



The Sanela Diana Jenkins Human Rights
Speakers Series 2012-13

The International Criminal Court: The Next Decade

IR 110
IPS 271
PoliSci 204/304

CONTACT INFORMATION

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TODAY'S AGENDA

- I. OVERVIEW OF SERIES AND PLANNED ONLINE DEBATES
- II. POLITICS AND INTERNATIONAL JUSTICE
- III. BACK TO PROFESSOR STACY

OVERVIEW OF SERIES AND PLANNED ONLINE DEBATES

SPEAKERS SERIES SCHEDULE

January 15

Richard Dicker

Director

International Justice Program

Human Rights Watch

January 22

Jim Fearon

Stanford Political Science, Civil War/Conflict

January 29

Cherif Bassiouni

Chairman

Drafting Committee

United Nations Diplomatic Conference on the
Establishment of an International Criminal Court

February 5

Ambassador David J. Scheffer

Special Expert to the Secretary-General on the
U.N. Assistance to the Khmer Rouge Trials

February 12

Carla Ferstman

Director of REDRESS

Doctor of Philosophy student, Oxford

February 19

William Pace

Convenor for the International NGO
Coalition for the ICC (CICC)

February 26

Shamila Batohi

Senior Legal Advisor

Office of the Prosecutor, ICC

March 5

Richard Steinberg

Director

Sanela Diana Jenkins
Human Rights Project,
UCLA

Helen Stacy

Director

Program on Human Rights, Stanford
Center on Democracy,
Development and the Rule of Law



OVERVIEW OF SERIES AND PLANNED ONLINE DEBATES



Each Lecture will be followed immediately by a
Voluntary Dinner & Framing Exercise
and then an **Online Debate**



OVERVIEW OF SERIES AND PLANNED ONLINE DEBATES

VOLUNTARY DINNER & FRAMING EXERCISE

Duration: **30-45 minutes**

Location: **Bechtel S-151**

Led by: **Dr. Diane Steinberg**



OVERVIEW OF SERIES AND PLANNED ONLINE DEBATES

ONLINE DEBATE

[StanfordHumanRights.com](https://stanfordhumanrights.com)

Begins Each Thursday Morning

Enrolled Students Must Post
Three Thoughtful Comments During the Quarter

OVERVIEW OF SERIES AND PLANNED ONLINE DEBATES



& Human Rights
International
Criminal Law
Online Forum
UCLAForum.com



UCLA | SCHOOL OF LAW
SANELA DIANA JENKINS HUMAN RIGHTS PROJECT



Fatou Bensouda
ICC Prosecutor

Topic for June 2012 – October 2012

Current Question on Mass Rape

Can the International Criminal Court (ICC) sustain a conviction for the underlying crime of mass rape without testimony from victims?

Article 68, paragraph 1 of the *Rome Statute* provides, "the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.... The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes." Sexual and gender based violence and crimes against children are highlighted. Pursuant to Rule 87 of the *Rules of Procedure and Evidence*, ("Rules"), a Chamber may order certain measures, such as the use of face and voice distortion, pseudonyms and closed sessions, to protect the identity of victims from the public. Such measures have been adopted by the Chambers of the ICC. However, notwithstanding, eliciting victim testimony is especially difficult given the cultural stigma that may attach to victims of rape in some cultures. Where testifying as a victim might precipitate discrimination, severe social stigma, exclusion from one's community, or even physical harm, these measures may not alleviate the concerns of victims. Requiring victims to testify in the face of threats of violence, foreclosure of the opportunity to marry, or the possibility of being convicted of adultery might place too great a burden on victims; and some might be unwilling to come forward even where widespread abuses have occurred. Accordingly, it has been argued that the Office of the Prosecutor must be empowered to

SITE INDEX OF ALL ISSUES



The Mass Rape Issue

Can the International Criminal Court (ICC) sustain a conviction for the underlying crime of mass rape without testimony from victims?

The Opinions of the Invited Experts



Askin de Brouwer Hagan MacKinnon Wedgwood

Discussion

Background Materials



Special Lecture Debate: Politics and International Justice

To what extent should the ICC Office of the Prosecutor consider or engage in politics to advance international justice?

