
International Criminal Accountability and the Domestic Politics of Resistance: Case Studies from Kenya and Lebanon

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Contemporary international criminal law suggests that head of state immunity does not extend to atrocity crimes, but the executive's office continues to be the safest place for suspected perpetrators. Moreover, indicted suspects can use the threat of international accountability to win democratically contested elections. This article asks how suspects and their surrogates translate an indictment from an international criminal tribunal into an electoral victory and suggests that the path between an indictment and electoral victory unfolds in one of two ways: (1) the consolidation of existing coalitions around the indicted suspects and their allies; or (2) the creation of new coalitions that span existing cleavages. The article evaluates these assumptions through two cases: Lebanon and the Special Tribunal for Lebanon and Kenya and the International Criminal Court. These two decidedly different cases exemplify the ways in which coalitional politics shield suspects international accountability and reward them with high office.

The last few years have heralded a global backlash against the norms of democratic liberalism and internationalism. For proponents of international criminal adjudication, however, this backlash is neither new nor novel. International criminal tribunals (ICTs) have consistently faced challenges to their legitimacy, their authority and their ability to fulfill their mandates to hold accountable the worst perpetrators of the worst crimes (Alter et al. 2016; Helfer and Alter 2013; Viljoen 2011). They have been met with a wide range of resistance, from threatened mass withdrawals to severe budget cuts. One particularly irksome type of resistance to these tribunals has come from the very core of democratic liberalism: domestic, democratically contested elections. The very same political elites indicted by ICTs have gone on to win domestic elections, providing political cover for the suspected perpetrators and delegitimizing the courts that seek to try them. While the frequency of these elections is low, the magnitude of their effect is

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high. Moreover, the alternative scenario, one in which indicted suspects lose their electoral bids, is largely hypothetical. At the International Criminal Court (ICC), for example, five indictees (out of 32) ran for a high-ranking position following their indictments and all five won.¹

The past twenty years have ushered in a period of normative change, one in which heads of state can and occasionally do face prosecution for atrocity crimes. And yet, the president or prime minister's office remains the safest place for perpetrators of mass atrocities looking to avoid prosecution. It is no surprise, then, that even following an indictment at an ICT, suspected perpetrators and their surrogates will seek high office. This article considers how political elites turn the threat of prosecution into electoral success. By doing so, this article contributes to the broader literature on law and society by problematizing the durability of justice and accountability norms and interrogating the susceptibility of the international legal order to domestic political and social processes and anti-Western, counter-hegemonic rhetoric.

Indeed, the connection between prosecution at an ICT and electoral victory is coalitional politics and anti-Western rhetoric. In this article, I present two pathways along which the threat of prosecution can lead to domestic electoral success. First, when faced with indictments that target only one side of the political spectrum, the threat of prosecution can lead to the consolidation of an electoral coalition around an indicted suspect or her surrogates. By solidifying a coalition when one of the coalition members is at risk of prosecution, other members of the coalition are able to help guarantee their own survival by prioritizing regime stability. Second, when the threat of prosecution reaches across party lines, new coalitions can form to protect the suspected perpetrators. In both instances, the threat of accountability at an ICT can prove politically beneficial for domestic political elites who are able to spin the threats of international trials and investigations into an attack on the state by Western influences and powerful international actors.

This article applies this theoretical framework to two distinct cases: Kenya and the ICC and Lebanon and the Special Tribunal for Lebanon (STL). Although Kenya and Lebanon present decidedly different types of democracies and the ICC and STL have different jurisdictions, both cases illustrate a larger phenomenon: political elites drawing on coalitional dynamics and anti-Western sentiment to turn an indictment by an ICT into electoral success. While it may not be a surprise that indictees turn to anti-Western

¹ See Table 1 for more details.

rhetoric to make their case to their voting publics or that their supporters follow suit, this pattern of indictees seeking—and winning—high office does illustrate some of the challenges that the international justice regime faces in shoring up its perceived legitimacy and point to the contested nature of both the tribunals and the norms that they espouse.

The implications of political elites who are threatened with international prosecution and go on to win elected office are manifold. These elections challenge the tribunals' ability to act as standard-bearers of acceptable and unacceptable behavior. Broad public support of indictees, as expressed through elections, indicate a widespread distrust of international justice mechanisms and the norms that underpin them. Further, these elections also diminish the courts' authority as judicial instruments, as they are unable to rein in their suspects enough to prevent them from not just running in national elections but also winning them. Beyond these challenges to the tribunals' legitimacy and authority, the electoral success of suspected perpetrators spells long-term operational problems for the tribunals. The tribunals require state cooperation and compliance in order to launch their investigations, interview witnesses, procure evidence, and arrest suspects, among many other tasks necessary to successfully processing cases. When indicted suspects are in control of the state, they can dictate the terms of cooperating—or not—with the tribunals (Hillebrecht and Straus 2017; Peskin 2008). This puts these political elites in a position in which they can undermine the tribunals, from dismantling their own cases to engaging in a longer-term battle against the tribunals' core function and purpose.

This research builds on a growing literature on the broader socio-political impacts of international human rights and criminal courts and makes three specific contributions to this field of study. First, the article elaborates on the premise that the meaning and purpose of international courts are highly conditional on local contexts (Clarke and Goodale 2010). Second and relatedly this article shows how this process of localization can obfuscate clear definitions of justice and victimhood. Third, the article adds to a growing literature on public perceptions of international justice.

By highlighting the way that domestic actors use and occasionally usurp international justice mechanisms for their own political gain, this article sheds light on the (contentious) process of localizing justice (McEvoy 2007; Palmer 2015). In both Kenya and Lebanon, the process of incorporating international justice norms into domestic electoral politics has been rife with inconsistencies, divisions, and contention. The often discordant rhetoric around justice norms in these cases highlight Sally Engle Merry's argument that "[J]ustice conceptions must resonate with other conceptions

of justice already in play in a particular situation if they are to generate compliance” (Merry 2010: 30). This article extends this principle to electoral politics, where the divisiveness around the vernacularization of international justice is evident everywhere from campaign promises to policy platforms. In doing so, the article also illustrates the implicit connections between political history and the role of international justice (Clarke and Goodale 2010; McGovern 2010). Only by fully reckoning with domestic political dynamics can scholars and practitioners begin to make sense of the broader socio-political impacts of the ICC, STL, and other justice mechanisms (Clark 2018).

By examining the rhetorical devices suspected perpetrators use to distance themselves from international accountability and to turn the threat of prosecution into coalitional and electoral gains, this article also contributes to the notion that the “truth” regarding mass atrocity crimes is more elusive than the language of law and justice might reveal. As Rene Lemarchand tells us, “Viewed through the prism of history, the roles of victims and perpetrators become blurred” (Lemarchand 2011: 6). This article amends Lemarchand’s argument to say that “viewed through the prism of *international courts*, the roles of victims and perpetrators become blurred.” From the perspective of the anti-ICC and anti-STL elites, *they* are the victims of an international justice machine that is inherently and inextricably neo-colonial. They resist the language of justice that these courts use and, in doing so, stress a different kind of justice and a different kind of violence. In particular, the rhetorical rejection of the ICC and STL belies a broader demand for forms of justice that no court can provide: social and economic development and sovereign independence (McEvoy 2007; Palmer 2015; Sharp 2018). Both the usurpation of international justice and its rejection illustrate the political power and selectivity of justice hidden just below the surface of claims for equality before the law (Reyntjens 2013). As Timothy Longman notes, trials are not just sites of truth-seeking and accountability but also “...sites of forgetting” (Longman 2017: 126).

