif al-Islam Qaddafi. ICC Prosecutor Karim Khan's recent briefing underscored Libya's ongoing atrocities and the necessity of justice for its victims, with the US

[11] Further information on the Libya case before ICC: https://www.icc-cpi.int/situations/libya

reaffirming its support for Libyan efforts to end abuses, including against migrants and detainees.

3.4.8. Uganda Case

The ICC's investigations in Uganda have focused on alleged war crimes and crimes against humanity tied to the armed conflict predominantly between the Lord's Resistance Army (LRA) and national authorities in Northern Uganda since July 1, 2002. Following Uganda's referral[12], the ICC Prosecutor emphasized the critical need for cooperation among states and international organizations in the pursuit of LRA leadership and highlighted the reintegration challenges faced by many LRA members who were themselves victims. Support from the international community was deemed essential to secure Northern Uganda's stability, which Uganda and the ICC could not achieve in isolation.

The ICC began investigations in July 2004, examining crimes such as war crimes (murder, cruel treatment of civilians, attacks on civilian populations, pillaging, rape, forced enlistment of children) and crimes against humanity (murder, enslavement, sexual enslavement, rape, and inhumane acts). This led to the Court's first arrest warrants in 2005 against senior LRA leaders, though most suspects remained at large for a decade. One key figure, Dominic Ongwen, surrendered in 2015, while Joseph Kony and Vincent Otti remain fugitives. On December 1, 2023, ICC Prosecutor Karim A. A. Khan KC announced the end of the investigation phase in Uganda.

3.4.8.1. US participation

In 2012, a viral social media campaign by the U.S.-based NGO Invisible Children shed light on Joseph Kony's alleged crimes, particularly child soldier recruitment, drawing unprecedented global attention to the LRA. While the video “Kony 2012” generated massive engagement, critics argued it oversimplified the complexities of international justice and highlighted concerns over the ICC's image in Africa, framing Kony's capture as a straightforward solution to the regional crisis. In January 2015, Dominic Ongwen, an LRA commander, surrendered to US forces in CAR and was subsequently handed over to the ICC (Holly Cullen, 2021, p. 12).

[12] Further information on the Uganda case before ICC: https://www.icc-cpi.int/uganda

3.4.9. Congo Case

The ICC's investigations in the DRC[13] have concentrated on alleged war crimes and crimes against humanity in the Ituri region and North and South Kivu Provinces since July 1, 2002. The Office of the Prosecutor acknowledged that reported crimes dated back to the 1990s, though ICC jurisdiction only began in 2002. Initial investigations cited widespread mass murder, summary executions, rape, torture, forced displacement, and illegal child soldier conscription.

The DRC investigations led to various cases, with charges including war crimes (child soldier recruitment, murder, attacks on civilians, rape, torture, and pillaging) and crimes against humanity (murder, rape, persecution, forcible population transfer). This investigation was the Prosecutor's first, resulting in convictions for Thomas Lubanga Dyilo, Germain Katanga, and Bosco Ntaganda, as well as an acquittal for Ngudojolo Chui.

3.4.9.1. US participation

In January 2013, Bosco Ntaganda, the Congolese warlord known as "the Terminator," surrendered unexpectedly at the U.S. Embassy in Rwanda, requesting transfer to the ICC to face charges. Although the U.S. is not a Rome Statute signatory, embassy officials facilitated his transfer to The Hague. By November 2021, the US publicly supported the ICC Appeals Chamber's decision to confirm Ntaganda's conviction, reinforcing its stance on justice for war crimes, including ongoing efforts against the LRA. The US further demonstrated its commitment by offering rewards for information leading to the capture of Joseph Kony.

3.5. Partial Conclusion

The intermestic perspective on U.S. foreign policy toward the ICC demonstrates an interplay between domestic pressures and international objectives. The United States' engagement with the Court aptly illustrates how domestic actors, such as Congress, interest groups, and diasporic communities, juxtapose geopolitical strategies. This dual-layered dynamic brings to the fore the tensions

[13] Further information on the Congo case before ICC: https://www.icc-cpi.int/drc

inherent in a balancing act between national interests and international commitments, especially in international criminal justice.

The U.S. has used intermestic factors to its advantage, shaping ICC processes effectively to suit its strategic priorities while resisting broader institutional accountability. This selective engagement underlines the pragmatic balancing act that the U.S. undertakes to maintain its international influence without compromising sovereignty. Therefore, these findings constitute a lesson in the complexity of U.S. foreign policy: how internal and external forces combine to produce its stance toward the ICC and other similar international institutions. The following chapter will apply this intermedia lens to the Venezuelan conflict and its relations with the United States and the ICC.

4. To Enemies, Justice: The Legal Mechanism as a Reflection of US Intermestic Relations in the Venezuelan Case

4.1. Introduction

This chapter explores how American foreign policy, driven by strategic, political, and economic considerations, shapes its involvement in the Venezuelan situation, especially in the context of international justice. By analyzing the effects of the U.S. in the ICC proceedings related to Venezuela[14], this section will examine how the U.S. uses multilateral institutions to pursue its broader goals and exert pressure on the Venezuelan government and address the complexities of international law in this politically charged setting by exploring the intermestic relationships within this process.

To this end, the chapter is divided into three main parts. The first part will look at the Venezuelan crisis and its effects, providing an overview of the country's political, economic, and social collapse and its consequences for the region and the world. In the second part, the Venezuelan case at the International Criminal Court will be presented, including why and for what reasons the case was submitted to the court. The third section aims to analyze the impact of the Venezuelan crisis on the United States and explain how the intermestic political demands of special groups, such as immigrants and the financial sector, determine the United States' approach

[14] Further information on the Venezuela cases (I and II) before ICC:

to ICC proceedings, explaining the internal process behind this perspective. This section will also examine the domestic politics of the United States, especially Venezuela, and its participation in judicial proceedings against the regime.

4.2. Venezuela crisis

The Venezuelan crisis can be deemed one of the severest economic, political, and socio-political crises of contemporary Latin America. It has and still is expressing itself in social unrest, the reduction of living standards, and displacement. Precariously, the transition from a nascent democracy to a solid autocratic state over the last decade has also intensified economic misdirection, embezzlement, and suppression of civil liberties. These have been compounded by reduced oil revenue and sanctions to a level that declares Venezuela's socio-economic or list state recently that caused regional and global impact. This complex emergency has challenged world leadership, eroded fundamental rights, and precipitated one of the most massive migration waves in the contemporary world. It requires emergency relief and sustained global cooperation to mitigate, contain, prevent, and respond to its causes and impacts.

4.2.1. The crisis development

In the latter half of the 2010s, Venezuela experienced an unprecedented crisis, arguably the most severe faced by any modern Latin American society and among the deepest for a country not engaged in war in recent times. Throughout 2013 to 2023, the country's Gross Domestic Product (GDP) fell precipitously by 73 percent (2024). According to the International Monetary Fund, the current GDP per capita in Venezuela is 4.02 thousand (2024). Venezuela changed from a limited democracy to an authoritarian government (Bull & Rosales, 2020, p. 2). Infant and child death rates also increased significantly, along with mortality rates for a variety of disorders.

The shortage of medical supplies and food in Venezuela resulted from the nation's reliance on imports and the government of Hugo Chávez's suppression of the private sector. The value of imports increased from 16.7 billion to 59.3 billion dollars between 1999 and 2012 (Briceño-Ruiz & Lehmann, 2021, p. 217). However, between 2013 and 2023, imports dropped from 48.77 billion to 11.18 billion, representing a fall of 77% (O'Neill, 2024). Although exogenous factors such as the

fuel crisis generated by the Russian Ukrainian conflict contributed to a brief increase in Venezuelan fuel consumption (Tarasenko, 2022), the worsening political crisis, with the Venezuelan election and its further developments, quickly led to the return of economic sanctions.