Discussion

Background Materials

This online debate, online course, and the associated lectures are products of a collaboration between UCLA School of Law; the Stanford Program on Human Rights; and Stanford's Division of International, Comparative & Area Studies. The collaborators are grateful to Sanela Diana Jenkins for her generous support.



Click To
HOME PAGE FOR
CURRENT ISSUE

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JOIN THE
DISCUSSION

Special Lecture Series
DEBATE CURRENT
LECTURE ISSUE

WHAT'S YOUR OPINION?

Participate in a debate on key issues in International Criminal Law and help us shed some light on tough legal issues faced by the Prosecutor of the ICC. What you say here matters. The Prosecutor is listening.

INTRODUCTION TO FORUM



Click for a Video Introduction by ICC Prosecutor Fatou Bensouda.

This Forum is run by Dr. Richard H. Steinberg of the Sanela Diana Jenkins Human Rights Project at UCLA School of Law with the support of the Office of the Prosecutor of the International Criminal Court. The purpose of the Forum is to allow members of the legal community, governments, academics, and others to debate complex issues of international criminal law faced by the Office of the Prosecutor in the course of its work at the ICC. Membership and participation in this Forum are open to everyone. We welcome you to express your opinion, and we request a civil debate which directly addresses the legal issue set forth in the current question. [\(more\)](#)



Cour
Pénale
Internationale
International
Criminal
Court

Bureau du Procureur
Office of the Prosecutor



& Human Rights
International
Criminal Law
Online Forum



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SITE INDEX**

Special Lecture Series
**DEBATE CURRENT
LECTURE ISSUE**



Dr. Richard H. Steinberg
Professor of Law

Lecture Topic beginning January 8, 2013

*Current Question on
Politics & the ICC*

To what extent should the ICC
Office of the Prosecutor consider
or engage in politics to advance
international justice?

BACKGROUND MATERIALS – LECTURES

Richard Steinberg Lectures on Politics and the ICC



& Human Rights
International
Criminal Law
Online Forum

No Additional Background Materials Yet.

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SEARCH

Go



POLITICS AND INTERNATIONAL JUSTICE

I. THE DOMINANT PARADIGM

A Legal Culture of International Justice

II. POLITICS—FOR BETTER OR WORSE

III. ACCOUNTING FOR POLITICS

Five Operating Principles

IV. “JUSTICE DIPLOMACY”

Engaging with the Great Powers and Situation Countries

V. CONCLUSION

An Emerging Era of Justice Diplomacy?

THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

Established by the Rome Statute in July 2002

121 State Parties:

- All of South America, most of Europe, half of Africa
- **But not:** US, China, Russia, India

Oversight by the Assembly of States Parties

THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

A COURT OF LIMITED JURISDICTION:

SUBJECT MATTER JURISDICTION:

- Genocide, Crimes Against Humanity, War Crimes

TERRITORIAL JURISDICTION:

- National of a State Party (or state accepting jurisdiction)
- Crime on the Territory of a State Party (or state accepting jurisdiction)
- Referral by the UN Security Council

TEMPORAL JURISDICTION:

- Only crimes committed after 1 July 2002

COMPLEMENTARITY:

- A court of last resort, investigating and prosecuting only where national courts have failed.

THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

THREE ORGANS:

JUDICIAL DIVISIONS (CHAMBERS):

18 Judges

Pre-Trial Chamber, Trial Chamber, Appeals Chamber

OFFICE OF THE PROSECUTOR (OTP):

Mme. Fatou Bensouda

Trial Attorneys, Investigators, JCCD (Jurisdiction, Cooperation, Complementarity)

REGISTRY

Court Administration, Defense Counsel, Detention Unit, Etc.

THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

ACTIVITY:

18 Preliminary Examinations

7 Investigations (All in Africa)

30 Public Arrest Warrants

8 On-Going Trials

1 Conviction; 1 Acquittal

THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

- ELEMENTS:**
- Main focus of OTP work is to identify, charge, arrest, and try those most responsible
 - No impunity for such persons
 - Legal/formal reasoning and evidence should motivate OTP behavior
 - Peace-making and reconciliation should be left to other actors
 - Political considerations should not enter into OTP decisions

THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

I shall not be involved in political considerations. I have to respect scrupulously my legal limits.

—Luis Moreno-Ocampo
4 February 2010



THE DOMINANT PARADIGM: A LEGAL CULTURE OF INTERNATIONAL JUSTICE

THIS STANCE HAS SERVED THE OTP WELL IN ITS FIRST DECADE

- Built institutional structure
- Assembled a strong staff
- Cooperation with most States Parties
- Cooperation with some other countries
- By legal measures, the OTP has begun establishing a successful record



THE ICC IS NOW RECOGNIZED AS A LEGAL INSTITUTION FIRMLY ENTRENCHED IN THE INTERNATIONAL LANDSCAPE

POLITICS—FOR BETTER OR WORSE

IRONY: While the OTP culture has favored justice over politics, the sharpest and most persistent criticism of the OTP is that it is playing politics.

The New York Times

INTERNATIONAL
Herald Tribune
THE WORLD'S DAILY NEWSPAPER | iht.com



**FOREIGN
AFFAIRS**

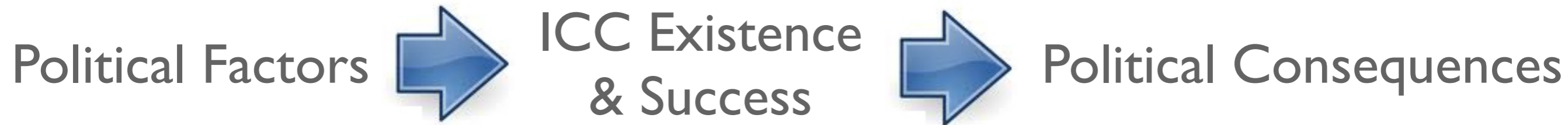
Opinio Juris

**The
Washington
Post**



**HUMAN
RIGHTS
WATCH**

POLITICS—FOR BETTER OR WORSE



POLITICS—FOR BETTER OR WORSE

THE OTP'S SUCCESS DEPENDS ON
THE POLITICAL DECISIONS OF STATES TO:

- Permit investigations and evidence-gathering
- Provide a safe environment for investigators
- Effectuate arrests
- Fund its work
- Help legitimate its work
- Pressure parties in a situation to cooperate with the OTP
- Provide evidence
- Not interfere with its work

POLITICS—FOR BETTER OR WORSE

POLITICAL CONSEQUENCES OF OTP ACTION—FOR BETTER:

- Remove reprehensible and powerful figures from the situation
- Focus world attention on and constrain freedom of action of the accused
- Lower the morale of followers of the accused and may cause their surrender

POLITICS—FOR BETTER OR WORSE



Visiting DDR/RR Camp and Meeting
with Demobilized Soldiers

POLITICS—FOR BETTER OR WORSE

POLITICAL CONSEQUENCES OF OTP ACTION—FOR WORSE:

- Legal/rational basis for investigations may result in patterns that give rise to claims of bias—the Africa perception problem



POLITICS—FOR BETTER OR WORSE

POLITICAL CONSEQUENCES OF OTP ACTION—FOR WORSE:

- Investigations or arrests may consolidate power for an autocratic leader and diminish the OTP's legitimacy



POLITICS—FOR BETTER OR WORSE

POLITICAL CONSEQUENCES OF OTP ACTION—FOR WORSE:

- Fugitives may react to an arrest warrant by renewed commitment to fight rather than to make peace



POLITICS—FOR BETTER OR WORSE

IMPLICATIONS:

- Like it or not, the OTP is now a major international political actor, engaging in “High Politics”



POLITICS—FOR BETTER OR WORSE

IMPLICATIONS:

- OTP actions are evaluated in political terms:
 - ▶ Removal of bad actors from the scene
 - ▶ Promoting peace in situation countries
 - ▶ Promoting reconciliation in situation countries