Relatedly, this article also builds on the scholarship on perceptions of international justice. As Clarke et al. (2016) argue, perceptions of international justice are multifaceted and layered. There is no singular perception of international justice on the part of member states, targeted perpetrators or victims. Understanding how different audiences perceive international courts can help us to better understand how they relate to the courts and, in turn, how the courts relate to their different stakeholders (Clarke et al. 2016). This article pushes this idea further, suggesting that perceptions of international courts are endogenous to a host of other factors, such as the domestic distribution of power, the

pre-existing relationship between domestic and international actors and the public's predisposition for anti-colonial rhetoric.

This article proceeds as follows. Section 1 sets out the theoretical context, explaining why electoral victory is so prized for those threatened with international prosecution. Section 2 then turns to how those who have been indicted by an ICT can turn those indictments into electoral victory. It outlines two models of coalitional politics that either consolidate existing coalitions in order to protect the regime or create new coalitions in order to ward off outside intervention into domestic politics. The theoretical framework in Section 2 also emphasizes the anti-Western narrative that helps to solidify these coalitions around the suspected perpetrators. Section 3 explains the empirical research design and presents the empirical analyses from Kenya and Lebanon. Section 4 concludes this study.

1. Holding on for What We Have Got: High Office and Protection from Accountability

The early 2000s were characterized by optimism around head of state immunity. In addition to the launch of the ICC, the Augusto Pinochet and Hissène Habré cases, while imperfect, demonstrated a growing international norm to hold heads of state—and all perpetrators of human rights abuse—accountable for their crimes (Lutz and Reiger 2009; Roht-Arriaza 2006; Roht-Arriaza and Mariezcurrena 2006; Roth 2001; Sikkink 2011). The arrest and conviction of Charles Taylor by the Special Court of Sierra Leone further demonstrated that (*former*) heads of state could—and should—be held accountable for their crimes by international courts. Scholars and justice activists further argued that the threat of accountability could have a deterrent effect on the commission of atrocity crimes, at least under certain conditions (Hillebrecht 2016; Kersten 2016; Nouwen 2014; Nouwen and Werner 2010; Prorok 2017; Wegner 2015).

This optimism, however, soon met with the cold realities of prosecuting heads of state, particularly sitting heads of state. When the ICC began to exercise its power to investigate heads of state through UN Security Council referrals or the *proprio motu* mechanisms, as it did in Sudan and Kenya, respectively, the underlying schisms around head of state immunity became evident. Since 2012, in fact, the African Union has made numerous threats to withdraw from the ICC and planned on establishing their own regional criminal court that would provide immunity from prosecution for heads of state (Akande 2011; Deya 2012; International Justice Resource Center 2014). All of which is to

suggest that the more uncertainty and ambiguity there is around head of state immunity for atrocity crimes, the more incentive leaders have to hang on to power (Escribà-Folch and Krčmaric 2017; Krčmaric forthcoming; Prorok 2016, 2017). Being in power, especially in the face of an indictment, is paramount for those political elites wishing to avoid a one-way trip to The Hague.²

Recent research suggests that elites have an additional incentive to stay in power: their exit options are shrinking. While, in the past, leaders accused of mass atrocity crimes could seek exile in friendly countries, the number of states willing to host exiled ex-presidents is dwindling (Escribà-Folch and Krčmaric 2017). The result, of course, is that heads of state need to hang on to power for longer, regardless of the costs. Thus, after nearly 20 years of normative and legal development around head of state immunity, the takeaway is this: while being in power is not a guarantee that heads of state will not be held accountable for their crimes, it is their best shot at staying out of jail.

In addition to the legal and normative ambiguities surrounding sitting head of state accountability, executives get to dictate the terms of engagement with ICTs. These tribunals rely on political actors, particularly political elites at the state level, to do their work. Without domestic political cooperation, ICTs cannot visit the site of suspected atrocities, gather evidence or secure witness testimony. This cooperation, which Victor Peskin (2008) refers to as “virtual cooperation,” is fundamental to the tribunals’ work and can pose its own type of backlash (Peskin 2008). Without states’ cooperation, ICTs are limited in the witnesses they can interview, the perpetrators they can pursue and the evidence they can access. State cooperation can facilitate international prosecutions; noncooperation can stop a case in its tracks.

Hillebrecht and Straus (2017) argue that political elites will only cooperate with the ICC—and by extensions other ICTs—under three conditions. These include: (1) when elites are dependent on international aid and trade and want to signal a commitment to human rights; (2) when cooperation with the ICC activates the “international legal lasso,” the political maneuver by which elites can physically remove political opponents by referring cases at ICTs and handing over suspects; and (3) when cooperation allows elites to delay their own potential indictments by offering up political opponents for long and lengthy trials (Hillebrecht and Straus 2017). The second and third mechanisms

² The Hague is home to the ICC, the ICTY, and part of the STL, as well as special chambers for the SCSL.

share one key feature: they assume that whoever is in power sets the tone and tenor of cooperation with the ICT. And thus, being in the executive's office is important for stopping indictments before they happen or staving off their effects if they do.

The difficulties of arresting and trying heads of state also elucidate points of tension with the ways in which international tribunals operate. Although these tribunals intend to be neutral judicial actors, their fundamental undertaking is a political one (Dothan 2013; Huneus 2013; Lupu 2013). The prosecutors' offices of these tribunals are charged with identifying cases, investigating those cases and then pursuing indictments. Prosecutors must choose which cases to pursue, which allegations to investigate and which individuals to indict. Throughout the process of identifying, investigating and trying cases, prosecutors' powers are limited by the statutes that created the courts for which they work. They must also consider how their decisions will impact the long-term effectiveness of the court, the feasibility of arresting perpetrators and their relationship with judges and oversight bodies (Aptel 2012; Brubacher 2004; Danner 2003; Davis 2015; Greenawalt 2007; Poes 2017; Schabas 2008).

At the ICC, for example, the Prosecutor can exercise discretion regarding which types of alleged violations to pursue, the gravity of those violations and the "interests of justice," according to Court's statute (Aptel 2012; Schabas 2008). Prosecutorial discretion also intersects with the principle of complementarity, which is a cornerstone of the Rome Statute and of contemporary international criminal accountability. As outlined in the Preamble and Article 17(1) of the Rome Statute, the ICC should act only as a last resort. When national jurisdictions are able and willing to pursue accountability, the ICC must defer to them (Rome Statute of the International Criminal Court 1998). As such, when Prosecutors identify, investigate and try cases, they also must consider the role of national jurisdictions.

As with other ad hoc and hybrid tribunals, the mandate of the Prosecutor of the STL is much narrower than its counterpart at the ICC. In the case of the STL, for example, the Prosecutor can only investigate activity directly or indirectly related to the 2005 assassination of Prime Minister Rafik Hariri. Yet, the general principles of prosecutorial independence and discretion hold. Article 11 (2) of the STL statute is clear in this regard: "The Prosecutor shall act independently as a separate organ of the Special Tribunal. He or she shall not seek or receive instructions from any Government or from any other source" (Statute of the Special Tribunal for Lebanon n.d.).