4.2.1.1. The crisis in Venezuela and its causes

The Venezuelan state has been in an ongoing economic and political crisis since 2016. The crisis that began in 2016 had its prelude in the political context of Hugo Chavez's government. The election of Chaves and the changes he proposed, such as the model of participatory democracy and his so-called "twenty-first Century Socialism," created local instability, which was triggered by Chaves' death in 2013 (Hoffmann, 2019, p.819). This crisis has meant the dismantling of democracy and the rule of law. Despite the re-election of President Nicolás Maduro seeking a discourse of legitimacy, questions about the veracity of the elections and the president's manipulation of power contribute to maintaining the political crisis and lack of stability within the country. This instability is denounced not only by members of the opposition but also by Venezuelan citizens who are forced to leave the country.

Today's instability is presented in its social, political, and, to some extent, economic characteristics. It is also accompanied by internal political polarization, resulting in achieving a peaceful resolution or transitioning to a challenge (Briceño-Ruiz & Lehmann, Venezuela in Crisis: IBID, Governability, Equity and Democracy, 2021, page number 213). The situation in Venezuela has then shifted to regional and international interaction with China, Russia, Latin American countries, and the United States. The nation of circumstances was named by civil society organizations both domestically and internationally as a complicated humanitarian position that demands urgent high-level attention and response (Bull & Rosales, 2020, p. 2).

Briceño-Ruiz and Lehmann (2021, p. 213) note that the Venezuelan government has never developed a serious economic plan to combat the economic crisis that has plagued it since its inception. However, the Maduro government increased public spending when it continued to apply exchange controls, interest rates, and prices. The nation is estimated to have the world's highest inflation, as

indicated by global organizations such as the World Bank and the International Monetary Fund.

Since Chaves' death, Nicolás Maduro, his successor, has triumphed in the presidential elections of 2013 and 2018. However, the May 2018 Presidential elections were rejected by most national and international actors because Maduro was sworn in before the TSJ. In the case of Guaidó, a leader of the opposition and president of the National Assembly, Maduro's inauguration by the Supreme Court of the Republic of Venezuela in an attempt to legitimate an election recognized as null by most countries was a usurpation of power contrary to article 333 of the Constitution of Venezuela. Guaidó thought Maduro was trying to seize the presidential powers in violation of Article 333 of the Venezuelan Constitution. The situation in Venezuela has not improved since then. An unsuccessful attempt was made on February 23, 2019, to send humanitarian assistance to the nation. Leading opposition figure Leopoldo Lopez was released from prison after serving four years after several military personnel, including the Director of the Bolivarian Intelligence Service (SEBIN), acknowledged Guaidó as President at the end of April. After hours of quiet, Maduro appeared on television and said that the US was planning a coup (Briceño-Ruiz & Lehmann, Venezuela in Crisis: Governability, Equity and Democracy, 2021, p. 217).

The different powers of the Maduro government continued to increase quickly over the freedom of the press, where journalists who criticized the Maduro administration and government officials were arrested. It has been alleged that, during anti-government protests, security forces, within a single weekend, were involved in the deaths of at least 25 people and the wounding of more than 285 others. Incidents suggest that the government had planned to eliminate any outspoken opposition forcefully. In the period from January to May of 2019, 66 protest-related deaths were recorded, of which 52 were attributed to actions of government security forces. Furthermore, according to the United Nations, as of May 31, 2019, there are 793 persons still arbitrarily held in the country. The UNHCR report affirms that more than 5.4 million Venezuelans are seeking refuge and asylum abroad, and more than 2 million are living in other forms of legal stay in the American continent (VENEZUELA, 2024). At the same time, allegations

persist that Maduro's wealth has grown significantly, fuelled by illicit activities such as drug trafficking and money laundering (Matos, 437).

The Venezuelan government has curtailed judicial and parliamentary oversight, co-opted the Supreme Court of Justice, and blocked the National Assembly's functions through court rulings and physical impediments (Antoniazzi, 2020). A parallel National Assembly and "National Constituent Assembly," controlled by the government, target opposition figures. Internationally, Venezuela withdrew from the American Convention on Human Rights in 2012 and the OAS Charter in 2017, diminishing external oversight.

In 2023, the Barbados Agreement was signed in a context of mediation promoted by the Norwegian government, ensuring electoral guarantees for all Venezuelans (2023), seeking to promote presidential elections in the second half of 2024, in exchange for lifting some sanctions on Venezuela. The agreement included a series of guarantees for the elections to be considered fair and legitimate, such as non-interference from outside and the sending of international observers to legitimize the democratic process (Dib, 2024). More recently, after years of boycotts and struggles to remain together as individual opposition leaders attempted to take the lead, the opposition decided to participate in a presidential run in 2024. However, the following electoral process was shrouded in criticism and a lack of transparency. Since the start of the electoral race, Nicolás Maduro has been accused of persecuting opposition candidates (2024), most famously Maria Corina Machado, who was barred from running because she took part in the 2019 demonstrations. Subsequently, Maria Corina nominated Edmundo Gonzales as her candidate, who managed to run in the Venezuelan elections.

Throughout the electoral process, it became clear that Maduro would not leave his position easily. With controversial speeches (Rogero, 2024) and the support of the Venezuelan armed forces and the public machine, Maduro did not indicate his intention to promote a peaceful transition, a term laid down in the Barbados agreement. The electoral battle took another chapter when Maduro refused to release the electoral minutes, leading to several questions about his election (Cano, 2024).

4.2.2. World Reaction to the crisis

There is no denying the crisis's effect on the nation's leading economic sector—oil production. Exports from the nation significantly decreased until 2020. The US sanctions placed on the nation and internal unrest are the two primary causes of this decrease. Oil continues to dominate the nation's economy more than a century after its discovery. Venezuela's economic and political situation spiraled out of control as the price of oil fell from over $100 per barrel in 2014 to less than $30 per barrel in early 2016. Although prices have subsequently increased, the situation is still dire (Andrianov, 2022).

The instability, including various challenges such as structural, security, and infrastructure issues, heightened the business risk for investors. The decline in oil prices shifted focus away from large Greenfield projects like the new OOB initiatives, which have longer lead times. Instead, there was a greater emphasis on leveraging existing developed assets, pursuing short-cycle projects, and implementing cost-cutting measures. Furthermore, the US government has imposed economic sanctions on the Venezuelan government and PDVSA since 2017, significantly affecting international partnerships. With few exceptions, these sanctions reduced market access to Venezuelan crude and increased the operational risks associated with PDVSA (Bull & Rosales, 2020).

Exogenous factors such as the war between Russia and Ukraine have created a new demand for Venezuelan oil. This new demand has momentarily eased the crisis and brought previously distant actors such as the US closer together, even though part of the sanctions has been maintained. This also contributed to Venezuela's return to negotiation tables and multilateral events.

The migratory flow of Venezuelans due to the crisis has become an unavoidable issue. According to official figures reported by host countries, the number of emigrants has reached 7,774,494 as of July 3, 2024. Colombia is the primary destination for Venezuelan migrants, with 2,857,528, followed by Peru with 1,542,004, Brazil with 568,058, Chile with 532,715, and Ecuador with 444,778.