ACCOUNTING FOR POLITICS: FIVE OPERATIONAL PRINCIPLES

I. Protect the ICC's legitimacy

- Stand for no impunity
- Act only under the color of law and consistently with it
- Exercise agency through prosecutorial discretion

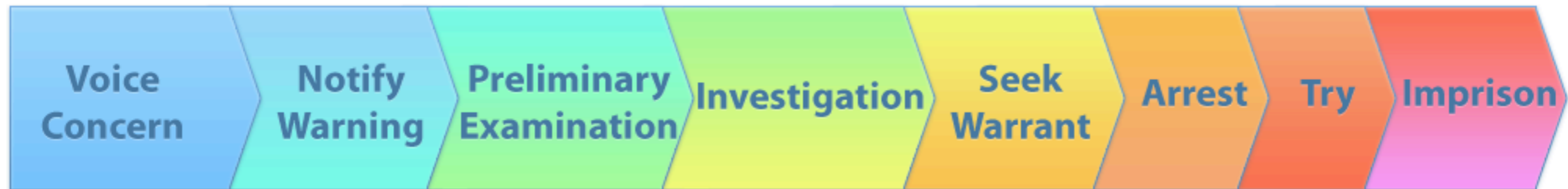


ACCOUNTING FOR POLITICS: FIVE OPERATIONAL PRINCIPLES

2. Simultaneously pursue not only criminal justice, but also peace and reconciliation

ACCOUNTING FOR POLITICS: FIVE OPERATIONAL PRINCIPLES

3. Whenever crimes are taking place,
voice concern or act.



The Engagement-Intensity Spectrum: OTP's Toolbox

ACCOUNTING FOR POLITICS: FIVE OPERATIONAL PRINCIPLES

4. Consider consequences for the
Great Powers and Situation Countries



ACCOUNTING FOR POLITICS: FIVE OPERATIONAL PRINCIPLES

5. Build greater institutional capacity to analyze politics and engage diplomatically



“JUSTICE DIPLOMACY”

ENGAGING WITH SITUATION COUNTRIES

Intensify positive complementarity efforts

“JUSTICE DIPLOMACY”

ENGAGING WITH SITUATION COUNTRIES

Pursue expansive outreach in situation countries



“JUSTICE DIPLOMACY”

ENGAGING WITH SITUATION COUNTRIES

Analyze the political consequences of reparations



“JUSTICE DIPLOMACY”

ENGAGING WITH SITUATION COUNTRIES



“JUSTICE DIPLOMACY”

ENGAGING WITH THE GREAT POWERS— JUSTICE AND CONFLICT MANAGEMENT

Take into account the stance of powerful states

The Great Powers Oppose ICC Engagement

The Great Powers are Divided
(e.g., Gaza)

The Great Powers Favor Justice
(e.g., Libya)

The OTP Should Not Engage
(or Engage Only with Minimal Intensity)

Nuanced & Contextualized
Justice Diplomacy is Required

The OTP Should Engage with Intensity

Voice Concern

Notify
Warning

Preliminary
Examination

Investigation

Seek
Warrant

Arrest

Try

Imprison

“JUSTICE DIPLOMACY”

ENGAGING WITH THE GREAT POWERS—
JUSTICE AND CONFLICT MANAGEMENT

Facilitate Peace:

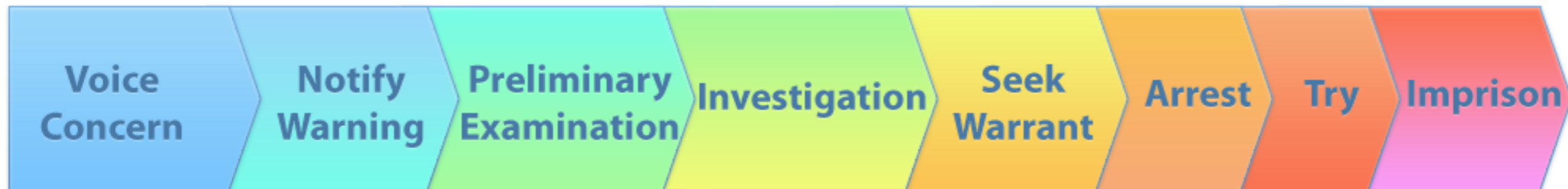
**Stipulate that the peace-making efforts of
perpetrators is a basis for mitigation in sentencing**