At the ICC and STL, like all ICTs, prosecutorial discretion often meets the harsh light of *realpolitik* (Author Interviews).³ Global and domestic political trends affect which crises ICTs pursue and which they leave to the side (Bosco 2014; Rudolph 2001, 2017). Unsurprisingly, this inconsistent case selection process feeds into a broader narrative that the tribunals are nothing more than tools of neo-colonialism and Western dominance and thus should play no role in the domestic politics of those affected states.

2. Seeking Office under the Shadow of an Indictment: Two Pathways to Electoral Victory

Given the stakes involved, it is no surprise that those political elites indicted by ICTs have an incentive to seek out elected office, particularly high office. While this is perhaps most easily accomplished in the authoritarian and dictatorial states often associated with the commission of mass atrocity crimes, even leaders in authoritarian states have domestic veto players that they need to convince (Weeks 2008). More to the point of this article, however, is the fact that democracies, and particularly transitional or “partial” democracies, experience political violence (Davenport 1997; Davenport and Armstrong 2004; Dunning and Dunning 2011; Ikpe 2015; Schwarzmantel 2010; Snyder 2000). The political elites who commit these crimes are then subjected to two potential layers of accountability: domestic and international trials. Their best gamble for avoiding paying for their crimes either domestically or internationally is to seek and/or stay in high office.

While domestic accountability for former or sitting heads of state for atrocity crimes is possible, it is unlikely and often contested. Peru’s former president, Alberto Fujimori, is a prime example. Although Fujimori is serving a prison sentence for his role in the violence perpetrated against leftists in Peru in the 1980s, his sentence was not only hard won but also deeply unpopular (Cespedes and Wade 2009; Taj and Tait 2017). If getting a former head of state to serve a prison sentence for committing human rights violations is hard, it is even more difficult to indict and try a sitting head of state or her co-partisans. Sitting heads of state often exercise a tremendous amount of influence over their

³ The author conducted interviews with bureaucrats and diplomats between May 2013 and December 2017 at the ICC, STL, and ICTY in The Hague and at the United Nations in New York and at multiple states’ Permanent Missions to the UN. Interview topics included prosecutorial discretion, state cooperation with ICTs and backlash to international courts. To protect the privacy of interviews subjects, interview data are available upon request in de-identified and aggregate form.

colleagues in the judiciary and legislature who would execute any accountability proceedings.

Given the obvious challenges that even the most robust democratic institutions face when tasked with holding their own leaders accountable, the clearest threat of accountability comes from ICTs. While proponents of ICTs and head of state accountability might hope that the threat of prosecution at an ICT would alienate the accused and their co-partisans, spoiling their electoral bids or otherwise have little to no effect on domestic elections, what is most of interest to this article is a third scenario: that an ICT indictment can propel indicted suspects to electoral victory.

A survey of all of the indicted perpetrators before the ICC indicates that of the 32 indicted suspects⁴ five ran for a high-ranking office in their country *after their indictment*. All five were elected. Of those five, two—Kenya's Uhuru Kenyatta and William Ruto—ran in a country considered to be transitional or consolidated democracy. Another four were appointed to cabinet-level positions or the equivalent in their home countries. Thus, while the percentage of the indicted suspects who ran for elected office is not high, their electoral success rate is, to date, 100 percent. Table 1 provides additional details about the five ICC indicted suspects who have been elected for a high-ranking position following their indictment at the ICC.

In the transitional democracies where ICTs and electoral politics overlap, domestic politics are often highly fractured and divisive. In these contexts, political coalitions play a particularly salient role, as does the nearly omnipresent uncertainty about the direction and future of democracy. For example, recent literature on coalitions in third-wave democracies suggests that uncertainty over the fate of democratization and control over the state is considerable and the threat of democratic reversal nontrivial (Lupu and Riedl 2013). Lupu and Riedl (2013) argue that third-wave states face three types of uncertainty: institutional uncertainty, economic uncertainty, and most relevant to the present purposes, regime uncertainty. As they describe, "regime uncertainty thus makes the longevity of many institutions of political interaction difficult to predict...it may imply a high probability that some parties will be proscribed from competition in future elections" (p. 1345). The introduction of ICTs into the domestic political sphere only exacerbates this uncertainty. Domestic actors, particularly those belonging to smaller parties that are allied with the incumbent might have just as much to lose when an ICT threatens to prosecute their patrons in the dominant party as that party itself.

⁴ At the time of data collection in February 2017.

Table 1. International Criminal Court (ICC) Indicted Suspects Elected to Office

Name	Country of Situation	Investigation Opened	Position	Date of Election
William Samoei Ruto	Kenya	March 2010	Deputy President	March 4, 2013
Uhuru Muigai Kenyatta	Kenya	March 2010	President	March 4, 2013
Omar Al Bashir	Sudan (Darfur)	June 2005	President	April 2010; April 2015
Jean-Pierre Bemba Gombo ¹	Central African Republic	May 2007	Senator	January 2007
Fidele Babala Wandu	Central African Republic	May 2007	Member of Parliament	Not reported

¹ Bemba was elected in the Democratic Republic of the Congo.

The threat of prosecution increases coalition members' incentives to protect their leaders in two ways. The first is self-preservation. In the case of prosecution following one-sided violence, in particular, where one or more members of the coalition might have been part of the violence, the threat of prosecution only adds to the importance of keeping the coalition together, as it protects other members from the downstream threat of prosecution. That is, if the leader of the coalition were to be ousted, then other coalitions members might not only lose power but also find themselves facing prosecution. Even if other coalition members were to benefit from the leader being removed from power, the leader is also first line of defense in stopping ICT prosecutions from reaching deeper into the coalition.

The second reason the threat of ICT prosecution increases coalition members' incentives to protect their leaders has to do with the vulnerable position of indicted leaders and their parties. A leader that is threatened with the removal of power is more susceptible to manipulation and other coalition members can extract valuable concessions from them. Indeed, research on international military coalitions suggests vulnerable leaders are less picky about their coalition partners than their more stable counterparts (Johnson 2015; Wolford and Ritter 2016). This dynamic is not specific to ICTs and applies, instead, to any circumstance in which coalition leaders, either as a party or as individuals, are vulnerable and coalition partners see in that vulnerability an opportunity to extract valuable concessions. The threat of prosecution at an ICT just happens to provide one such opportunity.

In the cases that follow, anti-Western rhetoric accompanies domestic campaigns against ICTs and for indicted suspects. This should not come as much of a surprise: the ICTs are funded by the UN and supported largely by Western European states, while all of situations under investigation come from the Global South. In the contexts in which the ICTs work, anti-Western, anti-

imperial rhetoric is not new. In Kenya and Lebanon, leaders and the public have been railing against the West for more than a decade (Corstange 2015; Gettleman 2006). As Campbell (1998) tells us, outside enemies can help to reinforce domestic alliances. As symbols of Western ideals of democratic liberalism and rule of law, coupled with the inconsistent application of international criminal law across the globe, anti-Western, anti-imperial rhetoric provided a convenient narrative for suspected perpetrators looking to win an election despite—or because of—threatened ICT prosecution. This anti-Western sentiment might not be novel and theoretically the coalitions could have held together without it, but it is useful for indicted suspects and their parties to help shape coalitions' platforms and candidates' speeches, all while inflaming public opinion against the tribunals. With this context in mind, I now turn to the two pathways indicted suspects and their parties can pursue to win elected office: consolidating and creating coalitions.