The Venezuelan crisis was denounced by several countries, mainly Latin American, in speeches at the General Assembly. The topic of Venezuela and Nicolás Maduro has become part of the political agenda in Latin America and is a polarized

issue in electoral debates on the continent (Kahn, 2024). Among the speeches about the Maduro regime, Chilean President Gabriel Boric, for example, in his speech at the UN General Assembly, renewed his unequivocal denunciation of election fraud and human rights violations in Venezuela, calling the regime a “dictatorship that is trying to steal an election, that persecutes its opponents and is indifferent to the exile not of thousands, but of millions of its citizens” (Kahn, 2024). In line with this, the Argentine Federal Court ordered the arrest of Maduro and his Interior Minister, Diosdado Cabello, for alleged crimes against humanity committed against dissidents. Guatemalan President Bernardo Arévalo rejected the current Venezuelan election, while President Luis Abinader of the Dominican Republic called on President Maduro to release the records of the electronic ballot boxes (Kahn, 2024).

On the sidelines of the UN event, Brazil’s President Luiz Inácio Lula da Silva met with the French President Emmanuel Macron to review Venezuela’s situation. However, the Venezuelan government is not only criticized. While calling for a political solution to the conflict, in his speech to the General Assembly, Colombian President Gustavo Petro, in a critique of global inequality, seemed to praise the country by saying that “economic blockades against rebel countries that do not fall under their control, such as Cuba or Venezuela” (Kahn, 2024).

Several countries have spoken out on the issue, with the new aspect of the Venezuelan crisis being the recent electoral crisis. Numerous Latin American presidents, both allies and critics of Maduro (2024), have spoken out, demanding that the minutes of the elections be published. The demands were not restricted to Latin America; in December 2024, the United Nations Human Rights Committee demanded that Venezuela publish the minutes and not destroy them (Buschschlüter, 2024).

4.2.3. The migration crisis

The ongoing political unrest, socio-economic instability, and humanitarian crisis in Venezuela have forced over 6.1 million people to flee the country, marking the largest displacement crisis in Latin America’s modern history. Approximately 80% of these refugees and migrants, totaling more than 5 million, are hosted across 17 countries in Latin America and the Caribbean. Many embark on perilous journeys, often on foot or by sea, without precise final destinations or proper

documentation, exposing themselves to significant risks, including exploitation by smugglers and traffickers. Some leave behind families and communities, while others travel to reunite with loved ones.

The Venezuelan migration crisis, one of the most significant in recent history, has unfolded in three distinct phases, reflecting the country's worsening economic and social collapse. The demographic and socioeconomic profiles of migrants have shifted over time, adapting to the intensifying hardships faced by the Venezuelan population. Unlike other major migration crises, such as those in Syria and Afghanistan, which were primarily driven by armed conflicts, Venezuela's situation stems from dire economic and humanitarian conditions, making it the most significant migration outflow for a non-conflict country in recent years.

The COVID-19 pandemic temporarily disrupted migration flows in 2020 as countries implemented border closures to manage public health risks. However, as borders reopened in 2021 and 2022, migration resumed, with numbers expected to grow further. This resurgence has been supported by measures such as granting protective status to Venezuelan migrants, as seen in Colombia and Ecuador. Despite the temporary slowdown, the overall trend indicates a continued rise in migration as the crisis in Venezuela persists.

As of August 2022, approximately 7 million Venezuelans had fled their homeland, comparable to major global migration crises over the last 50 years. This number surpasses the displacement seen in Ethiopia (1980), Iraq (1988, 2004), South Sudan (2014), and even the 6.3 million refugees fleeing the war in Ukraine during the same period. However, while Venezuelan migrants represent 23% of the country’s total population, this proportion remains below the levels in Syria and Afghanistan, where migration accounted for more than 35% of the population within five years of their crises.

The destinations and composition of Venezuelan migrant flows have evolved as the crisis deepened. Most have sought refuge in neighboring Latin American nations, though many have relocated to other regions, particularly the United States and Spain. Colombia has become the primary destination, hosting 2.5 million Venezuelans, representing about 5% of its population as of August 2022. Chile, Ecuador, and Peru have collectively absorbed over 2 million migrants,

exceeding 3% of their local populations on average. Meanwhile, smaller territories like Aruba and Curaçao, despite receiving fewer migrants in absolute numbers, have seen their populations swell by 9% to 15% due to the influx (Paez & Vivas, 2017).

4.3. The ICC case

Venezuela acceded to the Rome Statute during its negotiations in 1998 and ratified it on 7 June 2000, officially becoming a member of the ICC. On 27 September 2018, a group of States Parties to the Rome Statute—namely Argentina, Canada, Colombia, Chile, Paraguay, and Peru—known as the Lima Group, which will be further discussed, referred a case to the Office of the Prosecutor regarding the situation in Venezuela dating back to 12 February 2014. By Article 14 of the Statute of the International Criminal Court (ICC), the referring States requested the Prosecutor to initiate an investigation of crimes against humanity allegedly committed in the territory of Venezuela. Following these referrals, in 2018, the ICC Prosecutor announced the initiation of a preliminary examination into alleged crimes committed in Venezuela since at least April 2017, in the context of protests and related political unrest, designated as Venezuela I ("Venezuela I | International Criminal Court"). On 28 September 2018, the ICC Presidency initially assigned the Situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I. Later, on 19 February 2020, the Presidency reassigned the case, now designated as Venezuela I, to Pre-Trial Chamber III, reflecting procedural adjustments in the Court's handling of the situation. Over the next two years, the situation remained in Phase 2 of the Preliminary Examination.

Separately, in February 2020, Venezuela submitted a referral to the ICC regarding a second situation known as Venezuela II. This referral focused on alleged crimes against humanity occurring in Venezuela as a result of "illegal coercive measures unilaterally imposed by the United States government" since at least 2014. The ICC Prosecutor's Office has since scrutinized both situations, reflecting the complexity and gravity of the allegations under review ('Venezuela').

To demonstrate cooperation with the Court, Venezuela pursued an agreement with the Office of the Prosecutor to foster mechanisms to support and promote authentic national judicial proceedings. As part of this initiative, Venezuela also committed to implementing measures to enhance collaboration between the

parties, thereby facilitating the effective fulfillment of the Prosecutor's mandate within its territory (‘Venezuela I | International Criminal Court’).

On 21 April 2022, Venezuela formally requested the Prosecutor to defer the ongoing investigations, citing actions undertaken by Venezuelan authorities and invoking Article 18 of the Rome Statute, which upholds the principle of complementarity. This request was subsequently referred to the Pre-Trial Chamber. In his notification to the Chamber, the Prosecutor also indicated his intention to seek authorization to resume the Office's investigations as soon as possible following a review of the grounds presented in the deferral request. In line with his stated intention, on 1 November 2022, the Prosecutor submitted a formal application to Pre-Trial Chamber I, seeking authorization to recommence the investigation into the Situation in the Bolivarian Republic of Venezuela. This request was approved on 27 June 2023, granting the Prosecutor the authority to resume the investigations. The Venezuelan authorities contested the Prosecutor's request and the subsequent authorization granted by Pre-Trial Chamber I. However, their appeal was ultimately rejected on 1 March 2024. An additional complaint was filed by Uruguay in September 2024, in a context following the Venezuelan elections (‘Venezuela I | International Criminal Court’).

4.3.1. The referral of Lima group

Since 2017, the Lima Group has become one of the critical regional alliances trying to deal with Venezuela's profound political and humanitarian situation. Composed of 13 countries, the group has reiterated over the last few years the restoration of democracy, protection of human rights, and the rule of law through the channel of multilateral diplomacy. This section deals with one of the most important decisions taken by the Group: referring the situation in Venezuela to the ICC. With this referral, the Lima Group showed that it did not forget its commitment to accountability for crimes against humanity and increased international pressure on the regime of Nicolás Maduro. It also details the political and legal consequences of such a referral, together with the strategies the coalition has followed, in order to develop the unique role played by the Lima Group in framing the international response to Venezuela's crisis and its broader significance within the realm of international law and diplomacy.