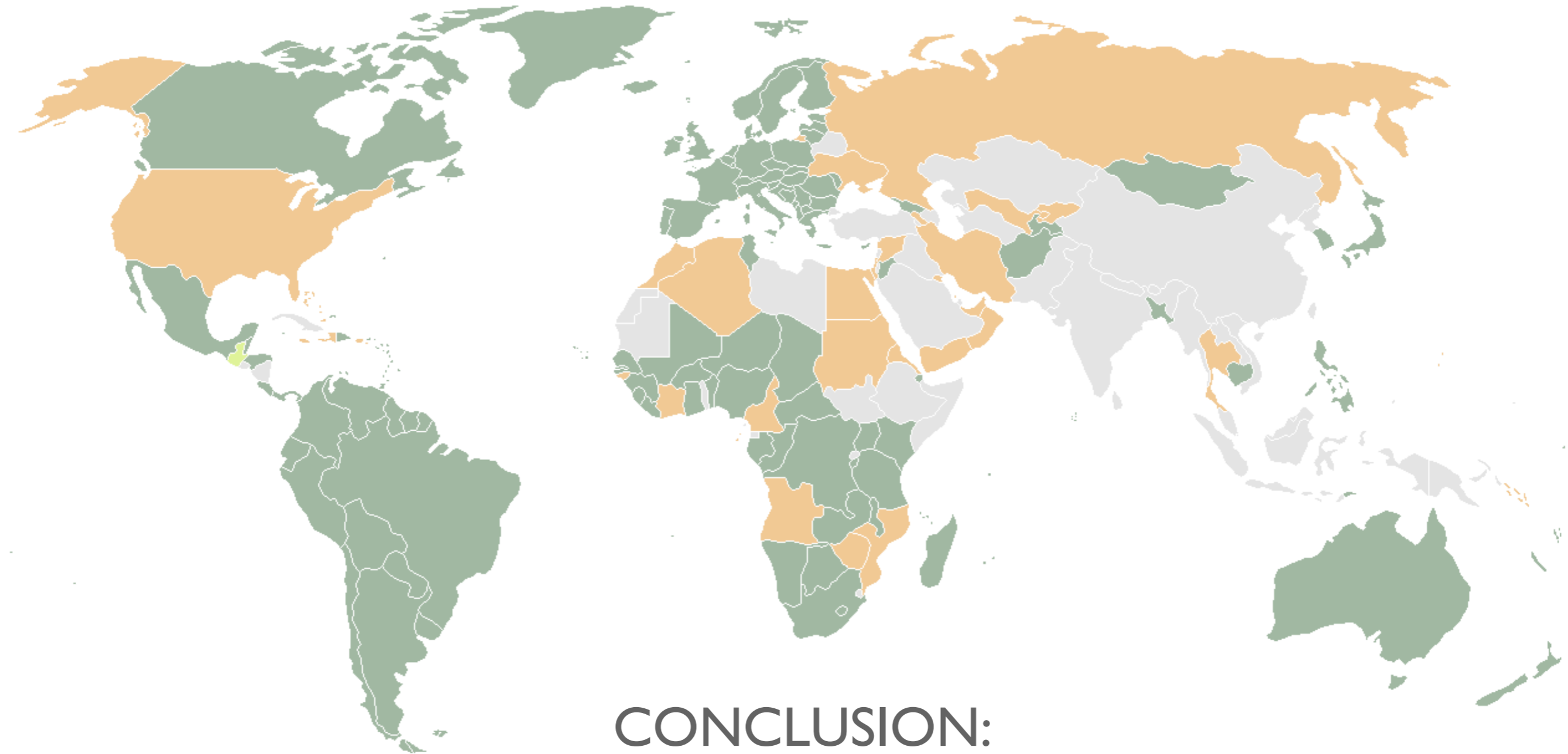
“JUSTICE DIPLOMACY”