2.1 Pathway #1: Consolidating Coalitions

The first pathway concerns strengthening and consolidating existing coalitions. In states where coalitions have been both crucial in maintaining governmental control and are also incredibly fluid, even removing one or two key players in a coalition could bring down the whole house of cards. The threat of destabilizing a coalition through prosecutions is only exacerbated by the fact that most parties in new democracies tend to be quite weak vis-à-vis the incumbent, and thus not particularly robust to outside challenges (Rakner and van de Walle 2009). Thus, the smaller parties in its sphere are typically reliant on the incumbent for survival (van de Walle 2003). If the threat of international prosecution threatens to unseat an incumbent or a fragile coalition containing the incumbent, we could expect that the parties in this coalition would close ranks around the indicted in order to preserve their own position in power—and any concessions that they have been able to extract from the leading party. Instead of disavowing the indicted suspects' party, even those loosely affiliated with the indicted have an incentive to preserve the status quo. And by doing so, they tip the electoral scales in favor of the indicted incumbent.

This dynamic of closing ranks is further exaggerated when the ICT sets its sights on only one side of a divided political landscape and, in doing so, further exacerbates and exaggerates pre-existing divides. This is particularly true when the tribunals are investigating one-sided violence or only investigating one group that was involved in multi-sided violence. In these instances, the

accused and their co-partisans obviously do not view the tribunals as neutral actors, but instead view them as international opponents aligned with their domestic foes.

Given that ICTs are, by definition, international judicial instruments and, in practice, UN-sponsored institutions, the threat of prosecution can have the biggest effect on closing ranks when domestic audiences are divided over the alignment of the country with power centers in the North/West and South/East. In places like Lebanon, which I discuss in detail in the empirical analysis in the following, there is a deep divide over alignment with the U.S., the EU and the UN and equally deep skepticism about the intention of these institutions and their member states. Elites are able to paint the ICTs as manifestations of neocolonialism and Western paternalism. Thus, the threat of prosecution becomes an even stronger impetus for closing ranks and preserving a fragile coalition if the tribunals only investigate one of the dominant political forces in the country and that is not the political force aligned with the West.

2.2 Pathway #2: Creating Coalitions

The second mechanism refers to a situation in which the threat of ICT prosecution does not cause an existing alliance to coalesce around the indicted suspects, but rather provides an impetus for partisans from opposing coalitions to cross the aisle to form a new coalition. This mechanism is similar, of course, to the oft-described “rally-round-the-flag” phenomenon, in which external threats drive domestic cohesion. The rally-round-the-flag effect suggests that once faced with an external foe, domestic audiences will come together to support their government, regardless of their differences (Gowa 1998; see also Campbell 1998). While the ICTs are not enemies as such, they do represent a threat to state sovereignty and governance. Moreover, to those who have been indicted, the ICTs represent a not insignificant threat to their power and freedom.

In discussing the previous pathway, I stressed the nature of one-sided prosecutions. That is, when the ICTs prosecute only one party or side of a conflict or mass atrocity, regardless of whether or not the violence was one-sided also, they create an incentive for the broader constellation of political allies to close ranks around the indicted. The focus of this second pathway, however, is in indictments and investigations that span multiple parties or coalitions. When the ICT investigations are multi-sided, the path to electoral victory cannot just be the tightening of existing coalitions, as those coalitions would eventually have to go head-to-head to win an election for high office. Instead, the road

to victory requires cross-party coalitions. In these scenarios, all else equal, it is vital for the indicted suspects to establish an anti-ICT coalition that can draw votes from a number of different parties and factions, even if they make unlikely bedfellows. The ICTs' investigations and indictments, operating much like a foreign war, become a focal point for disparate parties and groups as they rally-round-the-flag to "repel" the enemy.

This second pathway also taps into broader contempt for the ICTs, which for many publics and political elites have come to represent the West's overreach into the domestic politics of other sovereign states under the guise of the rule of law. In the face of broad investigations and indictments, political elites and their constituents subsume their domestic divides, at least briefly, under a broader effort to collectively push back against international pressure. When there is a substantial anti-Western, anti-UN, anti-American sentiment in the country, the threat of prosecution at an ICT can be enough to channel that anti-globalist sentiment into a cross-cutting coalition that garners enough votes to carry the indicted suspects to electoral victory.

While instances of such across-the-aisle rallying are rare, as ICTs become increasingly involved in the domestic politics of their target states, we might expect to see more of this dynamic. While we can dismiss this type of rallying as political expediency, alliances such as Kenya's Jubilee Alliance represent something more substantial about how ICTs intersect with domestic politics and the nationalist and anti-imperialist sentiments that the ICTs invoke.

2.3 An Alternative Scenario: When the Threat of Prosecution Costs a Candidate the Job

The two pathways outlined above both describe scenarios in which the pro-suspect, anti-ICT coalitions, whether newly formed or newly strengthened, provide enough votes for the indicted suspects or their co-partisans to win elected office. While it is obvious that an ICT investigation and indictment would mobilize the accused and his or her political allies, it is also not surprising that the opposition to the accused and pro-accountability forces would be energized following an indictment or investigation.

For the political enemies of the suspected perpetrators, ICT indictments, investigations and trials are prime opportunities for them to have an ICT remove their competition from the domestic political sphere. Hillebrecht and Straus (2017) call this the international legal lasso. Although they develop the term with respect to the incumbents who cooperate with the ICC in order to remove political spoilers from the country, the same logic applies

in the context of electoral politics. The accused parties' political opponents have an incentive, first, to see that the investigations and indictments are carried out in order to remove their political opponents from the political landscape, carving out more space for their own political ambitions. Second, the opposition of the accused has the most to lose if the investigations and indictments lead to electoral victory. In the accused's electoral victory, opponents could find themselves the victims of political repression and violence or even *en route* to The Hague.

In addition to the opposition parties who have their own electoral incentives for pushing for successful ICT investigations and indictments involving their opponents, pro-accountability constituencies have an incentive to mobilize around ICT indictments. While these moral coalitions certainly map onto the partisan and political landscape of the country, they also transcend those boundaries. For pro-accountability human rights defenders, civic organizations, members of the judiciary, and regular citizens, among others, ICT involvement offers an opportunity to demonstrate the immutability of the accountability norm. That is, when an indicted perpetrator runs for office, a resounding electoral defeat could be a turning point, a move away from a political environment in which impunity is expected and accepted to one in which everyone, regardless of their station, is held accountable.

3. Process Tracing: Electoral Politics in Lebanon and Kenya

In order to evaluate the aforementioned electoral pathways and the conditions that inform them, the rest of this article evaluates two cases: Lebanon and the STL and Kenya and the ICC. Kenya and Lebanon represent "least similar cases." Their domestic political configurations and demographics differ greatly, as do their relationships with the West and with regional neighbors. The courts, too, are very different. The ICC has a global reach and a broad judicial mandate, while the STL is restricted to one singular act of terrorism. In the context of ICTs, the cases share only one main commonality: both Lebanon and had Kenya had democratic elections that were generally free and fair and those elections put indicted suspects or their allies into power. The Kenyan and Lebanese cases are what George and Bennet call "heuristic cases" (George and Bennett 2004). As they explain, "heuristic cases identify new variables, hypotheses, causal mechanisms and casual paths" (George and Bennett 2004, 75). By selecting these two least similar cases, the following research is able to specify and theorize about a generally unexplained causal process: the route

from an indictment at an international court to domestic political victory.