In early 2025, Argentina filed a new complaint with the ICC against Venezuela, this time (Quintana & Uriburu, 2025). The complaint followed rising tensions in the relations between Argentina and Venezuela after the election of Nicolás Maduro, which culminated in a diplomatic crisis. This crisis topped with the detention of Nahuel Gallo, an Argentinian citizen who, upon arrival in Venezuela, where his wife and daughter reside, was put under arrest.

The complaint by Argentina is a single incident, but it points to broader accusations against the Venezuelan government. Furthermore, the timing of the complaint does seem politically opportune for the administration of Javier Milei, as it comes at a time when the latter tries to cozy up to U.S. President-elect Donald Trump by finding common ground on foreign policy priorities.

4.3.1.1. The Lima Group and its interests

As previously mentioned, the Lima Group, a coalition of 13 countries, has been a critical voice in addressing the ongoing crisis in Venezuela. Deeply concerned about the erosion of democratic principles and human rights under Nicolás Maduro's regime, the group took decisive steps, including filing a complaint with the ICC to investigate alleged crimes against humanity. With its origins in a foreign ministers' meeting in Lima in 2017, the Lima Group aims to establish initiatives to defend democracy in Venezuela (García, 2019, p. 180). With this aim, they expressed unwavering support for Venezuela's National Assembly, recognizing it as the only legitimate democratic institution and urging the transfer of executive powers to the Assembly until free and fair elections could be held ("Lima Group Declaration" 2019).

The Lima Group's statement reflected a profound sense of urgency and commitment to the Venezuelan people. They condemned the breakdown of constitutional order and emphasized that the restoration of democracy and respect for human rights is the only path forward to resolve Venezuela's severe political, economic, and humanitarian crises. Recognizing the immense suffering caused by the crisis, the group called for a resolution led by Venezuelans while pledging ongoing political and diplomatic support through institutions like the OAS and the UN. They also voiced their concerns about the crisis's ripple effects, including widespread migration and public health challenges impacting the entire region.

To address the situation, the group proposed actionable measures. These included reassessing diplomatic relations with Venezuela, imposing financial restrictions on high-level officials of the Maduro regime, and halting military cooperation. In its declaration, they urged international financial institutions to withhold loans that might prop up the regime and pressed for swift action by the ICC on alleged crimes against humanity. Finally, the group appealed to the global community to adopt similar measures, emphasizing that collective international action is vital to restore democracy and alleviate the suffering of the Venezuelan people (“Lima Group Declaration,” 2019).

The Lima Group operates as an ad hoc regional diplomatic coalition established to address the political crisis in Venezuela. Despite its informal status, the Group positions itself as a multilateral platform dedicated to defending democratic stability in the region. This focus has enabled it to garner international recognition and legitimacy from other actors, even though it is neither a formal international organization nor an institutionalized regional mechanism for political dialogue and consultation. Consequently, its temporal scope and thematic agenda are directly tied to the unfolding political developments in Venezuela (García, 2019, p. 180). Unlike traditional multilateral bodies, the Lima Group adopts a distinctive operational approach, openly supporting one side of the conflict—the opposition—without engaging in dialogue with Nicolás Maduro's government. This alignment underscores its role as a coalition of aligned states rather than a neutral mediator (García, 2019, p. 180). Thus, the Lima Group shifted away from a traditional regional approach centered on diplomatic mediation, gradually embracing a more combative multilateral strategy toward the Venezuelan government, characterized by a political discourse of open confrontation.

The Lima Group adopted a strategy centered on diplomatic and media activism to amplify the international visibility of the Venezuelan crisis. This approach included raising the issue in UN Security Council sessions with the backing of the United States and the European Union, filing a complaint with the International Criminal Court, and exerting diplomatic pressure through initiatives such as the diplomatic siege. Additionally, the Group sought to politically leverage the humanitarian crisis faced by the Venezuelan population and the abuses of power committed by the Maduro regime to bolster its international denunciations (García,

2019, p. 181). The Lima Group, on its own, cannot engage in high-level coercive diplomacy, limiting its ability to assert credible pressure on the Maduro government. This structural limitation has rendered U.S. support indispensable to compensate for the Group's diplomatic shortcomings. Carlos Alberto García (2019, 181) highlights the uncomfortable position this dependency creates for the Lima Group, as evidenced during its meeting on 25 February 2019. At this gathering, the U.S. urged the governments of Bogotá and Brasília to adopt stronger measures against the Maduro regime. However, the Trump administration's push for coercive action risked undermining the Lima Group's legitimacy, marginalizing its diplomatic efforts, and tethering its agenda to Washington's decisions. Furthermore, such an approach threatened to exacerbate Venezuela's humanitarian crisis, complicating the Group's objectives.

The formation of the Lima Group in August 2017 by pro-enforcement member states marked a turning point in regional diplomatic efforts concerning Venezuela. While its members continued participating in the OAS, the Lima Group's creation diluted the OAS's influence by bypassing its decision-making structures. Instead, the Group fostered direct collaborations with U.S. senators, the White House, the Venezuelan opposition, and OAS Secretary-General Luis Almagro. Over time, the Lima Group supplanted the OAS General Assembly and Permanent Council as the primary forums for shaping Venezuela policy. Together with Almagro, the Group spearheaded external initiatives, including filing a case against the Venezuelan regime with the ICC and invoking the Inter-American Treaty of Reciprocal Assistance (Rio Treaty). These actions enabled Latin American states to impose targeted sanctions on Venezuela outside the OAS's multilateral framework. The growing prominence of the Lima Group, coupled with Almagro's assertive stance, increasingly sidelined the OAS in addressing the Venezuelan crisis. Venezuela's withdrawal from the OAS, initiated in April 2017 and finalized two years later, further underscored this shift (PALESTINI 2023, 15).

4.3.2. The accusations

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The purpose and significance of the referral to the International Criminal Court (ICC) are better understood as political rather than strictly legal (Ortiz, 2018). At its core, the referral served as a formal and public expression of political backing and a commitment to pursue accountability in Venezuela. The coalition of state parties behind the referral, all members of the Lima Group, demonstrated a strong political interest in resolving Venezuela's crisis through peaceful means and

coercive diplomacy. The referral was not merely a gesture of support for the ICC Prosecutor's work; it represented a tangible effort to transform political will into legal action. By submitting the referral, these States Parties moved beyond mere condemnation of the situation in Venezuela, taking active steps to facilitate an investigation. Although the referral has limited direct legal consequences, it bolsters the Prosecutor's efforts by showcasing a willingness among these States to cooperate if an investigation proceeds.

Furthermore, the referral allows the Prosecutor to bypass the need for judicial authorization to open an investigation, expediting the process—a critical advantage given the delays observed in other cases, such as Afghanistan. In Venezuela, the referral amplifies institutional and multilateral pressure on the regime from neighboring countries. Nicholas Ortiz explains how this is not a single action, pointing out that paralleling ones were taken in forums like Mercosur, the OAS, and ALBA. However, unlike those instances, this referral could lead to the prosecution of individuals responsible for crimes against humanity against the Venezuelan people. This referral also comes at a pivotal moment when the ICC faces significant opposition to its mandate. While such resistance, including public criticism from certain States, has been counterbalanced by statements of support from State Parties and non-governmental organizations, the referral demonstrates a proactive step to reinforce the Court's work. It has acted as a catalyst, generating further momentum for investigating Venezuela's situation.