ENGAGING WITH THE GREAT POWERS—
JUSTICE AND CONFLICT MANAGEMENT

Bargaining for peace



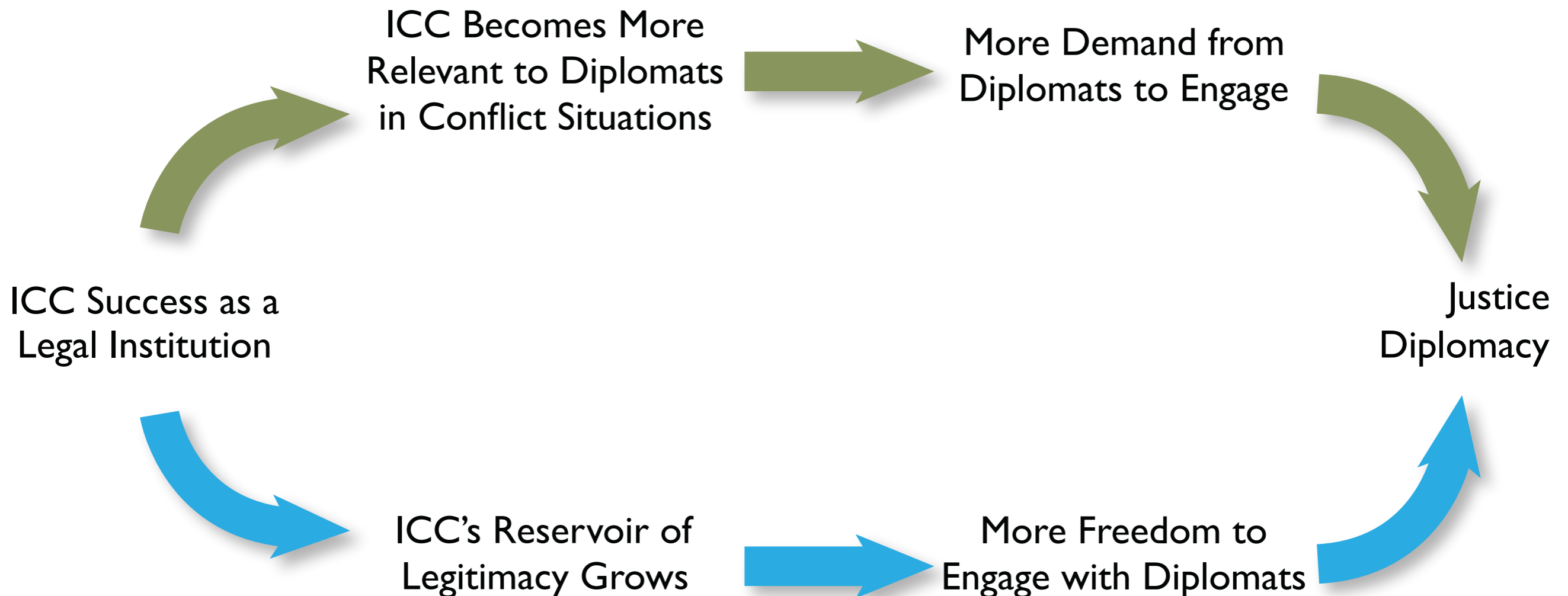
POLITICS AND INTERNATIONAL JUSTICE



CONCLUSION:
**AN EMERGING ERA OF
JUSTICE DIPLOMACY?**

POLITICS AND INTERNATIONAL JUSTICE

CONCLUSION:





POLITICS AND INTERNATIONAL JUSTICE

NOTE: THIS STANCE IS CONTESTED

Many argue that the ICC should remain a purely legal institution, avoiding politics completely.

Three Main Reasons:

LEGITIMACY

INSTITUTIONAL CAPACITY

THE FRENCH REVOLUTION



POLITICS AND INTERNATIONAL JUSTICE

FIRST ONLINE DEBATE:

To what extent should the ICC Office of the Prosecutor consider or engage in politics to advance international justice?