Within the context of this least similar case study design, the main mode of analysis is process tracing. Again, George and Bennet's explanations are helpful in understanding the method. As they explain: "... Process tracing ... attempts to trace the links between possible causes and observed outcomes. (George and Bennett 2004, 6; see also Collier 2011; Mahoney 2010; and King et al. 1994). The benefits of process tracing for the question at hand are multi-fold. First it allows for rich description about a thus-far understudied topic—the role of ICTs in electoral politics—and sets the stage for generating questions for future inquiry. Moreover, this approach is important because the universe of potential cases is small and there is little variation among them. As mentioned in the context of the ICC above, only five indicted perpetrators have run for office and they all won. This means, then, that there are no "negative" cases readily available to researchers.

The limitations of this type of inquiry, however, are two-fold. First, because of the small number of case, it is difficult to control for confounding factors and extrapolate the findings in the same way that researchers would do in a large-N econometric analysis. The second limitation concerns the internal validity of the findings. The findings gathered by this least similar design using heuristic cases and process tracing, are not falsifiable. Instead, the research can be replicated by other scholars (see in the following) and interrogated that way.

Consistent with the principles of process tracing, for each case I conducted an analysis of all articles printed in the newspaper(s) of record of the target country referring to the tribunal in question during the given time frame. In the case of Kenya, I examined over 300 news articles from *The Star* and *The Nation* between January 1, 2012 and December 31, 2013. For Lebanon, I evaluated 998 newspaper articles in *The Daily Star* between January 1, 2008 and December 31, 2013. These documents allowed me to assemble a nuanced timeline of events in each of the cases and map out how the different actors—elites, the public, the courts and international allies and enemies—interacted around the topics of elections and ICTs.

I supplemented this content analysis with reports from a range of NGOs, including but not limited to the Carnegie Endowment for International Peace, the Clarion Project, Human Rights Watch, the International Justice Resource Center, the International Justice Monitor and the Kenyan Institute for Justice. Public opinion polls, reported by NGOs and other media outlets, as well as press releases and case law from the ICC, STL and the United

Nations, also served as supplements to the content analysis. As noted above, I also conducted interviews with stakeholders at the ICC, STL and the United Nations.⁵ Apart from the interviews, all of the other sources, which are documented in the references below, are in the public domain and are available online for transparency and replicability purposes. While the law and society literature is rich with diverse ways of assessing “society,” this article takes the approach that media accounts, public opinion polling and elections themselves are snapshots, albeit imperfect and incomplete ones, of social processes and sentiments.

3.1 Lebanon and the STL (2009–2011): Tipping the Scales

The Lebanese experience with the STL illustrates the first pathway articulated above: an ICT issued one-sided indictments that led to the strengthening of an existing coalition with the goal of suppressing the indictments and undermining the tribunal. The coalition also capitalized on the uncertainty that defines Lebanese democracy and the value coalition partners see in extracting concessions from vulnerable coalition leaders. Lebanon’s democracy is fragile as a result of its complicated, multi-ethnic, multi-religious power-sharing structure; the involvement of regional partners in domestic Lebanese politics; and the presence and centrality of armed militant groups in the political sphere. Capitalizing on this uncertainty, anti-STL groups drove the cabinet to collapse in order to push through a vote that their candidate for prime minister was likely to win. The chorus that accompanied this process was one of anti-imperialism.

3.2 Background on the Lebanon and the STL

The STL is a unique ICT. It is a hybrid court, drawing on a combination of domestic and international law, staff and funding and is the only international court designed to deal with a singular act of terrorism. In this case, the STL was set up to find and try those accused of assassinating the Lebanese Prime Minister, Rafik Hariri, and killing 22 others in a February 2005 car bombing. A UN fact-finding mission found the domestic investigations around the assassination inadequate, which then led to the creation of the UN International Independent Investigation Commission, which was charged with facilitating the investigation into Hariri’s assassination (United Nations Security Council 2005). When domestic roadblocks prevented the creation of a more substantive domestic mechanism, then-Prime Minister Fouad Siniora

⁵ See footnote 1 for description of the interviews.

asked the UNSC to create a more formal body to investigate the assassination (United Nations Security Council 2006). In 2007 the UNSC established the STL under the Security Council's Chapter VII powers without Lebanese parliamentary approval (United Nations Security Council 2007).

The creation of the STL also led to the formation of the March 8th Coalition. Led by Hezbollah and the Free Patriotic Movement (FPM), the March 8th Alliance campaigned for the 2009 parliamentary elections on an anti-Western, anti-STL platform. Although the March 8th Alliance lost the election that year, it quickly became a powerful force in Lebanese politics and the main antagonists of the STL (Slackman 2009). In 2011, the March 8th Alliance orchestrated the collapse of the cabinet and the reconstitution of the Lebanese government with its surrogate at the head. Unlike the example of the ICC and the Kenyan President and Deputy President in the following, the suspects at the STL are not the elites themselves, but rather party operatives. The coalition that coalesced around the STL provided an opportunity to protect both the individuals charged with the assassination and the party that facilitated it.

3.3 Consolidating the Coalition against the STL

The anti-STL coalition began to take shape in the first days of the tribunal but further consolidated as the tribunal's work advanced and during the brief time that Saad Hariri, Rafik Hariri's son, was Prime Minister (2009–2011). At the center of the March 8th Alliance was Hezbollah. Hezbollah also enjoyed the support of the FPM, founded by Michel Aoun, a Christian leader, and the Socialist Progressive Party, headed by Druze leader Wasid Jamblatt. Shiia Muslims, among whom Hezbollah has support, represent 27 percent of the population, while Christians make up 40.5 percent and the Druze make up 5.6 percent. As such, the March 8th Alliance brought together three of the four most important voting blocs in Lebanon. Sunni Muslims represent another 27 percent of voters (Central Intelligence Agency 2018).⁶

In 2009, Christian voters split their support between the March 14th Alliance, of which Michel Aoun's FPM used to be part, and the March 8th Alliance, which Aoun joined after breaking with other leaders of the March 14th coalition (Slackman 2009). The STL was central to Aoun's switch. As Aoun argued in 2009, "I was the first to support the Special Tribunal for Lebanon,

⁶ Interestingly, the Government of Lebanon has not conducted its own census in many years because of fears that even conducting the census would increase existing tensions and lead to civil strife.

but when I saw it was being politicized, I withdrew my support” (Sfeir 2009). According to the New York Times reporting following the 2009 election, by joining the March 8th Alliance, Aoun was able to preserve his party’s seats in Parliament (Slackman 2009). According to post-election reports, Aoun lost Christian voters but by protecting Hezbollah, his FPM picked up Muslim supporters (*Al Jazeera* 2009).

Druze and Progressive Socialist Party leader, Wasid Jumblatt, also became an ardent critic of the STL and the Western countries that supported it. While Jumblatt had previously been a supporter of U.S. policy and had opposed Syrian influence in Lebanon, his alliances shifted as a way to protect the Druze. Jumblatt, too, used the STL to fuel the flames of anti-Western sentiment. For example, in discussing the failure of Saudi-Syrian talks in early 2011, Jumblatt blamed “the forces of darkness,” meaning the West. He said, “It appears the forces of darkness got involved and stymied the Syria-Saudi initiative, through which we would have seen a blocking of the negative repercussion of the [S.T.L.] indictment” (*The Daily Star* 2011b).