The Human Rights Council established an independent fact-finding mission in Venezuela to investigate grave human rights violations, including extrajudicial executions, enforced disappearances, arbitrary detentions, torture, and other forms of cruel, inhuman, or degrading treatment committed since 2014. The mission's findings implicated Nicolás Maduro and his associates in a range of severe crimes, such as murder; unlawful imprisonment or significant deprivation of liberty in contravention of fundamental international legal principles; acts of torture; sexual violence, including rape; enforced disappearances; and other inhumane acts intentionally inflicting substantial suffering (Matos, 446, 2021). Since 2014, over 12,500 individuals have been detained during protests, including not only demonstrators demanding the restoration of human rights but also bystanders. Of those detained, around 7,000 have been "conditionally released," though many

remain under threat of criminal prosecution as they are still required to appear in court (Matos, 452).

There are allegations of crime scene tampering by Venezuelan special forces, reportedly aimed at legitimizing extrajudicial executions. The UN fact-finding mission documented a total of 5,287 deaths in 2018, shedding light on the scale of these actions. Reports and testimonies from Venezuelan citizens have been instrumental in ongoing investigations by the International Criminal Court (ICC), further supported by establishing an ICC prosecutor's office in Caracas.

Additionally, political opponents of Nicolás Maduro's regime have faced systematic arrests aimed at barring their participation in elections. A recent example is Edmundo Gonzales, a presidential candidate and former Venezuelan ambassador to Brazil, whose arrest warrant was issued but avoided after he sought asylum in Spain. Similarly, pre-candidate Maria Corina Machado had her candidacy revoked before the elections under the pretext of her involvement in anti-government activities in 2020. With the post-election tensions, Maria Corina Machado, although she refuses to leave Venezuela, remains in hiding, as she said in a recent interview (2024).

Reports indicate numerous instances of sexual violence against detained women in Venezuela, though details on the methods remain scarce. Reny Elias, for example, recounted being arrested at home and witnessing officers select a young man, forcibly lower his pants, and subject him to abuse involving teargas powder, water, and penetration with a broomstick (Matos, 451).

The Venezuelan government has arrested more than 13,100 individuals in connection with anti-government protests. This crackdown represents a significant threat to democratic freedoms, as protests are a critical means for citizens to highlight the country's ongoing humanitarian crises. In 2017, the government banned protests that could "disturb or affect" the year's contested election, which many viewed as illegitimate. Under this measure, participants could face prison sentences of five to ten years. However, rather than enforce these penalties, security forces have reportedly resorted to killing individuals involved in protest-related incidents (Matos, 465).

4.3.3. Recent developments

After the recent election, the state repression in Venezuela has led to numerous casualties. According to the Inter-American Commission on Human Rights, the government's response has followed patterns observed during the 2014 and 2017 protests, characterized by excessive use of force, arbitrary detentions, enforced disappearances, judicial harassment, censorship, restrictions on freedom of expression and peaceful assembly, and barriers to human rights advocacy (Ayala and Cortés).

Although Venezuela claims that over 2,000 individuals have been detained during protests, the UN Fact-Finding Mission reported, as of August 8, 2024, 23 deaths and 1,260 arbitrary detentions. While the ICC prosecutor has acknowledged "actively monitoring" the situation, no formal statement has been issued (Ayala & Cortés,2024). The ongoing ICC investigation into Venezuela I underscores the critical need for more decisive action, considering the government's intensified repression following the contested July 28 elections. International human rights organizations, including Amnesty International, have emphasized the necessity of heightened global intervention. Moreover, lawyers from Venezuela and abroad have advocated for concrete measures, such as issuing arrest warrants against Nicolás Maduro, to address the escalating violations (Ayala and Cortés).

The consistent failure of domestic investigations, combined with the recurrence of abuses under the same patterns that initially prompted the ICC investigation in 2021, indicates a lack of genuine commitment by Venezuela to ensure justice for victims (Ayala and Cortés). Moreover, the absence of judicial independence within the country underscores the necessity for the ICC to advance its efforts to prosecute those accountable for crimes committed in both 2017 and the more recent incidents. As systematic violence persists and domestic mechanisms remain unreliable, the ICC has the mandate and resources to proceed with prosecuting those responsible. In light of the Venezuelan government's failure to address impunity despite international scrutiny, external bodies must amplify their efforts to hold the state accountable and pressure it to halt ongoing human rights violations (Ayala and Cortés).

Since December 2020, the ICC has played a key role in recognizing the serious nature of the crimes committed during the Nicolás Maduro regime. The

Prosecutor's office concluded that there was reasonable evidence of crimes against humanity, including arbitrary detentions, torture, rape, and persecution. These crimes were attributed to civilian authorities, members of the military, and individuals acting on behalf of the government, highlighting a systematic pattern of abuse.

In the years that followed, the voices of Venezuelan citizens demanding justice grew louder. By April 2023, during an ICC consultation, the overwhelming majority of the 8,900 victims who provided their opinions called for the immediate resumption of investigations into the country's human rights abuses. Their statements painted a grim picture of widespread impunity and the absence of credible domestic investigations. This sentiment was later reinforced during appeal hearings in November 2023, where the inability of the Venezuelan judicial system to ensure accountability became undeniable.

As international scrutiny increased, the Venezuelan government's repression of dissent intensified. In February 2024, Rocío San Miguel, a prominent human rights defender, was arbitrarily arrested and charged with espionage and conspiracy—accusations devoid of evidence. Her case exemplifies the Maduro regime's systematic targeting of activists and opposition figures. The ICC's decision to proceed with its investigation represents a critical step in addressing these violations, signaling the international community's commitment to justice. However, this progress has not been without challenges, as the Venezuelan government continues to resist external oversight.

In early 2024, the government ordered the expulsion of representatives from the United Nations High Commissioner for Human Rights (OHCHR), further restricting international monitoring of the situation. This move drew condemnation from organizations such as the International Federation for Human Rights (FIDH) and PROVEA, which urged the Maduro regime to cooperate with the ICC and uphold its obligations under existing agreements. The expulsion reflects a broader pattern of defiance, as Venezuela remains unwilling to provide transparency or accountability for its actions.

Meanwhile, the crackdown on dissent following the fraudulent July 2024 presidential elections brought new atrocities to light. Amnesty International

reported numerous cases of arbitrary detention, torture, and ill-treatment of children during protests against the election results. Between July 29 and 31, six children faced grave violations of their rights, including unfair trials and inhumane treatment. As of November 2024, over 198 children remain in detention or face fabricated charges, while many others endure severe physical and psychological harm inflicted by state authorities.

The plight of these children underscores the escalating brutality of Maduro's regime. Amnesty International's Secretary General, Agnès Callamard, strongly condemned these actions, emphasizing that detaining, torturing, and prosecuting children represents an unconscionable violation of human rights. The organization called for the immediate release and restitution of all affected children, urging the international community to take decisive action.

These developments underscore the critical role of international mechanisms in addressing Venezuela's accountability crisis. While the ICC's investigation offers a pathway to justice, the persistence of state-sponsored repression and the Maduro government's refusal to cooperate with global institutions highlight the challenges ahead.

4.4. Intermestic processes: actors and interests about Venezuela in US society

In addition to the imposition of U.S. sanctions on Venezuela, domestic American political actors have actively sought to influence political developments within the country. The Venezuela Defense of Human Rights and Civil Society Act, which penalized anyone connected to the Maduro administration, was co-sponsored by senators Marco Rubio and Bob Menendez in 2014. In line with his long-standing position for regime change in Cuba, Rubio made passionate comments in the Senate prior to its introduction, arguing for a confrontational strategy against the Venezuelan government. He persisted in his rhetoric in the following years, ostensibly to gain ground in the 2016 U.S. presidential primary (Brand & Muno, 2023, p. 155). As a result, the Maduro government declared Rubio and other politicians to be "terrorists" and permanently banned them from visiting Venezuela.