Whether Aoun and Jumblatt were sincere in their criticisms of the STL or if that were instead a smokescreen for other incentives, by joining with Hezbollah and the March 8th Alliance, they helped to close ranks around the party of the accused. Three key moments—a false witnesses scandal, the handing down of indictments and failed Saudi-Syrian talks—further consolidated the coalition and set it up for a democratic takeover of the premiership, which it accomplished in early 2011. Aoun and Jumblatt were also able to extract important concessions from the takeover. For example, FPM received an impressive cabinet portfolio that included the ministries of defense, the interior, justice, foreign affairs, telecommunications and energy (Hannah 2011).

In the earliest days of the STL, before it was even fully operational, UN investigators looking into Hariri’s assassination received witness testimony that pointed to four perpetrators, namely four pro-Syrian generals, who were subsequently arrested and unlawfully detained. Their testimony, however, proved to be fabricated (Berti 2011). Hezbollah and pro-Syrian allies in Lebanon asked the newly constituted STL to look into these cases in the spirit of judicial neutrality. When the STL refused, Hezbollah argued that it was evidence that the STL and the Hariri government were biased and “politicized” (Berti 2011). One of the accused, Jamil al-Sayyed, the former head of General Security, accused Hariri, who at the time was Prime Minister designate, of killing his own father. He said that Hariri had no “right” to claim justice and that Rafik Hariri had been killed three times:

“The first on February 14, 2005 and the assassins remain at large thanks to some officers and politicians surrounding [Saad] Hariri. The second time Rafik Hariri was assassinated was when the four generals were arrested after false witnesses were dictated lies by certain politicians, officers and journalists. The third time Hariri was killed was when the four generals were released in April” (The Daily Star 2009).

For the March 8th Coalition, the false-witnesses scandal was never resolved and remained a rallying cry throughout the Hariri administration. It directly led to the resignation of Hezbollah ministers in 2011, which, in turn, precipitated the government collapse (Lakkis 2011).

As it became clearer that the STL would indict Hezbollah operatives for Hariri’s assassination, Hezbollah threatened an outbreak of violence and instability (Zacharia 2010). Syria and Saudi Arabia initiated talks in 2010 to curb instability in Lebanon and to try to broker an agreement over the STL between the March 14th and March 8th parties (Berti 2011). The talks failed. Not only did the parties not reach an agreement, but the STL also started handing down indictments. In January 2011, the STL handed down four indictments, all against members of Hezbollah. The indictments were confirmed by the Pre-Trial Chamber on June 28, 2011 (The Special Tribunal for Lebanon, Indictments n.d.; Goldberg 2011).

Tough talk and speculation about the possibility for violence and a deepened political crisis abounded in the lead up to and aftermath of the indictments (Zacharia 2010). The Hariri government faced a nearly insolvable conundrum: to support the tribunal and alienate Hezbollah, Syria and Iran, or to give into to Hezbollah’s demands and denounce the very institution investigating his own father’s death (Berti 2011; Paul Salem in The Daily Star 2010).

Hariri supported the tribunal. In protest, in January 2011, Hezbollah and its allies all withdrew from the cabinet in response to the STL indictments and the earlier false witness scandal. The Hariri government collapsed. “Trying to bring the government down as a way to undermine the Special Tribunal [for Lebanon] is an abdication of responsibility, but it also will not work,” said then-Secretary of State Hillary Clinton (The Daily Star 2011a). The first part of Clinton’s statement might have been correct, but the second turned out to be quite false.

3.4 The Hezbollah-Backed Premiership

In the aftermath of the government’s collapse, President Michel Suleiman called for a two-day binding consultation with

Members of Parliament to select their new Prime Minister. Najib Mikati, who was a moderate on the STL but who had the support of Hezbollah and the March 8th Alliance, received 68 votes; Hariri received 60 (Dakroub 2011). A democratic, parliamentary election put Mikati, the delegate of those indicted by the STL, in the Prime Minister's office.

Mikati's goals for a government of national unity were quickly eclipsed by the power of the anti-STL coalition backing him. Hezbollah deputy leader Sheikh Naim Qassem, speaking to Hariri as well as to moderates in the Mikati government, said,

“The resistance, [Hezbollah] which has left a mark on history and the present, will not be hindered by the Israeli-American project – the so-called tribunal – which is now behind us and there is no going back...Reconsider your policies which drove you out of power with the will of the people...reevaluate your choices because this path will harm Lebanon and it will especially harm you. Do you believe that the U.S.-Israeli path will benefit you?”(The Daily Star 2011c).

In other words, this fragile coalition presented an opportunity for its parties to extract valuable concessions, concerning the STL and more broadly. With this in mind, Mikati had a big question to answer. Would Lebanon pay for its share of the STL? As Retired General Elias Hanna asked: “Would Hezbollah accept being in the government and financing [the tribunal]? It's not doable. How can [Mikati] finance it – in order to indict Hezbollah? It's not logical” (Bluhm 2011). Indeed, putting their “guy” into the Prime Minister's office was critical to Hezbollah's plan to bankrupt the tribunal.

The coalition that formed around the STL also seized on the narrative that the STL was an American-Israeli project meant to sideline Syria and take control of Lebanon. The U.S. was, in fact, a major supporter and funder of the STL, contributing \$14 of the estimated \$60 million price tag, something that stands in stark contrast to the U.S.'s various phases of hostility or ambiguity toward the ICC (Bluhm 2008). The British and French were also instrumental in creating and sustaining the tribunal. The Carnegie Endowment reported that polling by the Lebanon-based firm Information International in November 2010 showed that 59 percent of respondents wanted Lebanon to amend or abrogate its commitments with the STL. Fifty-four percent thought the STL was “politicized.” Meanwhile, another poll conducted in late 2010 by Pecther Middle East Polls found that while 79 percent of Sunni Muslims found the STL “free and fair,” 85 percent of Shiia respondents and 55 percent of Christian respondents found it to

be neither (Sassine 2011). The latter figure is important. A consolidated coalition between Aoun and Hezbollah, combined with an anti-imperialist narrative imperialist narrative, was a path for both parties to seize control of power, protected the indicted suspects and thwart the STL.

3.5 Implications for the STL

The STL conforms to the expectations that a tribunal that has one side of an already-divided polity in its sights exacerbates existing political divides. By painting the STL as an Israeli, pro-Western intervention into Lebanese politics, Hezbollah, their regional allies and even some moderate politicians managed to not only block the tribunal's work but also to use the threat of the tribunal for their own political gains. In this way, the STL has helped at various points over the past decade to tip the political scales in favor of Hezbollah and its affiliates. This not only affected domestic Lebanese politics, but it also has had a negative effect on the legitimacy and efficacy of the STL itself.

3.6 Kenya and the ICC (2010–2015): Creating Coalitions

While Lebanon illustrates the way that ICTs can alter electoral politics by reinforcing coalitions, the ICC's involvement in Kenya exemplifies the creation of a new coalition following the breakdown of democratic order and dual-sided ICT indictments. The ICC has been involved in Kenya since 2010 when the Office of the Prosecutor (OTP) used its *proprio motu* powers to open an investigation into the country's 2007–2008 post-electoral violence that left approximately 1000 dead, 3500 injured and 350,000 displaced (Situation in the Republic of Kenya 2010). The investigation produced two main cases: The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and The Prosecutor v. Uhuru Muigai Kenyatta (Office of the Prosecutor of the International Criminal Court 2013a, 2013b). The Prosecutor of the ICC charged Kenyatta, Ruto and Sang each with committing crimes against humanity (International Coalition for the Responsibility to Protect n.d.; Human Rights Watch 2008a; Kenya Institute of Governance, Africa Policy Institute, and Africa Peace Forum 2008; Kenyans for Peace with Truth and Justice 2008). The Prosecutor has since vacated these case (Office of the Prosecutor of the International Criminal Court 2016, 2014). Until the OTP is able to produce new evidence, the cases are considered closed, highlighting the power that those elites elected to the highest ranks have over the ICC and why electoral victory is so sought after for those on ICT's lists. In this case study, I demonstrate how crosscutting coalitions brought two political opponents to run on the same ticket and

allowed them to take control of the Kenyan political system, not only in spite of their ICC indictment but rather because of it.

3.7 Background on the Kenyan Situation

The Kenyan presidential election in 2007–2008 tapped into the unmet promises of then-President Mwai Kibaki's National Rainbow Coalition to bring about critical land reform and anti-corruption efforts and to bridge pre-existing political and ethnic divides. There had been incidents of ethnic violence throughout 2007 and as Human Rights Watch noted in its report on the post-electoral violence, the 2007 presidential campaign had been marked by "ethno-political polarization," particularly between Kibaki's newly constituted Party of National Unity (PNU) and the main opposition party, the Orange Democratic Movement (ODM) (Human Rights Watch 2008b). This rhetoric escalated to violence when local leaders of the ODM, including members of the Kalenjin and Luo ethnic groups, told their supporters that a victory by the incumbent president, Mwai Kibaki, was the result of voting fraud. This, they argued, was cause for "war." And so a group of young, predominately male, Kalenjin and Luo ODM supporters engaged in pogroms, pushing Kikuyu out of their homes and villages and engaging in acts of violence, including but not limited to pillaging, rape and murder. In turn, when Kikuyu leaders heard about the assaults on Kikuyu communities, they created self-defense forces and called upon the Mungii, traditionalist Kikuyu gangs, to exact revenge. These groups then unleashed their own violence on the communities they believed to support the ODM. The violence lasted for nearly nine weeks before Kibaki and the ODM nominee, Raila Odinga, agreed upon a power-sharing agreement. The power sharing agreement created the position of Prime Minister, which Odinga occupied, and also required the division of cabinet positions among the two sides and set the stage for the "alliance of the accused," which rose to power in 2013 (Human Rights Watch 2008a).

In the aftermath of the violence, the African Union's Panel of Eminent African Personalities, spearheaded by Kofi Annan, helped Kenya to create a set of commissions of inquiry into the violence. Annan, though, came to believe that the Kenyan government was simply stalling, so on July 16, 2009, he handed over materials to the OTP of the ICC, including the now infamous "sealed envelope," which contained the names of those suspected to be most responsible for inciting the post-electoral violence (Kenya Cases at the International Criminal Court: Timeline n.d.; Mueller 2014). That list, known as the Ocampo six, included prominent politicians from both the PNU and the ODM,

including, of course, Uhuru Kenyatta and William Ruto. How did these two groups of suspects, and particularly Kenyatta and Ruto, go from being on opposite sides of deadly violence to (successful) running mates?

3.8 The Alliance of the Accused: Creating a Coalition

Given their roles in the electoral violence in 2007–2008, Ruto and Kenyatta did, indeed, make strange bedfellows, although they had previously worked together in 2002 when Ruto managed Kenyatta's unsuccessful presidential bid. Their more recent alliance fomented around their indictments at the ICC and their shared desire to defeat Raila Odinga, the heir presumptive to the presidency. Their alliance also took advantage of the uncertainty that imbued Kenyan politics in the aftermath of the 2007–2008 post-electoral violence.

Analysts and observers feared that the ICC's indictments against Kenyatta, Ruto and Sang would change the nature of politics in Kenya. As Karuti Kanyinga wrote in *The Daily Nation*,

“This competition will include mobilizing members along tribal and, importantly, county lines. The ICC case will be used for or against to mobilise numbers to win. Already, the ICC intervention has occasioned forging of regional and tribal alliances, complete with members required in a competitive election. They represent vote rich blocs” (Kanyinga 2012).

And, indeed, once the confirmation of charges was handed down by the ICC, both the PNU and the ODM, as well as the coalitional government, began to crumble. According to the papers, Ruto distanced himself from Odinga after having expected him to defend him against the ICC charges and the broader allegations that he helped to rig the result in 2007. Upon breaking from Odinga and the ODM, Ruto said that he did not know “who will be President of Kenya, but it will not be Mr. Odinga” (Igwe 2012). Similarly, the PNU wing of the coalitional government collapsed. PNU Justice Minister, Mutula Kilonzo, insisted that those indicted by the ICC could not hold office (Shiundu and Opiyo 2012). Kenyatta dismissed Mutula Kilonzo's efforts as jealousy and vindictiveness. He argued, “Mutula is bitter with me because I told him to pay taxes like any other Kenyan” (Ng'etich 2012). Around the same time, Kenyatta, this time joined by Ruto, moved against the sitting Vice President, Kalonzo Musyoka, effectively driving the collapse of the coalitional government and reconfiguring the partisan landscape (Mathenge and Odalo 2012).

Kenyatta and Ruto both campaigned in a crowded field for the presidency throughout 2012, with no one candidate able to carry the votes needed to win. By early December 2012, however, after the indictments had been handed down and the existing party machines had crumbled, Kenyatta and Ruto officially joined forces. In a rally in the Rift Valley, the site of the worst post-electoral violence, the two announced that theirs was an alliance for unity and peace. They also announced that they were not concerned about the ICC charges (Uhuru Kenyatta and William Ruto Confirm Kenyan Alliance—BBC News 2012). This coalition brought together Kalenjin and Kikuyu voters, which, combined, represented approximately one quarter of the Kenyan population. Raila Odinga's tribe, the Luo, represented 12 percent (Nyambura and Hull 2008). Thus, while Kenyatta and Ruto brought together significant voting blocs, their numbers alone did not guarantee their victory. They needed to change the narrative around the indictments in order to win the election.

In their stump speeches and prayer meetings throughout the country, Ruto, Kenyatta and their allies advanced the idea that the charges against them were the work of foreign agents bent on undermining the Kenyan people and their democracy. In a joint press statement, eight MPs said that Kenyatta and Ruto's opponents were using foreign influence to undercut them (The Nation 2012). Kenyatta suggested that the ICC was an effort in re-colonization, an attempt to lock out other candidates in favor of Odinga. "They can take away their donor funding because Kenya has enough money to fund its development programmes," Kenyatta argued. Ruto, too, made a similar argument, going so far as to suggest, "If they feel that they are so attached to [Odinga], then they should take him to their country and have him as their president" (Ng'etich 2012). Kenyatta went further. He argued, "No foreigner can tell me that he can tell Kenyans who to elect. Kenyans must be allowed to pick their leaders including the President. Democracy will not be achieved by pouring money into NGOs to wreck peace" (Emeka-Mayaka Gekara 2012). Speaking in Eldoret, Ruto's stomping ground, Kenyatta again said, "Will Kenyans decide or will NGOs decide?" The crowd, of course, answered "Kenyans" (Nairobi Star 2012). In even harsher terms, Kenyatta said,

"...the foreign countries are saying that they fight impunity but they are blaming it on us. We are telling the whites to live [*sic*] with their monies. The razor blade that chopped him off during the independence days will do the same this time. If we join hands, we do not have to borrow money from them...They should only come do tourism and business but respect the

people of Kenya. They will not intimidate us but shall go forth”(Gicheha 2012).