Whether the Obama administration pursued a regional, multilateral strategy within the framework of the OAS with a commitment to human rights violations,

political freedoms, electoral integrity, and constitutional norms or as part of a deliberate multi-track approach to heighten pressure on Maduro is a subject of differing opinions (Brand & Muno, 2023, p. 155). Although it depends on the domestic political wing, Latin American nations rely on the OAS as a relevant institutional platform (cf. Muno & Brand, 2014), making its position in regional diplomacy even more difficult. Furthermore, it was thought that OAS Secretary General Luis Almagro, who has been in office since 2015, closely matched American objectives.

During the transition from the Obama to the Trump administration, Venezuela became marginalized in US foreign policy, although there was some continuity in the legal process. During the campaign, Trump paid particular attention to Latin America and focused more on domestic issues such as immigration. Interestingly, although the people of South America have confidence in the outgoing Obama administration, some Venezuelans are quite wary of the incoming Trump administration (Brand & Muno, 2023, p. 156). Secretary of State Rex Tillerson, who was involved with Venezuela, is a notable exception from the Trump administration.

Tillerson, a former Exxon Mobil executive, has personal grievances about the performance of Venezuela's oil industry, which has caused the company to suffer huge losses. His work was influenced by his participation in the 2014 World Bank Centre for Settlement of Investment Disputes (ICSID) decision that favored Venezuela but did not pay ExxonMobil enough. This time, Senator Marco Rubio successfully facilitated Trump's contact with Venezuelan debt activists and strongly influenced policy decisions (Camilleri, 2018, p. 189). Rubio's leadership under Trump has pushed for more radical policies, a departure from the more conservative decisions of the Obama era. These include tougher sanctions, increased support for opposition groups, and rumors of military intervention regarding Venezuela, which earned Rubio the nickname “impeach the president.”

In 2018, Trump's foreign policy group changed, showing people with opposing views strengthening the government's strict approach towards Venezuela (see Biegon, 2020: 64). Under these new guidelines, the use of sanctions increased, and Venezuela's oil production was affected, falling to approximately 1 million

barrels per day as of January 2019. As sanctions restricted oil trade between the two countries, 50% and eventually stopped utterly (Brown, 2020). The Prussian Government had the highest opinion of unilateral sanctions (Hausmann & Morales-Arilla, 2021). This approach included placing President Maduro on the sanctions list in July 2017. This shows that the determination to pressure the Venezuelan government is increasing.

The transition from the Trump administration to the Biden administration represented a cooling in the stance towards Venezuela. President Joe Biden[15], in addition to lifting some of the sanctions imposed on Venezuela, also gradually distanced himself from the self-proclaimed president Juan Guaidó, encouraging new elections in the country alongside other states. The current U.S. administration has even offered to act as an observer state in the elections, although Maduro did not answer that proposal.

Sanctions have exhibited greater flexibility since the onset of the conflict between Russia and Ukraine. Nevertheless, they have not been entirely lifted. The United States continues to enforce sanctions while proposing negotiations to facilitate a peaceful transition.

4.4.1. Economic interests

The Venezuelan conflict has been significantly influenced by the economic interests of the United States, which sought to diminish Venezuela's regional power and secure energy dominance. Throughout Barack Obama's administration, the US government began to undermine Petrocaribe initiatives (Feffer,2023). Petrocaribe's benefits for other vulnerable Caribbean and Central American countries contributed to a possible weakening of the US projection in the region.

In this way, the Obama administration sought to reduce any potential Venezuelan influence in the region. To do so, it imposed sanctions on Venezuela's Petrocaribe officials and pressured Caribbean nations to stay away from Venezuelan oil products. In keeping with the strategy of increasing US influence, the National Security Initiative sought to encourage the adoption of US-supplied liquefied

[15] (Joe Biden lifts sanctions on Venezuela, but not without conditions, 2023)

natural gas and renewable energy sources. This change in geopolitical objective was confirmed by the US government's special envoy for energy, Amos Hochstein.

U.S. analysts, while supporting these efforts, warned of potential fallout. The International Security Advisory Board cautioned in 2014 that countries reliant on Petrocaribe could face severe economic and political destabilization if Venezuelan support disappeared. Similarly, analysts from the Atlantic Council, in reports authored by David L. Goldwyn and Cory R. Gill, highlighted the risk of humanitarian crises and increased unauthorized migration to the United States if Petrocaribe collapsed. They warned, “In the Caribbean, the sudden decline of Petrocaribe and other Venezuelan credit programs could trigger humanitarian crises and unauthorized migration flows to the U.S. mainland” (Feffer 2023).

The Trump administration marked a sharp escalation in US economic actions against Venezuela. Economic sanctions were intensified from 2017, impacting Venezuela's financial sector. In 2019, these sanctions to include the state oil company. In 2020, then-Secretary of State Mark Pompeo declared the US government's intentions by stating that the US was “leading a 59-nation coalition to oust Maduro”. Former National Security Advisor John Bolton later admitted that the administration had supported a coup attempt against the Venezuelan government (Feffer 2023).

The US position was not without criticism, with economist Mark Weisbrot arguing that US sanctions were exacerbating Venezuela's economic collapse. In a 2019 study co-authored with Jeffrey Sachs, Weisbrot estimated that the sanctions from 2017 to 2018 resulted in more than 40,000 deaths. “US sanctions are a death sentence for tens of thousands of Venezuelans,” said the authors (Feffer 2023).

Nonetheless, even U.S. governemental institutions acknowledged the role of sanctions in worsening Venezuela’s economic woes. A report by the U.S. Government Accountability Office, published just after Trump left office, concluded that the sanctions imposed on Venezuela's state oil company in 2019 likely deepened economic decline by severely restricting oil revenues (Feffer 2023). Subsequently, Connecticut senator Chris Murphy criticized Trump's approach to Venezuela, calling it a "catastrophic failure" that not only missed its objectives but

also compounded the ongoing humanitarian disaster. "It's really hard to overstate the disaster that was President Trump's policy toward Venezuela," Murphy said in September 2023, citing his role in fuelling the migration crisis plaguing the US-Mexico border.

US sanctions and their licenses directly impact companies' interest in Venezuelan oil. Although many companies, such as Maurel & Prom (MAUP.PA) and Repsol, are not based in the US, they apply to the US for a special license to do business with the sanctioned PDVSA, demonstrating US control over the Venezuelan economy (2024). US sanctions and their licenses directly impact companies' interest in Venezuelan oil. American companies such as Chevron make up a large part of the buyers of Venezuelan oil and, at the same time, are influenced by the sanctions; they also influence them, as seen in Chevron's most recent demand to maintain oil consumption regardless of the recent election results (Eaton, Garip , & Strasburg, 2024).

At the same time, there is an effort from the Venezuelan government to change these sanctions by influencing significant investments in lobbying efforts in the United States were made by Venezuela, including reportedly paying over $2 million to lobbyist Robert Stryk to address sanctions-related matters, according to *The Washington Post* (Jeff Stein, 2024). This expenditure underscores Venezuela’s strategy of engaging high-profile Washington insiders to navigate and potentially mitigate US sanctions. Such actions exemplify a broader trend among sanctioned regimes aiming to influence US policy through well-connected lobbyists, highlighting the lucrative and often controversial nature of sanctions-related lobbying in Washington.