The public was primed to receive such messages about the anti-Western bias of the ICC and the role of foreign interference in the Kenyan election. According to a South Consulting poll, between 2011 and 2013, the percentage of Kenyans who were happy that the ICC was indicting Kenyatta and Ruto declined from 89 percent to 50 percent (Maliti 2013). Moreover, public opinion about the court and support for the ruling coalition went hand in hand, suggesting that partisan identification and perceptions of the ICC were inextricably linked (Alleblas et al. 2017). And thus, it was with these vote-rich blocs and anti-ICC rhetoric that Kenyatta and Ruto were declared the winners of the closely contested presidential election November 2013.

3.9 Electoral Victory and Its Implications for the ICC

Kenyatta and Ruto’s electoral victory in 2013 had two main implications for their own immunity as well as for the reputation and standing of the ICC. The first implication was that, operating from a position of power, Kenyatta and Ruto were able to undermine the cases against them, effectively ensuring their immunity, at least for the short- to medium-term. Second, and perhaps more importantly, by causing the ICC to run in circles to get information and to access victims, the Kenyan government was not only able to stop the Kenyatta case but also to cast further doubt on the ICC’s competence and legitimacy in the medium term to long term.

4. Conclusion: Electoral Gains and the Undermining of International Justice

By their very nature, ICTs emerge from and address complex and messy conflict and post-conflict environments. These tribunals can be politically divisive and often struggle as much with maintaining their legitimacy and authority as they do with fulfilling their legal mandates (Alter et al. 2016). Because of this, those being prosecuted or threatened with prosecution at international tribunals can use the threat of prosecution to their political advantage at home. The threat of prosecution, particularly when only one faction of the political landscape faces that threat, can cause existing coalitions to tighten and close ranks in order to help protect an important member of the coalition. Similarly, when the threat of prosecution is spread across the political spectrum, political elites can form new coalitions in order to secure electoral

victory and protect themselves from prosecution. As was the case in both Kenya and Lebanon, these coalitional politics, as well as anti-Western sentiment, allowed Kenya's Kenyatta and Ruto, and well as Hezbollah's surrogates in Lebanon to win at the ballot box.

This analysis contributes to the law and society literature by illustrating the fissures inherent in international criminal accountability and problematizing, rather than taking as a given, the accountability norm and its codification in ICTs. More specifically, this illustrates the contentions implicit in the processes of localizing justice (Clarke and Goodale 2010). In both Kenya and Lebanon, domestic schisms revealed that the justice norms embodied by international courts, as well as their day-to-day operations, were the subject of continued contention and division, not consensus. By demonstrating how these justice mechanisms were framed by some political elites as unwelcome and imperialist also contributes to the law and society field by highlighting how easily the line between perpetrator and victim can become blurred (Lemarchand 2011). In the eyes of the anti-STL and anti-ICC elites, they were the victims of historic and contemporary exploitation. Instead of providing reparations for these crimes, the tribunals in question exacerbated them. Indeed, no court could ever provide satisfactory reparations for these forms of abuses (Clarke 2009; Sharp 2018).

The article also contributes to the growing literature in law and society on perceptions and international courts (Clarke et al. 2016). Its primary contribution in this respect is to show how perceptions of international tribunals can be manipulated and packaged alongside other domestic and electoral concerns. Moreover, this article shows how these perceptions of tribunals are endogenous to larger socio-political patterns. They are both cause and consequence. While existing socio-economic and political dynamics can affect how justice is contextualized and thus inform perceptions of justice, so too can perceptions of justice influence domestic political conditions, particularly when these perceptions are linked to electoral politics.

As the empirical analysis above is limited to two cases and is not an exercise in theory testing but rather process tracing, we must be careful to generalize too broadly from the findings. The Kenyan and Lebanese cases represent particular dynamics, and the ICC and STL assume distinct political roles. And yet, the fact that the process tracing suggests that the general dynamics of turning an indictment at an ICT into domestic electoral victory proceeded along similar lines in such disparate contexts suggests that the theoretical implications can travel to other cases and courts. For example, in the case of the ICT for the former Yugoslavia, that Serbian elites have not only pushed back against the

Court but also used it as a way to undermine Western democratic influences and restrict democratic participation (Subotic 2009). In the case of Rwanda, President Kagame used the ICT for Rwanda (ICTR) and domestic transitional justice processes as ways of consolidating his own grip on power, crippling the ICTR in its ability to hold Tutsi elites, including him, accountable for any violence committed during the genocide (Morrill 2012).

For suspected perpetrators looking to escape prosecution and prison and for the parties looking to retain a hold on power, the stakes of these post-indictment elections are obviously high. The same is true, however, for the tribunals. When suspects at ICTs win elected office, they set off a chain of events that challenge the tribunals' credibility and normative legitimacy; threaten the viability of the tribunals' cases against the suspects and his or her allies; and contribute to the larger politics of backlash to international courts. Let us consider each at turn.

First, the electoral victory of suspected war criminals poses a normative challenge to the tribunals. For advocates of international criminal justice, the problem is not only that indicted suspects can use their status as indicted suspects to their electoral advantage but the fact that they can do so in *democratic* elections. By mobilizing voters against the tribunals, political elites cast doubt and suspicion on the tribunals and on the very pursuit of international criminal justice. This is a particularly acute problem where the democratic process is in place but imbued with uncertainty and where votes for the accused serve as referenda on the tribunals and democratic liberalism.

Second, once suspects at ICTs control the state, they also dictate the terms and tenor of the state's relationship with the ICT. This means that the degree to which the state cooperates on the cases involving its head of state hinges on the good faith and willingness of that very same president or prime minister. Heads of state do not often work with the tribunals under the assumption of good faith. Instead, they engage in a bevy of tactics, from witness intimidation to evidence tampering, intended to destroy the case against them.

The implications of indicted suspects winning at the ballot box go beyond dismantling any one case. A pattern of noncooperation, witness intimidation, contempt of court filings and dismissed cases can serve as death knells for the tribunals. If they cannot fulfill their basic job—to investigate and adjudicate on cases—then what are they good for? This can be a difficult question for the tribunals to answer, particularly when faced with a larger political environment that is turning away from multilateral institutions and the rhetoric of human rights and toward isolationism and inflammatory nationalism.

The tribunals are not passive recipients of political elites' manipulation and the courts and their advocates can push back against this process of "tribunal capture" in a number of ways. First, supporters of international criminal accountability can and should continue to do the difficult work of norm diffusion. By changing the meaning of the tribunals and accountability within the political environments in which they work, the tribunals and their supporters will make the courts less susceptible to the neo-imperialist narratives often attached to them by indicted suspects and their allies.

In addition, it is incumbent upon the tribunals to run clean and efficient trials. When justice is delayed or seemingly politicized, opponents to the ICTs are able to usurp the courts' authority and undermine their efforts. Finally, and relatedly, so-called steward states need to come to the aid of the tribunals in both normative and material ways (Hafner-Burton 2013). This might mean coupling foreign assistance with cooperation with the ICTs or naming and shaming states and elites who use the threat of prosecution as a tool for electoral advancement at international forums.

In order to turn the tide of indictments leading to electoral success, the tribunals, steward states and international criminal accountability activists will need to work in concert so that the threat of prosecution dampens a suspect's domestic electoral prospects, rather than heightens them. Future work by scholars from a range of disciplines, including law and society, international relations and public opinion can shed light on how international courts and their allies can respond to and even preempt suspects from turning an indictment into a successful campaign strategy.

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