4.4.2. Diaspora

The influence of the Venezuelan migrant community in the United States, particularly in shaping domestic policies toward Venezuela, has grown substantially in recent years. Concentrated primarily in southern Florida, this diaspora has become a critical voting bloc, with their numbers and political engagement steadily increasing. Over the past two decades, the Venezuelan American population has surged, making it one of the fastest-growing Hispanic groups in the country. By 2021, the Venezuelan diaspora in the U.S. exceeded 545,000 people, with

approximately 51 percent residing in Florida, particularly in Miami-Dade, Broward, and Orange counties. Between 2008 and 2018 alone, the number of Venezuelan eligible voters in Florida increased by 184 percent (Pew Research Centre 2021).

The Venezuelan diaspora's political activities in Florida have been amplified through various organizations such as Venezuelans Persecuted Politically in Exile (VEPPEX), Raíces Venezolanas, the Organized Movement of Venezuelans Abroad (MOVE), and Casa Venezuela. These groups have forged connections with U.S. politicians, particularly those aligned with the Cuban cause, framing Venezuela as a "new Cuba." Notable figures like Senator Marco Rubio and Congressman Mario Díaz-Balart have played pivotal roles in advocating for policies that reflect the concerns of these Venezuelan groups (Andrade, 2017). De acordo com Caroline Pedroso, prominent leaders such as José Colina (VEPPEX), Norma Camero Reno (MOVE and Casa Venezuelan), and Patricia Andrade have actively opposed the Venezuelan regime, collaborating with U.S. agencies like the CIA to bolster resistance efforts.

Despite ideological differences among these organizations, their shared opposition to Nicolás Maduro's government remains strong. For example, VEPPEX supports a hardline stance against Venezuela but criticizes Trump-era anti-immigration policies that hinder Venezuelan asylum seekers. Conversely, MOVE and Raíces Venezolanas endorse U.S. declarations labeling Venezuela as a "socialist dictatorship," reflecting unwavering support for U.S. government actions (Colina, 2017; Camero Reno, 2017; Andrade, 2017). This duality underscores the nuanced relationship between these groups and U.S. administrations.

The Trump administration's policies further energized the Venezuelan-American community, whose support was instrumental in securing his victory in Florida. Trump's tough stance on Venezuela resonated with the diaspora, even as his broader immigration policies faced criticism. During his first year in office, 21,407 Venezuelans sought asylum in the U.S., placing Venezuela at the top of the list of asylum-seeking nations (Dellano, 2017). Meanwhile, organizations like VEPPEX and MOVE continued to advocate for stronger U.S. action against the Venezuelan regime while also resisting policies that restricted migration pathways for fleeing Venezuelans (Pedroso, 2021).

Recent political activism within the diaspora has also focused on international justice. In Miami, Venezuelan expatriates, including figures like José Prusza, have rallied to demand that the International Criminal Court (ICC) expedite its investigation into crimes against humanity committed by Maduro's regime. "We raise our voices in Miami so that the world hears us and recognizes the human rights violations under Nicolás Maduro's illegitimate regime," Prusza declared during a protest organized by Comando con Venezuela Miami. The event highlighted Venezuela's ongoing crisis and called for urgent international action to secure justice and freedom (Comando con Venezuela Miami 2024).

The symbolic elements of these protests, such as red lipstick and white handkerchiefs, underscore the resilience of the Venezuelan people. Messages like "SOS CPI" and "Justice Now" amplify their plea for global intervention and serve as stark reminders of the silenced voices suffering under an authoritarian regime (Broner, 2022). This growing political influence of the Venezuelan diaspora, intertwined with their advocacy efforts, continues to shape U.S. policy and international discourse on Venezuela's humanitarian crisis.

4.4.3. Lima Group influence in the US

The Lima Group's activities demonstrate the pervasive influence of U.S. interests in shaping regional policies toward Venezuela and beyond. Formed in 2017, the Group emerged after several countries failed to invoke the Inter-American Democratic Charter within the Organization of American States (OAS) to address the perceived constitutional breakdown in Venezuela. Spearheaded by the Trump administration, the Group aimed to support the Venezuelan opposition, advocate for releasing political prisoners, and facilitate free elections while promoting humanitarian aid. Initially comprising countries such as Argentina, Brazil, Canada, and Mexico, the initiative was endorsed internationally by the United States, the European Union, and the OAS and domestically by Venezuelan opposition parties (Busso).

From its inception, the Lima Group bore the unmistakable imprint of U.S. foreign policy priorities. Washington's overarching strategy of "diplomatic siege" employed both carrot-and-stick tactics, including escalating economic sanctions, recognizing Juan Guaidó as interim president, and labeling Nicolás Maduro's

government as "narcoterrorism." High-profile actions, such as the Cúcuta operation and military maneuvers near Venezuela's coasts, underscored this approach (Busso). President Trump further heightened tensions by declaring that "all options," including military intervention, were on the table. While the Group generally refrained from endorsing direct military action, aligning its positions with U.S. interests highlighted Washington's dominant role.

The United States' influence extended beyond shaping policy; it positioned the Lima Group as a tool to advance its broader geopolitical goals. This included isolating Maduro's government and deterring potential threats. However, U.S. actions, such as imposing sanctions even during the COVID-19 pandemic, pushed the Venezuelan government to strengthen alliances with non-regional powers like China, Russia, Iran, and Turkey. This dynamic heightened geopolitical tensions, complicating efforts to resolve the crisis and underscoring the far-reaching consequences of U.S. involvement in the region (Busso).

Critics argue that the Lima Group has not effectively conveyed a credible or costly threat to Maduro's government. Instead, the Group risks becoming an appendage of U.S. decision-making rather than a diplomatic mechanism for fostering peaceful resolution. As García (2019) notes, deeper U.S. engagement with coercive diplomacy could securitize the Venezuelan crisis further, undermining the autonomy and multilateral traditions of Latin American diplomacy. The Group's alignment with Washington contradicts historical regional governance models, such as the Contadora Group, which emphasized cooperative problem-solving. This dependency weakens regional governance and undermines prospects for autonomous and sustainable solutions to the crisis (García, 2019).

Moreover, revelations about the Lima Group's broader objectives suggest that its actions extend beyond Venezuela. Historical parallels, such as U.S. involvement in undermining progressive governments in Brazil, Haiti, and potentially Mexico, reveal a pattern of interventions designed to dismantle governments prioritizing citizen welfare. As the Orinoco Tribune reports, plans are allegedly underway to orchestrate a future coup against Mexican President Andrés Manuel López Obrador (AMLO). These patterns emphasize the Group's role as a proxy for U.S. strategies to suppress progressive movements in Latin America,

further complicating the region's political landscape ("The Lima Group is more than just about Venezuela").

The Lima Group's trajectory underscores the need to redefine its relationship with the United States. Increased U.S. pressure for more radical stances threatens the multilateral autonomy historically championed by Latin America. Without recalibrating this dynamic, the region risks perpetuating dependency on external powers at the expense of fostering a unified, independent diplomatic approach to complex regional crises (García, 2019).

4.4.4. Venezuela accusation of US interests before ICC

Through a statement released by the Ministry of Foreign Affairs on Tuesday, June 27, Venezuela expressed its dissent regarding the International Criminal Court's (ICC) decision in the case known as Venezuela I. This case, initiated by the far-right former Colombian President Iván Duque and other ideologically aligned governments from the now-defunct Lima Group—a coalition orchestrated by Washington to diplomatically isolate Venezuela—has been sharply criticized by Venezuelan authorities. The Venezuelan statement characterized the ICC's decision as a politically motivated maneuver by domestic and international actors. According to the communiqué, these actors aim to revive unfounded allegations of crimes against humanity, leveraging the ICC as a tool within a broader strategy led by the United States to politicize the mechanisms of international justice.

The statement emphasized Venezuela's long-standing objections to what it sees as the instrumentalization of international criminal justice for political purposes. It noted that since the Office of the Prosecutor at the ICC initiated a Preliminary Examination in February 2018, Venezuela has repeatedly denounced efforts to misuse the court's processes as part of a U.S.-led "regime change" agenda. The communiqué underscored that the accusations of crimes against humanity are unfounded, describing them as the product of intentional distortion and manipulation of isolated human rights violations. The statement claimed that these incidents have either already been investigated or are actively being addressed by the Venezuelan judicial system.

Venezuela further criticized the decision as an example of how international institutions are weaponized to advance geopolitical agendas. By exploiting the

mechanisms of international criminal justice, these actors aim to delegitimize the Venezuelan government and justify external interference. According to the communiqué, this strategy aligns with broader efforts to undermine Venezuela's sovereignty and destabilize its political landscape.

The communiqué also reaffirmed Venezuela's commitment to upholding justice and accountability within its national framework. It highlighted ongoing efforts by Venezuelan authorities to investigate and prosecute any substantiated human rights violations, asserting that the country's legal system is competent and autonomous in addressing these matters. In this context, the Venezuelan government framed the ICC's actions as an unnecessary and unjustified intrusion that disregards the principle of complementarity—a cornerstone of international criminal law, which recognizes the primacy of national courts in prosecuting crimes.

Ultimately, the Venezuelan government views the ICC's decision as a politically charged act that undermines the legitimacy of international legal institutions. By attributing this outcome to a broader U.S.-driven strategy, the communiqué paints a picture of international justice being co-opted to serve the interests of powerful states at the expense of smaller nations. Venezuela's strong reaction reflects its ongoing struggle against what it perceives as external attempts to erode its sovereignty and impose foreign agendas under the guise of human rights advocacy.

4.5. Partial Conclusions

The United States' involvement in the Venezuelan conflict demonstrates a complex interplay of international strategy and domestic influence, underscoring an intermestic process to understand the influence of US actors. Despite positioning itself as a staunch critic of the Venezuelan government in international forums, the U.S. government leverages its geopolitical influence over countries within its sphere to carry out initiatives it cannot directly pursue due to its non-signatory status to the Rome Statute. By aligning with nations that are parties to the International Criminal Court (ICC), the United States can exert significant influence on the actions of these states, enabling it to weaponize international legal mechanisms

against the Venezuelan government while avoiding direct accountability within the ICC framework.

This strategy is not solely motivated by external policy goals but also reflects the intermestic pressures. Venezuelan diaspora groups, concentrated in states like Florida, play a pivotal role in shaping U.S. policy toward Venezuela. These communities and organizations, like VEPPEX and MOVE, act as vocal advocates for a hardline stance against the Maduro administration. Their alignment with U.S. policymakers, particularly Republican and Democratic figures with connections to Cuban and Venezuelan exile communities, ensures that their priorities are represented in foreign policy decisions. These groups view Venezuela as a "new Cuba," framing the regime as a socialist dictatorship that demands an assertive response from the U.S., including economic sanctions and diplomatic isolation.

Moreover, financial interests and lobbying networks significantly impact the U.S. position. Oil and energy companies, deeply intertwined with the U.S. economy, have vested interests in undermining Venezuela's state oil enterprise and redirecting regional energy dependence toward American suppliers. Lobbying efforts by these financial actors further intensify the U.S. commitment to maintaining its economic leverage in the region, ensuring that Venezuela's natural resources remain inaccessible to geopolitical competitors such as China, Russia, and Iran.

While the U.S. claims to champion democratic values and human rights in its criticism of Venezuela, its actions reveal a pragmatic pursuit of strategic and economic dominance. The use of regional allies, such as those in the now-defunct Lima Group, to isolate Venezuela diplomatically and the application of coercive measures like sanctions demonstrate how the U.S. manipulates multilateral frameworks to serve unilateral objectives. These actions and the influence of domestic pressure groups highlight the interplay of internal and external factors driving U.S. policy.

In conclusion, the United States’ approach to the Venezuelan conflict exemplifies using its domestic and international influence to promote its interests, reflecting the intermestic effect of the process. While it publicly champions

democratic governance and accountability in Venezuela, its non-participation in the ICC and reliance on allied signatory states reveal a deliberate circumvention of direct involvement. This strategy not only consolidates U.S. hegemony in the region but also underscores the significant role that immigrant communities, lobbying groups, and financial interests play in shaping foreign policy. Consequently, the U.S. response to the Venezuelan crisis is less a defense of universal values and more a reflection of the interplay between strategic imperatives and domestic political pressures.

5. Concluding remarks

This research has navigated the complex relationship of the United States with the International Criminal Court, underlining the interaction between sovereignty, justice, and the use of international institutions as tools of strategy. The research indicated that U.S. foreign policy on the ICC demonstrates a calculated trade-off between advancing international justice and protecting national interests through reviewing historical developments, theoretical frameworks, and case studies.

The findings underline how the United States has selectively engaged the ICC, in which domestic and international factors influence active participation, strategic opposition, and selective cooperation. Such an intermestic approach proved instrumental in dissecting how domestic political actors, international alliances, and broader geopolitical concerns shape U.S. decisions related to the court. This also shows the reciprocity between the policy of the United States and how the ICC works, with implications for international law, state sovereignty, and global governance.

However, beyond the U.S.-ICC relationship, the broader implications of this research are on how major powers navigate and use international legal institutions as a function of their internal priorities and global strategies. While actions by the United States toward the ICC preclude full institutional commitment, they are also opportunities to deploy international justice mechanisms to shape global norms and policies.

Thus, the Venezuelan crisis, often flaunted as driven by the US geoeconomic interests and geostrategies, strike a significantly wider impact on the interventions

executed internationally. To dislodge Venezuelan regional influence, these efforts have, without fail, destabilized the country and further endangered human lives, leaving thousands of Venezuelans in deplorable conditions and forcing many to seek refuge abroad. By destabilizing Venezuela to achieve broader geopolitical goals, the United States indirectly contributes to humanitarian challenges, underscoring the complex consequences of its strategies.]]

In this sense, besides the government's foreign policy, some groups directly influence state approaches to international issues. These sectors interact with a government's foreign policy but do not represent the state's official position; instead, they can influence its reformulation or oppose it. The prominent external actors of such influence would be diasporic movements advancing particular international agendas, economic groups having vested interests in selected issues, and traditional political actors looking to increase their clout through specific policy emphases. This work examines outside pressures that detail the complex nature inherent in domestic and international interactive variables determining U.S. foreign policy.

The findings further highlight the role of domestic pressures in shaping U.S. foreign policy. The Venezuelan crisis illustrates how intermestic dynamics—the interplay of diasporic movements, economic interests, and political agendas—affect the formulation of international positions. This framework could be useful to analyse other cases such as those summarized in chapter 3 in other to deepen the undetrstanding of the intersection between domestic and international actors and between the US and the ICC.

That said both this research and further research on the topic could benefit from an expansion of the analysis of Primary sources, that could be added to shed light on the motivations and strategies of the concrete actors that were driving U.S. policy toward the ICC. This would enhance the validity of the research findings and allow new perspectives for comparative research. The dynamics observed in the case of other major powers could place the United States within a broader context by highlighting the unique and everyday challenges of handling international justice systems.

Therefore, the research fills in the gap in understanding the interaction between domestic and international variables that configure foreign policy. While pointing out limitations and providing some leads for future study, it calls for more probing into the complex relations between states, non-state actors, and international legal institutions in an emerging configuration of global governance.

The intersection of sovereignty, justice, and international institutions is an ever-changing and dynamic field of inquiry. Further work will be required to extend these themes in various ways, such as through methodological approaches and extensions of analysis to comparative perspectives across states. This will allow an understanding of the complex realities of contemporary international relations and the pursuit of global justice.

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